

(VII) GENERAL CONTRACT TERMS

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INTRODUCTION

These Contract Terms Procedures set out certain terms and conditions of Contracts. The terms described in Part I (General Contract Terms) below apply to Contracts as part of their Contract Terms. Part I of these Contract Terms Procedures applies: (i) in relation to all F&O Contracts; and (ii) in relation to CDS Contracts and FX Contracts to the extent specified in the CDS Procedures and FX Procedures respectively.

Certain other Contract Terms; (i) for ICE Endex Contracts are set out in the ICE Endex Rules; (ii) for ICE Futures Europe Contracts are set out in the ICE Futures Europe Rules; (iii) for ICE Futures US Contracts are set out in the ICE Futures US Rules; (iv) for Financials & Softs Contracts are set out in the LIFFE Rules or the ICE Futures Europe Rules, as applicable; (v) for CDS Contracts are set out in the CDS Procedures; and (vi) for FX Contracts are set out in the FX Procedures. See the definition of "Contract Terms" for further details.

PART I: GENERAL CONTRACT TERMS

1. INTERPRETATION

1.1 Words and expressions used in this Part shall have the same meaning as in the Rules, unless otherwise expressly defined in this Part.

2. ECONOMIC TERMS

2.1 The economic terms of a Contract ("Economic Terms") shall be derived from the information presented to the Clearing House in relation to the corresponding Transaction in accordance with the Rules.

2.2 The Economic Terms comprise:

- (a) proposed Selling Counterparty (or fixed rate payer) (but excluding the identity of the Clearing House as Seller pursuant to any Contract) or proposed Buying Counterparty (or floating rate payer) (but excluding the identity of the Clearing House as Buyer pursuant to any Contract);
- (b) Contract Set;
- (c) quantity;
- (d) delivery date or period (where applicable);
- (e) settlement date (where applicable);
- (f) exercise date (where applicable);
- (g) fixed price or traded price (as the case may be); and
- (h) floating price (where applicable).

2.3 The Clearing House and Clearing Counterparty shall pay when due all amounts that fall due for payment pursuant to the Economic Terms or otherwise pursuant to the Contract Terms.

3. STANDARD TERMS

3.1 The following standard terms ("**Standard Terms**") shall apply to all Contracts:

- (a) **Payment of stamp duty and other taxes**
 - (i) All payments due under a Contract shall be made by the Clearing Counterparty free and clear and without deduction or withholding for or on account of any tax, unless

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required by Applicable Law. If such a deduction or withholding is required by Applicable Law to be made by a Clearing Counterparty, the amount due from the Clearing Counterparty shall be increased to an amount which (after making such deduction or withholding) leaves an amount equal to the payment which would have been due had no deduction or withholding been required.

- (ii) The Clearing Counterparty will be responsible for ensuring that any stamp duty or other similar tax levied or imposed upon it or its Customer in respect of any Contract to which it is a party that is applicable in any jurisdiction is duly paid.
- (iii) The Clearing House shall make any payments due to a Clearing Counterparty net of any deduction or withholding for or on account of any tax it is required to make from such payments.
- (iv) The Clearing Counterparty shall indemnify the Clearing House against any stamp duty or other tax levied or imposed upon the Clearing House in any jurisdiction in respect of the Clearing House's entry into, execution or performance of, or payment or delivery pursuant to, any Contract.

(b) **Payments**

- (i) The Clearing House shall effect daily settlement to market of Contracts and shall calculate Open Contract Positions in accordance with the Rules. The Market Delivery Settlement Price, Settlement Price, Reference Price and Strike Price and other reference prices (where applicable) shall be determined in accordance with the Rules and Market Rules.
- (ii) Payments under, and in respect of, each Contract shall be calculated by the Clearing House and shall be made by, or to, the Clearing Counterparty in accordance with the Rules.
- (iii) Each instruction made by the Clearing House to an Approved Financial Institution pursuant to Rule 302 shall be deemed to be made pursuant to the Contract Terms for each Contract of a Set for which a Clearing Counterparty has an Open Contract Position. In respect of each Contract and instruction under Rule 302, the Clearing Counterparty shall be deemed to make instructions to the Clearing House to place at the disposal of the Clearing House, by way of book entry on the accounts of the Clearing House or an Approved Financial Institution, all amounts as are or become payable pursuant to the Contract, all amounts due in respect of Margin for Contracts of the relevant Set and all amounts as are instructed by the Clearing House in connection with the Contract or Contract Set pursuant to Rule 302.

(c) **Rules**

- (i) Each Contract shall be subject to the Rules, which shall form a part of and be incorporated by reference into, the Contract Terms. In the event of any conflict between the Contract Terms and the Rules or any other document, Rule 102(f) shall apply.
- (ii) In particular, in respect of each Contract, the Clearing Counterparty and Clearing House shall:
 - (A) observe, comply with and be bound by the Rules (as amended in accordance with the Rules from time to time);

- (B) be subject to and bound by all of the provisions, dispositions, transfers and requirements of the Rules in relation to payment, title, rights, obligations, liabilities, property (whether tangible or intangible) and Margin;
- (C) be subject to and bound by all representations, warranties, agreements and acknowledgements that arise pursuant to the Rules from time to time;
- (D) be subject to any requirement imposed as a result of a request, decision, determination, direction, sanction, requirement, award or discretion that the Clearing House is entitled to make, exercise or impose pursuant to the Rules;
- (E) be responsible for the actions and omissions of its Representatives as set out in the Rules; and
- (F) if an Event of Default is declared in respect of it, to be bound by the Rules as a Defaulter.

(d) **Customers and Third Party Rights**

- (i) Except as otherwise provided in the Rules for FCM Clearing Members, each party will act as principal and not as agent in respect of each Contract (in the case of the Clearing Member, whether such Contract is for the Clearing Member's own account or is undertaken as a result of an order from another member of a Market or from a Customer or from any other person or arises as a result of a pre-existing contract of, or obligation of the Clearing Member towards, any third party).
- (ii) Clearing Member represents and warrants that a contractually binding agreement is in place with any Customer in respect of whom it acts as Clearing Member in relation to any Contract, pursuant to which such Customer agrees that: (i) (only if the Clearing Member is not an FCM Clearing Member), the Clearing Member acts as principal in respect of the Contract; and (ii) the Customer has no recourse, whether under contract, tort or otherwise under Applicable Laws, against the Clearing House in respect of the Contract or pursuant to the Rules.
- (iii) The Clearing Counterparty acknowledges and agrees that the Clearing House does not have any obligations to Persons other than Clearing Counterparties, as set out further in Rule 111. Contractual and other provision for any consequences for a Customer or counterparty (other than the Clearing House) of the Clearing Member of any Contract arising, existing or being settled or subject to delivery between the Clearing House and the Clearing Member (including, without limitation, effective and enforceable arrangements for any Corresponding Contract or Agency Relationship with any Customer and Transferor/Transferee arrangements) shall not be the responsibility of the Clearing House.
- (iv) A person who is not a party to a Contract shall have no rights under or in respect of such Contract. Rights of third parties to enforce any term of any Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise are expressly excluded.

(e) **Offer, Acceptance and Formalities**

- (i) The parties agree that each Contract that is not void *ab initio* shall be deemed to have been subject to an offer by the Clearing House accepted by the Clearing Counterparty immediately upon its formation pursuant to the Rules. No Contract shall require any written instrument or document be signed, delivered or executed or electronic or

other entry to be made in any record or book in order for it to arise and become binding on the parties, save as specified in Part 4 of the Rules.

- (ii) Notwithstanding (i) above, if at any time, it is necessary or desirable to better implement or protect the rights and obligations of any party to a Contract, each party shall, at its own expense, use all reasonable endeavours to enter into and execute all documents reasonably required to so implement or protect. In such circumstances, each party shall also procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to any Contract.

(f) **Warranties**

The Clearing Counterparty represents and warrants that:

- (i) neither the execution nor performance of the Contract by or on behalf of the Clearing Counterparty or the Clearing House will breach or conflict with any provision of the memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document of the Clearing Counterparty, or with any agreement or Applicable Law which is binding upon or affects the Clearing Counterparty;
- (ii) the Clearing Counterparty and signatories acting on its behalf each have full power and all necessary authority to enter into the Contract and perform any act that may be required pursuant to the Contract and pursuant to the Rules in respect of the Contract; and
- (iii) the Clearing Counterparty has complied with its obligations as a Clearing Counterparty, is duly organised and validly existing under Applicable Laws of the jurisdiction of its incorporation and is in good standing under such Applicable Laws.

The Clearing Counterparty acknowledges that the Clearing House will not review nor be responsible for reviewing any provision of the Clearing Counterparty's memorandum of incorporation, articles of association, by-laws, partnership agreement, limited liability company agreement or any other organisational document of the Clearing Counterparty, any agreement to which the Clearing Counterparty is party or any Applicable Law which is binding upon or affects the Clearing Counterparty with a view to determining the authority of the Clearing Counterparty to enter into any Contract.

(g) **Assignment and transfer**

No Clearing Counterparty may, at any time, assign any of its rights or transfer by novation any of its rights and obligations under any Contract to a third party unless (i) such transfer occurs pursuant to the Rules; or (ii) the Clearing House provides its prior written consent. Each Contract shall bind, and enure to the benefit of, the parties and their authorised successors and assignees.

(h) **Default Interest**

Interest shall be charged to the Clearing Counterparty on any unpaid but due amount from the date on which the amount becomes due and payable until the date of payment at 1% above the rate per annum which is the cost (without proof or evidence of any actual cost) to the Clearing House if it were to fund or itself funded the relevant amount, compounded daily.

(i) **No Partnership or Agency**

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent or principal of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. This does not affect the relationship of agency between a Disclosed Principal Member and a Clearing Member which has appointed it or any relationship of agency between an FCM Clearing Member and its Customer.

(j) **Severance**

If any provision of a Contract (or part of any provision) is found by any Court or other Governmental Authority to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of that Contract, and the validity and enforceability of the other provisions of that Contract shall not be affected.

(k) **Liability**

The Clearing Counterparty shall indemnify and hold harmless the Clearing House in respect of any Contract in accordance with the provisions of the Rules relating to indemnity and liability. The liability of the Clearing House and its Representatives under any Contract shall be subject to all the exclusions on liability set out in the Rules.

(l) **Disputes**

Any and all disputes arising out of or in connection with a Contract, including any dispute as to the existence, validity or termination of any Contract, shall be resolved pursuant to the dispute resolution procedures set out in Rule 117. In the event of any conflict between a provision of these Contract Terms and Rule 117, the provisions of Rule 117 shall prevail.

(m) **Termination**

The Contract shall terminate automatically, and Rule 209(c) shall apply, upon the Insolvency of the Clearing House. In the event of Rule 209(c) applying, the price at which Contracts are terminated for purposes of Rule 905(h) shall be the same price for all Contracts of the same Set.

(n) **Governing Law**

These Contract Terms, and all non-contractual obligations arising out of or in connection with them, are governed by and shall be construed in accordance with English law and any Dispute under these Contract Terms will be subject to arbitration under Rule 117.

(o) **Waiver**

Any waiver of any right or consent under a Contract is only effective if it is in writing and signed by the waiving or consenting party, and applies only in the circumstances for which it is given and to the Contract concerned and shall not prevent the party who is giving it from subsequently relying on the relevant provision. No delay or failure to exercise any right under a Contract shall operate as a waiver. No single or partial exercise of any right under a Contract shall prevent any further exercise of the same or any other right under that Contract or any other Contract.

(p) **Entire Agreement**

The Clearing Counterparty warrants to the Exchange and Clearing House that, in entering into each Contract, it does not rely on any statement, representation, assurance or warranty of the

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Exchange or Clearing House or any other party other than as expressly set out in the Contract Terms. The Clearing Counterparty agrees and undertakes to the Clearing House that its only rights and remedies available arising out of or in connection with a Contract or their subject matters shall be solely for breach of contract, in accordance with the Contract Rules. Nothing in this clause or elsewhere in the Contract Rules shall limit or exclude any liability for fraud, death or personal injury or for any other liability which by law cannot be excluded.