

AUCTION TERMS FOR F&O DEFAULT AUCTIONS

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AUCTION TERMS FOR F&O DEFAULT AUCTIONS

1. INTRODUCTION

- 1.1 These Auction Terms for F&O Default Auctions (the "**F&O Default Auction Terms**") govern the auctioning of a lot (an "**Auction Lot**") representing one or more F&O Contracts ("**F&O Contracts**") to which a Defaulter is or was a party, where such auction ("**F&O Auction**") is administered by the Clearing House pursuant to Part 9 of the ICE Clear Europe Rules (the "**Rules**") and these F&O Default Auction Terms. These F&O Default Auction Terms are 'Procedures' as defined in the Rules and are subject to the Rules, including, without limitation, Rule 102. A reference herein to F&O Contracts includes: (i) where automatic early termination has taken place under Part 9 of the Rules or the Contract Terms, a reference to an auction of the terminated F&O Contracts or notional amounts representing such F&O Contracts; and (ii) where contracts have arisen from hedging transactions made pursuant to Rule 903(c), a reference to any such hedging contracts executed by the Clearing House.
- 1.2 These F&O Default Auction Terms shall apply to every F&O Auction conducted by the Clearing House pursuant to Part 9 of the Rules. However, they may be modified or supplemented for any particular F&O Auction pursuant to the relevant F&O Auction Specifications as set out in paragraph 2.6. Nothing in these F&O Default Auction Terms shall prevent the Clearing House from administering a sale or entering into offsetting transactions without holding an auction to which these F&O Default Auction Terms apply, including through the procurement of competitive prices from more than one Person (which may or may not include Clearing Members) in order to terminate, close out, hedge or offset a Defaulter's Contracts pursuant to Rule 905.
- 1.3 The Clearing House will conduct F&O Auctions in accordance with its default policies. In the event of a conflict between the terms of such default policies and these F&O Default Auction Terms (as modified or supplemented by any applicable F&O Auction Specification as set out in paragraph 2.6), these F&O Default Auction Terms shall prevail.
- 1.4 Subject to paragraph 1.5 to 1.10 below, these F&O Default Auction 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 F&O Default Auction Terms will be subject to arbitration under Rule 117.
- 1.5 Solely as between an FCM/BD Clearing Member and the Clearing House, those provisions of these F&O Default Auction Terms inasmuch as they relate solely to an issue or matter concerning:
- (a) the pledging, transfer, holding, use and segregation of Pledged Collateral provided by an FCM/BD Clearing Member (or other property, excluding for the avoidance of doubt the Contracts themselves recorded in such an Account, recorded in a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided by an FCM/BD Clearing Member); and/or
 - (b) the application of any net sum owed in favour of the FCM/BD Clearing Member in respect of a Customer Account or Proprietary Account that is designated as an account in respect of which Pledged Collateral may be provided,

and, solely to the extent relevant to interpreting the foregoing provisions in such circumstances, relevant definitions and interpretative provisions in paragraph 1 of these F&O Default Auction Terms (such provisions, together or separately "**Pledged Collateral Matters**") shall be governed by and construed in accordance with the laws of the State of New York and, as applicable, the federal law of the United States of America.

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- 1.6 For the avoidance of doubt, paragraph 1.5 is an exception to paragraph 1.4 and Rule 102(s) which provide that the F&O Default Auction Terms and Rules respectively shall be governed by and construed in accordance with the laws of England and Wales. For the avoidance of doubt, without limitation and notwithstanding paragraph 1.5, the following are governed by and shall be construed in accordance with the laws of England and Wales in their entirety without any exception and shall in no circumstances constitute a Pledged Collateral Matter:
- (a) all of the provisions of these F&O Default Auction Terms relating to the Designated System;
 - (b) any Dispute or issue arising as between a Non-FCM/BD Clearing Member or Sponsored Principal on the one hand and the Clearing House on the other hand;
 - (c) any Dispute or issue arising in respect of a Customer Account or Proprietary Account that is not designated as an account in respect of which Pledged Collateral may be provided;
 - (d) any matter relating to Pledged Collateral of a Non-FCM/BD Clearing Member or a Sponsored Principal;
 - (e) any Pledged Collateral provided by an FCM/BD Clearing Member or Sponsored Principal pursuant to an English law Pledged Collateral Addendum; and
 - (f) the Contract Terms of all Contracts.
- 1.7 Where a dispute between an FCM/BD Clearing Member and the Clearing House relates to one or more Pledged Collateral Matters, notwithstanding the provisions of Rule 117, solely the allegations or claims relating to the Pledged Collateral Matters in such dispute shall be heard and determined exclusively in any New York federal court sitting in the Borough of Manhattan of the City of New York, provided, however, that if such federal court does not have jurisdiction over such allegations or claims, such allegations or claims shall be heard and determined exclusively in any New York state court sitting in the Borough of Manhattan of the City of New York (such Courts, together, "**New York Courts**"). Consistent with the preceding sentence, the Clearing House and each FCM/BD Clearing Member hereby:
- (a) submits to the exclusive jurisdiction of the New York Courts solely in respect of allegations or claims relating to Pledged Collateral Matters; and
 - (b) agrees that service of process will be validly effected by sending notice in accordance with Rule 113.
- 1.8 All allegations or claims other than those over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 shall be finally and exclusively determined by way of arbitration pursuant to Rule 117. It is expressly recognised that for Disputes between an FCM/BD Clearing Member and the Clearing House containing both allegations or claims over which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 and other allegations or claims, it may be necessary to have both New York Court proceedings and arbitral proceedings. The submission of a party to the jurisdiction of a New York Court and/or the taking of a step by a party in proceedings before a New York Court, where in any such instance the New York Court has exclusive jurisdiction pursuant to paragraph 1.7 does not amount to a waiver by that party of its right to commence or participate in arbitral proceedings in accordance with Rule 117. The submission of a party to arbitration under Rule 117 or in respect of any Dispute does not amount to a waiver by that party of its right to have allegations or claims in relation to which the New York Courts have exclusive jurisdiction pursuant to paragraph 1.7 heard in the New York Courts.

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- 1.9 Nothing in paragraphs 1.4 to 1.10 precludes the Clearing House from bringing an action to enforce a judgment from any New York Court or award of any arbitral tribunal in any court of competent jurisdiction.
- 1.10 EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY DISPUTE ARISING OUT OF, UNDER OR IN CONNECTION WITH THESE F&O DEFAULT AUCTION TERMS OR ANY MATTER CONTEMPLATED BY THEM. EACH CLEARING MEMBER AND THE CLEARING HOUSE HEREBY:
- (a) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PERSON BOUND BY THESE RULES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF ANY SUCH DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER; AND
 - (b) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THESE RULES, ALL CONTRACTS AND ALL OTHER TRANSACTIONS CONTEMPLATED BY THESE RULES, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN PARAGRAPHS 1.4 to 1.10.
- 1.11 Capitalised terms used, but not defined, in these F&O Default Auction Terms shall have the meanings given to them in the Rules, F&O Procedures, Finance Procedures or F&O Standard Terms as applicable, and in the order of priority specified in Rule 102(f) in the event and to the extent of any conflict.

2. THE AUCTION PROCESS

- 2.1 Any F&O Auctions of F&O Contracts to which a Defaulter is or was party will take place after the Clearing House has notified the F&O Clearing Members electronically through the Default Management System operated by the Clearing House ("**DMS**") (or via such other means and in such format as is specified by the Clearing House) that an auction or auctions are to take place (such notice, the "**F&O Auction Announcement**").
- 2.2 Subject to a zero Minimum Bid Requirement being established pursuant to this paragraph 2.2 or paragraph 2.4, each F&O Clearing Member is required to bid in every F&O Auction regardless of whether such F&O Clearing Member is at the time of the F&O Auction a party to any F&O Contract, has served a notice of termination for which the Termination Date has not yet passed or is in a Cooling-off Period. For these F&O Default Auction Terms the term 'F&O Clearing Member' shall be construed to exclude any F&O Clearing Member that is a Defaulter and the term 'Sponsored Principal' shall be construed to exclude any Sponsored Principal that is a Defaulter. Subject to paragraph 2.4 below, with respect to an Auction Lot, all F&O Clearing Members are required to bid for a minimum of F&O Contracts in each Auction Lot as determined by the Clearing House (the "**Minimum Bid Requirement**"). Each F&O Clearing Member's Minimum Bid Requirement will be determined separately for each category of F&O Contracts and will be determined *pro rata* based on the Original Margin requirement applicable to the Open Contract Positions of such F&O Clearing Member as compared to the total Original Margin Requirements for all the Open Contract Positions of all F&O Clearing Members, subject to paragraphs 2.4 and 5.6 below. The sum total of the F&O Clearing Members' Minimum Bid Requirements may be set to an amount greater than 100% (but no greater than 150%) of the F&O Contracts in the relevant Auction Lot as may be determined by the Clearing House from time to time. No Auction Participants other than F&O Clearing Members are subject to any minimum bid requirement.

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- 2.3 An F&O Clearing Member may bid for the account of a Customer, subject to paragraph 3.2 below. An F&O Clearing Member's bid for one of its Proprietary Accounts or Customer Accounts, including Individually Segregated Sponsored Accounts for the account of any Sponsored Principal for which it acts as Sponsor, will count towards its Minimum Bid Requirement.
- 2.4 Each F&O Clearing Member's Minimum Bid Requirement shall be communicated to it individually by the Clearing House through the DMS (or via such other means and in such format as is specified by the Clearing House) as soon as practicable prior to the relevant F&O Auction. A Minimum Bid Requirement shall not apply to an F&O Clearing Member: (a) to the extent such a Minimum Bid Requirement would be in breach of Applicable Law or the Rules; or (b) to the extent that such a Minimum Bid Requirement would be inappropriate in the circumstances, as may be reasonably determined by the Clearing House. An F&O Clearing Member will notify the Clearing House promptly but in any event within one hour of the Clearing House publishing details of the F&O Contracts comprising the relevant Auction Lot, in writing, if it reasonably considers that paragraph (a) or (b) applies or should apply to it and upon receiving confirmation by the Clearing House that it agrees with such assessment, the Minimum Bid Requirement shall not apply to that F&O Clearing Member. F&O Clearing Members may outsource the operational processing of any of their obligations under these F&O Default Auction Terms under Rule 102(w). F&O Clearing Members may also transfer their Minimum Bid Requirements to an Affiliate provided that such Affiliate so agrees and is also an F&O Clearing Member, subject to both Clearing Members notifying the Clearing House prior to an F&O Auction and executing an agreement in the format approved by the Clearing House for these purposes. An F&O Clearing Member that so transfers its Minimum Bid Requirement to an Affiliated F&O Clearing Member or outsources any of its obligations remains liable for any breach by its Affiliate or outsourcee of these F&O Default Auction Terms or the F&O Auction Specifications, including without limitation in respect of such F&O Clearing Member's Minimum Bid Requirement (in addition to the liability on the part of its Affiliate for such breach).
- 2.5 The Clearing House may divide the portfolio of a Defaulter into discrete F&O Auctions or different Auction Lots as it considers appropriate. The Clearing House may at its discretion determine which particular F&O Contracts or packages of F&O Contracts are to be the subjects of a particular Auction Lot and may establish Auction Lots by selecting by way of F&O Contract Set or generic type (e.g. oil, power, emissions). The Clearing House may combine contracts with different currencies in the same Auction Lot. In these circumstances, F&O Auction Participants must still provide bids in a single currency, being that specified in the relevant F&O Auction Specifications. Payment obligations resulting from the F&O Auction will be in the specified currency. In creating any such Auction Lots, the Clearing House will consider if F&O Contracts that provide Margin offsets for one another in the normal margining methodology of the Clearing House should be retained in the same Auction Lot. It is expected that the Clearing House will create one or more separate Auction Lots consisting of F&O Contracts for which one or more F&O Clearing Members is excused from a Minimum Bid Requirement or has a zero Minimum Bid Requirement under paragraphs 2.2 and 2.4. The Clearing House may auction Auction Lots in such order as it considers appropriate. Prior to an F&O Auction Announcement or the circulation of the F&O Auction Specifications, the Clearing House may have engaged in close-out or hedging trades or other transactions in respect of the portfolio of a Defaulter. In exercising its discretion under this paragraph 2.5, the Clearing House shall consider, wherever possible, taking into account the Clearing House's margining methodology, including within each Auction Lot of F&O Contracts, any F&O Contracts which have been offset for the purposes of calculating the Defaulter's Margin requirements.
- 2.6 In respect of each Auction Lot, the Clearing House will provide each F&O Clearing Member (and any other Person invited by the Clearing House to participate in the auction whose F&O Clearing Member has confirmed its willingness to clear resulting transactions) (such F&O Clearing Member, Customer or Sponsored Principal, a "**F&O Auction Participant**") in advance with information about F&O Contracts to be auctioned, timing for the bidding process, participation criteria, and, without prejudice to paragraph 2.4, any applicable Minimum Bid Requirements and other matters via a F&O Auction Announcement or

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through DMS (or via such other means and in such format as is specified by the Clearing House) (such information, the "**F&O Auction Specifications**"). The F&O Auction Specifications may include amendments or additions to any provision of these F&O Default Auction Terms or may disapply any provision of these F&O Default Auction Terms. In the event of any conflict between the F&O Auction Specifications and these F&O Default Auction Terms in respect of any particular Auction Lot, the F&O Auction Specifications shall prevail. If any Person which has been provided a copy of any F&O Auction Specifications believes that he does not satisfy any of the specified participation criteria, he should contact the Clearing House immediately, and, if the Clearing House agrees that such Person does not satisfy the criteria, he shall refrain from bidding for the relevant Auction Lot. The Clearing House may restrict any such Person's access to F&O Auctions if it determines that such Person does not satisfy the specified participation criteria. The Clearing House may update or correct any details in the F&O Auction Specifications at any time prior to the commencement of bidding in the relevant F&O Auction.

- 2.7 F&O Auction Participants shall be treated equally as regards the provision of information relating to F&O Auctions by the Clearing House. Any Person who receives any information in connection with an F&O Auction or possible F&O Auction shall hold such information in confidence and in accordance with the Rules, and shall not disclose it to any other Person except where such disclosure is made: (i) with the prior written consent of the Clearing House; (ii) to a Regulatory Authority or Governmental Authority where a request is formally made to the Person by or on behalf of the same or pursuant to Applicable Laws in writing, provided that the Person making such disclosure notifies the Clearing House of its disclosure where it is lawful to do so; (iii) pursuant to an order of a competent court or other Governmental Authority or otherwise to such other Persons, at such times and in such manner as may be required by Applicable Laws, provided that the Person making such disclosure notifies the Clearing House of its disclosure where it is lawful to do so; or (iv) to a Customer or Sponsored Principal where such Customer or Sponsored Principal has expressed his interest in participating in the F&O Auction and is subject to a duty of confidentiality similar to that set out in this paragraph 2.7.
- 2.8 All bids must be submitted via the DMS (or via such other means and in such format as is specified by the Clearing House) (such submission of a bid, "**Bid Submission**"). Bids can only be submitted during the time window and prior to the Bidding Close Time (as defined below) specified by the Clearing House in the relevant F&O Auction Specifications. F&O Auction Participants (or their Clearing Members) may be required by the Clearing House to post additional Margin as a condition of the F&O Auction Participant being entitled to submit a valid bid.
- 2.9 The F&O Auction will proceed pursuant to a 'sealed bid' process whereby the relevant F&O Auction Participants will be asked to submit bids for the relevant Auction Lot or a particular percentage of the Auction Lot via the DMS (or via such other means and in such format as is specified by the Clearing House). The F&O Auction Specifications may specify a minimum bid size. Any bid below any specified minimum bid size that is accepted by the DMS will be null and void unless the Clearing House, in its absolute discretion, determines otherwise. Successful bids will be determined in accordance with paragraph 5.3.
- 2.10 After the Bidding Close Time for any F&O Auction, the Clearing House will notify F&O Auction Participants to inform them either: (i) that the F&O Auction has successfully taken place and that there were successful bidders and that such bidders have been notified; or (ii) that the F&O Auction has taken place and no bids were successful.
- 2.11 A successful bidder (or its Clearing Member, if applicable) may be required to post additional Margin after the Bidding Close Time.

3. **THE BIDDING PROCESS**

3.1 F&O Clearing Members will make bids which, as a minimum, comply with any Minimum Bid Requirement notified to it. Any failure to comply with an applicable Minimum Bid Requirement shall be a breach of the Rules. The Clearing House is not obliged to solicit bids from F&O Clearing Members other than notifying F&O Clearing Members of any applicable Minimum Bid Requirement. Pursuant to Rule 908(i), if any F&O Clearing Member does not comply with any of its obligations under these F&O Default Auction Terms or any F&O Auction Specifications or chooses not to participate in any F&O Auction (except as provided for in these F&O Default Auction Terms), then the F&O Guaranty Fund Contributions and F&O Assessment Contributions of that F&O Clearing Member shall be applied to meet any shortfall, loss or liability in full, prior to the F&O Guaranty Fund Contributions or F&O Assessment Contributions (as applicable) of any other F&O Clearing Member or Clearing House F&O Contributions ranking equally with such F&O Guaranty Fund Contributions being so applied. Further pursuant to Rule 908(i), after applying any F&O Guaranty Fund Contributions or F&O Assessment Contributions of F&O Clearing Members in accordance with the previous sentence, in the event of an F&O Auction having taken place, the F&O Guaranty Fund Contributions and F&O Assessment Contributions of other F&O Clearing Members that are not Winning Bidders in the relevant F&O Auction (required to be applied in respect of the Event of Default which resulted in the F&O Auction) shall not be applied *pro rata*, but instead shall be applied in sequence, with such F&O Clearing Members with less competitive bids in the F&O Auction having their F&O Guaranty Fund Contributions and F&O Assessment Contributions applied prior to F&O Clearing Members with more competitive bids. The competitiveness of bids shall be determined based on the weighted average price per unit of each F&O Clearing Member's bids, according to the following formula:
$$\text{Weighted average price per unit} = \frac{\sum(\text{Price Sign} \times \text{Unsigned Price})}{\sum \text{Size}}$$
 For the purposes of determining the competitiveness of an All or Nothing Bid pursuant to the previous sentence, the price of such All or Nothing Bid shall be subjected to an appropriate scale factor to calculate a deemed price per unit. Any F&O Clearing Member with the same weighted average price per unit as another F&O Clearing Member will have their F&O Guaranty Fund Contributions and F&O Assessment Contributions applied on a *pro rata* basis as between such F&O Clearing Members within such sequence. After applying any such F&O Guaranty Fund Contributions or F&O Assessment Contributions of losing bidders, in the event of a F&O Auction having taken place, the F&O Guaranty Fund Contributions and F&O Assessment Contributions of the F&O Clearing Members that are Winning Bidders in the relevant F&O Auction and the Clearing House F&O GF Contribution (if required to be applied in respect of the Event of Default which resulted in the F&O Auction) shall be applied *pro rata*. Where, in respect of a particular F&O Auction, the portfolio of a Defaulter is split into multiple Auction Lots in accordance with paragraph 2.5, the process for determining the competitiveness of bids described in this paragraph 3.1 shall be carried out separately for each Auction Lot. For these purposes, the weighted average price per unit for each Auction Lot shall be scaled based on the proportion that the Original Margin requirement applicable to the Open Contract Positions comprising such Auction Lot represents in relation to the total Original Margin requirements for all the Open Contract Positions of the Defaulter in relation to auctioned F&O Contracts. Nothing in this paragraph 3.1 is intended to result in any Assessment Contribution being applied prior to any Guaranty Fund Contribution of any Clearing Member or Clearing House Contribution, nor shall affect the order of application of any Clearing House Initial Contribution. This paragraph 3.1 shall apply only in respect of those bids that are indicated, or are deemed under the F&O Auction Specifications, as related to Minimum Bid Requirements.

3.2 An F&O Auction Participant may submit multiple bids for each Auction Lot, or a percentage of each Auction Lot, on its own account or for the account of a Customer (including a Sponsored Principal), as the case may be, provided that such F&O Auction Participant ensures that all of its bids, whether for its account or for the account of its Customers, as the case may be, are provided in the same Bid Submission or otherwise as specified in the F&O Auction Specifications ("**Standard Bids**"). In addition to submitting one or more Standard Bids pursuant to the F&O Auction Specifications, an F&O Auction Participant may choose to submit one bid for an entire Auction Lot which, should that bid be a winning bid, stipulates the

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receipt of 100% of the Auction Lot without that award being split amongst more competitively priced Standard Bids (an "**All or Nothing Bid**"). In order to categorise a bid as an All or Nothing Bid, the F&O Auction Participant must specifically mark the bid as an All or Nothing Bid in its Bid Submission. All or Nothing Bids shall not be mandatory but shall, if submitted in the absence of any other bid, be deemed to satisfy the applicable Minimum Bid Requirement at the same price but adjusted on a *pro rata* basis. For the avoidance of doubt, the submission of an All or Nothing Bid does not disqualify an F&O Auction Participant from submitting one or more Standard Bids for each Auction Lot, or a percentage of each Auction Lot, whether for its account or for the account of its Customers, provided that such F&O Auction Participant ensures that all of its bids, whether for its account or for the account of its Customers, as the case may be, are submitted in the same Bid Submission or otherwise as specified in the F&O Auction Specifications. A bid made by an F&O Auction Participant by, for, or on behalf of a Customer shall be identified as such and such bid shall be treated as a bid for the relevant Customer Account or Proprietary Account. A bid made by, for, or on behalf of a Sponsored Principal or by a Sponsor in such capacity shall be identified as such and treated as a bid for the relevant Individually Segregated Sponsored Account. An F&O Clearing Member can satisfy its Minimum Bid Requirement by submitting multiple bids with differing bid prices and bid sizes provided that, in aggregate, its submitted bids equals or exceeds the Minimum Bid Requirement and any individual bid is equal to or larger than any applicable minimum bid size. Successful bidders will be determined in accordance with paragraph 5.3.

- 3.3 All the requirements of the Rules concerning the provision of information to the Clearing House apply in respect of the submission of bids by an F&O Auction Participant.
- 3.4 Bids can only be submitted during the time window specified by the Clearing House in the F&O Auction Specifications. The time period for submission will end at the closing time specified by the Clearing House for the relevant F&O Auction in the F&O Auction Specifications ("**Bidding Close Time**"). The Bidding Close Time may be postponed for up to one hour by the Clearing House giving notice of such postponement to all F&O Auction Participants, following consultation to the extent practicable and the term "**Bidding Close Time**" shall be construed accordingly.
- 3.5 A bid must be in respect of all F&O Contracts or a percentage of all F&O Contracts in the relevant Auction Lot. Any partial bids, such as bids which specify a particular F&O Contract, will be invalid and void. With respect to a particular Auction Lot, no F&O Auction Participant is permitted to bid, in aggregate, in excess of the number of F&O Contracts being auctioned in such Auction Lot.
- 3.6 No F&O Auction Participant may make a referential bid (for example a bid which purports to be a bid which is \$1 higher or lower than the highest or lowest bidder) or make a bid that is subject to conditions. Any such bid will be treated as invalid and void.
- 3.7 An F&O Auction Participant may amend or modify a submitted bid by resubmitting its entire Bid Submission through DMS (or such other means and in such format as is specified by the Clearing House). In the event a Bid Submission is resubmitted with any amendments or modifications the Clearing House will disregard any previous Bid Submissions submitted by such F&O Auction Participant and any such previous Bid Submission will be null and void. After the Bidding Close Time, all submitted Bid Submissions are irrevocable provided that if the Clearing House is satisfied, upon the request of an F&O Auction Participant, that a genuine mistake has been made in the submission of a bid, the Clearing House may, at its own discretion, invalidate the bid. Upon invalidation of such Bid, the Bid will be deemed not to have been submitted for purposes of these F&O Default Auction Terms and the F&O Auction Participant will be treated as if it had not made such bid.
- 3.8 Each bid will be deemed to have been submitted at the time it is recorded as being received by the Clearing House. Any bid received after the Closing Time will be treated as invalid and void.

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3.9 Any bid that does not comply with the requirements of these F&O Default Auction Terms or the F&O Auction Specifications will be treated as invalid and void.

4. PARTICIPATION BY CUSTOMERS AND SPONSORED PRINCIPALS IN THE AUCTION

4.1 An F&O Clearing Member may make separate bids in respect of its Customers or Sponsored Principals for whom it acts as Sponsor (in addition to any bids for its own account), in the same way as it may make a bid for one of its Proprietary Accounts and subject to the same provisions of these F&O Default Auction Terms. An F&O Clearing Member must have all due approval, consent or authorisation from its Customer or Sponsored Principal to make the relevant bid.

4.2 An F&O Clearing Member shall become liable for the entry into of F&O Contracts resulting from bids made on behalf of a Customer (including any F&O Auction Participant that is its Customer) in the same way as it is liable for and becomes party to other Customer Account Contracts or contracts entered into otherwise for Customers pursuant to the Rules. An F&O Clearing Member shall become liable as Sponsor for the entry into of F&O Contracts resulting from bids made for, by or on behalf of a Sponsored Principal (including any F&O Auction Participant that is a Sponsored Principal) in the same way as it is liable for and becomes party to other F&O Contracts recorded in an Individually Segregated Sponsored Account.

4.3 Each F&O Auction Participant that is not a F&O Clearing Member must enter into an F&O Auction Participation Agreement with its F&O Clearing Member (which agreement the Clearing House may enforce), prior to the commencement of any F&O Auction, as a condition of its participation in the F&O Auction.

4.4 The Clearing House reserves the right to verify any bid to ensure such bid will be cleared by an F&O Clearing Member or Sponsor and reserves the right to invalidate a bid where the Clearing House reasonably believes that such bid, if accepted, would not be cleared by an F&O Clearing Member or Sponsor (notwithstanding paragraph 4.2) or that such bid would be in breach of any position limits or other risk policies implemented by the Clearing House pursuant to the Rules. Any such invalidation will be made prior to the notifications made pursuant to paragraphs 2.11 and 5.8. Bids so invalidated will not be counted toward a F&O Clearing Member's Minimum Bid Requirement.

5. SELECTION OF THE WINNING BID

5.1 The Clearing House may at its discretion but giving due consideration to its F&O default management policies and procedures, set any reserve price and/or any maximum price (which in either case will not be disclosed to any bidders). If no bids exceed the reserve price (if any) and are less than the maximum price, (if any) then, subject to paragraph 5.10, there will be no successful bidder for the Auction Lot subject to the F&O Auction in question and the F&O Auction for that Auction Lot shall be treated as a failed F&O Auction.

5.2 The Clearing House may at its discretion withdraw an Auction Lot prior to or after the Bidding Close Time.

5.3 Promptly after the Bidding Close Time for an Auction Lot, the Clearing House will sort bids submitted to it in the order of the price of each bid. The bids will be ordered sequentially, starting with the highest bid price, and ending with the lowest price. The auction clearing price (the "**F&O Auction Clearing Price**") will be the price of the bid at which the sum of the notional amount of F&O Contracts with equal or higher Bid prices equals or is greater than the notional amount of F&O Contracts being auctioned. Unless an All or Nothing Bid is accepted, the Auction Lot will be allocated in full to bids at or above the F&O Auction Clearing Price, but at the F&O Auction Clearing Price. However, in the event that an All or Nothing Bid is included in the sum of the notional amount of Contracts with equal or higher bid prices that are equal or greater than the notional amount of F&O Contracts being auctioned, the All or Nothing Bid will instead be

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accepted by the Clearing House and the F&O Auction Clearing Price shall be the price of such bid, in accordance with paragraph 5.4. The F&O Auction Clearing Price will be either payable by the Clearing House to the F&O Auction Participant or its Clearing Member or to the Clearing House by the F&O Auction Participant or its Clearing Member, as applicable. In the event that a bid is also invalid or void or no F&O Contract is established with the F&O Auction Participant submitting any bid for any reason, such bid will not be accepted and the F&O Auction Participant will be treated as if it had not made such Bid.

Examples of how the F&O Auction Clearing Price is calculated is set out below, for illustrative purposes only:

Example 1

Note in these examples a negative bid indicates a payment by the Clearing House

Price Rank	Is All or Nothing Bid	Bid Size (% of Auction Lot)	Bid Price (Payment per 100%)	Size x Price	Allocation % of Auction Lot
1	No	20%	£100,000	£20,000	20%
2	No	30%	£0	£0	30%
3	No	25%	(£10,000,000)	(£2,500,000)	25%
4	No	25%	(£12,000,000)	(£3,000,000)	25%
5	No	30%	(£13,000,000)	(£3,900,000)	0%
6	No	40%	(£15,000,000)	(£6,000,000)	0%
7	No	50%	(£15,500,000)	(£7,750,000)	0%
8	No	40%	(£16,000,000)	(£6,400,000)	0%
9	No	20%	(£16,500,000)	(£3,300,000)	0%
10	No	20%	(£215,000,000)	(£43,000,000)	0%

Unless paragraph 5.5 applies, the F&O Auction Clearing Price will be - £12,000,000/100%. Portfolio will be allocated in full to bids at or above the F&O Auction Clearing Price.

Example 2

Price Rank	Is All or Nothing Bid	Bid Size (% of Auction Lot)	Bid Price (Payment per 100%)	Size x Price	Allocation % of Auction Lot
1	No	20%	£100,000	£20,000	20%
2	No	30%	£0	£0	30%
3	No	25%	(£10,000,000)	(£2,500,000)	25%

Unless paragraph 5.5 applies, the F&O Auction Clearing Price will be - £12,000,000/100%. Auction Lot will be allocated in full to bids 1,2 and 3 and allocated in part to bid 4.

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4	No	30%	(£12,000,000)	(£3,600,000)	25%
5	No	30%	(£13,000,000)	(£3,900,000)	0%
6	No	35%	(£15,000,000)	(£5,250,000)	0%
7	No	50%	(£15,500,000)	(£7,750,000)	0%
8	No	40%	(£16,000,000)	(£6,400,000)	0%
9	No	20%	(£16,500,000)	(£3,300,000)	0%
10	No	20%	(£215,000,000)	(£43,000,000)	0%

Example 3

Price Rank	Is All or Nothing Bid	Bid Size (% of Auction Lot)	Bid Price (Payment per 100%)	Size x Price	Allocation % of Auction Lot
1	No	20%	£100,000	£20,000	20%
2	No	30%	£0	£0	30%
3	No	25%	(£10,000,000)	(£2,500,000)	25%
4(1)	No	30%	(£12,000,000)	(£3,600,000)	12.5%
4(2)	No	30%	(£12,000,000)	(£3,600,000)	12.5%
6	No	30%	(£13,000,000)	(£3,900,000)	0%
7	No	35%	(£15,000,000)	(£5,250,000)	0%
8	No	50%	(£15,500,000)	(£7,750,000)	0%
9	No	40%	(£16,000,000)	(£6,400,000)	0%
10	No	20%	(£16,500,000)	(£3,300,000)	0%

Unless paragraph 5.5 applies, the F&O Auction Clearing Price will be - £12,000,000/100%. Auction Lot will be allocated in full to bids 1,2 and 3. Bids 4(1) and 4(2) will receive a *pro rata* share of the remaining Auction Lot.

Example 4

Price Rank	Is All or Nothing Bid	Bid Size (% of Auction Lot)	Bid Price (Payment per 100%)	Size x Price	Allocation % of Auction Lot
1	No	20%	£100,000	£20,000	0%
2	No	30%	£0	£0	0%

Unless paragraph 5.6 applies, the F&O Auction Clearing Price will be - £3,000,000/100%. Auction Lot will be allocated in full to bid 3.

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3	Yes	100%	(£3,000,000)	(£3,000,000)	100%
4	No	25%	(£10,000,000)	(£2,500,000)	0%
5	No	10%	(£15,000,000)	(£1,500,000)	0%
6	No	40%	(£15,000,000)	(£6,000,000)	0%
7	No	50%	(£15,500,000)	(£7,750,000)	0%
8	No	40%	(£16,000,000)	(£6,400,000)	0%
9	No	20%	(£16,500,000)	(£3,300,000)	0%
10	No	20%	(£215,000,000)	(£43,000,000)	0%

5.4 All F&O Contracts shall be allocated to Winning Bidders at the F&O Auction Clearing Price in a fair and consistent manner and in accordance with the bid size used in the calculation of the F&O Auction Clearing Price. All or Nothing Bid(s) which set the F&O Auction Clearing Price under paragraph 5.3 will be given precedence over Standard Bids. It is possible that a Standard Bid will receive no share of the Auction Lot, even if the bid price is higher than or equal to the F&O Auction Clearing Price, in circumstances in which an All or Nothing Bid has been accepted by the Clearing House. In the event that there are multiple Standard Bids and no All or Nothing Bids at the F&O Auction Clearing Price, to the extent there is a shortfall of F&O Contracts being available, F&O Contracts shall be allocated *pro rata* according to the number of F&O Contracts the relevant F&O Auction Participants bid for at the relevant price. In the event that there are multiple All or Nothing Bids at the same price (being the F&O Auction Clearing Price), the Auction Lot will be allocated equally among the F&O Auction Participants submitting those All or Nothing Bids. Bids below any applicable reserve price, above any applicable maximum price, or invalidated pursuant to paragraphs 3.5, 3.6, 3.7, 3.8, 3.9 and 4.4, may, at the discretion of the Clearing House be excluded for the purposes of calculating the F&O Auction Clearing Price or allocating sizes at the F&O Auction Clearing Price.

5.5 The Clearing House may, in any given F&O Auction (the "**First F&O Auction**") at its discretion, determine the F&O Auction Clearing Price for less than 100% of the F&O Contracts if in the reasonable determination of the Clearing House, a material impact on the amounts payable or receivable by the Clearing House would result if 100% of the F&O Contracts were awarded in the F&O Auction. In such circumstances, any All or Nothing Bids shall be disregarded and the Clearing House will call a second F&O Auction (a "**Second F&O Auction**") to auction off any remaining Auction Lots. The Clearing House may also, in accordance with its F&O default management policies or procedures, hold a Second F&O Auction in the event that there is a failed F&O Auction or not all F&O Contracts are allocated, whether due to Clearing Members failing to meet any applicable Minimum Bid Requirements, any minimum bid size, any reserve price or maximum price or otherwise.

An example of how this paragraph 5.5 would apply is set out below, for illustrative purposes only:

Price Rank	Is All or Nothing Bid	Bid Size (% of Auction Lot)	Bid Price (Payment per 100%)	Size x Price	Allocation % of Auction Lot
1	No	20%	£100,000	£20,000	20%

The F&O Auction Clearing Price for 80% of the Auction Lot shall be - £10,000,000/100%.

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2	No	30%	£0	£0	30%
3	No	30%	(£10,000,000)	(£3,000,000)	30%
4	No	20%	(£12,000,000)	(£2,400,000)	0%
5	No	30%	(£13,000,000)	(£3,900,000)	0%
6	No	40%	(£15,000,000)	(£6,000,000)	0%
7	No	50%	(£15,500,000)	(£7,750,000)	0%
8	No	40%	(£16,000,000)	(£6,400,000)	0%
9	No	20%	(£16,500,000)	(£3,000,000)	0%
10	No	20%	(£215,000,000)	(£43,000,000)	0%

Price of remaining 20% will be determined in a Second F&O Auction.

- 5.6 Any Second F&O Auction shall be announced pursuant to a further F&O Auction Announcement and shall be held in accordance with these F&O Default Auction Terms. The Clearing House shall circulate an F&O Auction Specification for a Second F&O Auction. An F&O Auction Participant for the First F&O Auction shall be deemed to be an F&O Auction Participant for the Second F&O Auction. The Clearing House may at its discretion withdraw an Auction Lot in the Second F&O Auction prior to the relevant Bidding Close Time. The Minimum Bid Requirement applicable to each F&O Clearing Member shall be reduced by any F&O Contracts actually won by such F&O Clearing Member (including any bids won by, for, or on behalf of, such F&O Clearing Member's Customers or Sponsored Principals for whom such F&O Clearing Member acts as Sponsor) at the F&O Auction Clearing Price pursuant to the First F&O Auction. Any such reductions in F&O Clearing Members' Minimum Bid Requirements will be shared *pro rata* as an increased Minimum Bid Requirement for all F&O Clearing Members who did not have any F&O Contracts allocated to them at the F&O Auction Clearing Price pursuant to the First F&O Auction.
- 5.7 In the case of a bid which results in the entry into a F&O Contract or F&O Contracts at the F&O Auction Clearing Price, the "**Winning Bidder**" will be the relevant F&O Clearing Member (for one of its Proprietary Accounts or Customer Accounts for the account of any relevant Customer, including Individually Segregated Sponsored Accounts for the account of a Sponsored Principal for which it acts as Sponsor, as applicable).
- 5.8 Each bid constitutes an offer to the Clearing House to enter into F&O Contracts pursuant to a Transfer governed by Rule 904(b) (but without regard to any Customer or Customer-CM Transactions of the Defaulter) and Part 4 of the Rules, such offer being made by the relevant F&O Clearing Member. The Clearing House shall use reasonable endeavours to notify Winning Bidders within 15 minutes after the Bidding Close Time of either the First F&O Auction or the Second F&O Auction, as the case may be. Immediately upon notification by the Clearing House to a Winning Bidder that it has a winning bid through the DMS (or via such other means and in such format as is specified by the Clearing House) and without the need for any further step, resulting F&O Contracts shall arise between the Clearing House and the Winning Bidder (either for one of its Proprietary Accounts or Customer Accounts for the account of the relevant Customer, including for an Individually Segregated Sponsored Account for the account of its Sponsored Principal, as applicable), in accordance with such a Transfer and Part 4 of the Rules, but without regard to any Customer or Customer-CM Transactions of the Defaulter, on economically identical terms to the F&O Contracts that are the subject of the Auction Lot in the relevant F&O Auction.

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- 5.9 The Clearing House may abandon or alter the procedure for any F&O Auction, including conducting subsequent F&O Auctions, at any time prior to the entry into of F&O Contracts with Winning Bidders, taking into account such considerations as it deems necessary or desirable to protect the financial integrity of the Clearing House, the Clearing Members generally or the marketplace for any instruments cleared by the Clearing House, and such other matters as it may deem appropriate.
- 5.10 In the event of a failed F&O Auction for whatever reason, the Clearing House may either run a new F&O Auction and shall do so in accordance with paragraph 5.6 or withdraw the Auction Lot. There shall be no limit to the number of repeated F&O Auctions under this provision. If the Auction Clearing Price falls below any reserve price or above any maximum price, the Clearing House may at its discretion nonetheless accept bids at such Auction Clearing Price and, if it does so, the F&O Auction for that Auction Lot shall not be treated as a failed F&O Auction.

6. POST-BID PROCEDURE

- 6.1 The Winning Bidder will become a party to new F&O Contracts with the Clearing House on economically identical terms to the F&O Contracts that are the subject of the Auction Lot in the F&O Auction. F&O Contracts will be established with the Winning Bidder pursuant to a termination of F&O Contracts between the Defaulter and the Clearing House and the establishment of new, economically identical F&O Contracts between the Clearing House and the Winning Bidder pursuant to Rule 904. The Winning Bidder (or, if it is a Sponsored Principal, it and its Sponsor) will be treated as if it were a "Transferee Clearing Member" for purposes of Part 9 of the Rules provided that the provisions of Part 9 to the extent relating to Customers shall not apply.
- 6.2 Any Customer-CM F&O Transactions relating to Customers of the Winning Bidder arising as a result of the F&O Auction will be established in accordance with the Rules and the Procedures in the same way as for F&O Contracts at the same time as F&O Contracts are entered into pursuant to paragraph 6.1, where the relevant Customer is recorded on a Customer Account of a Non-FCM/BD Clearing Member.
- 6.3 New F&O Contracts resulting from the F&O Auction will be established between the Clearing House and the Winning Bidder in respect of any particular Set, at the F&O Auction Clearing Price determined by the Clearing House as at the time specified in accordance with paragraph 6.5.
- 6.4 The Winning Bidder may be subject to an additional Margin call as a consequence of it becoming party to F&O Contracts pursuant to an F&O Auction. Any call for Margin required under these F&O Default Auction Terms will take place pursuant to the Finance Procedures.
- 6.5 Records of new F&O Contracts in accounts at the Clearing House may be updated by the Clearing House after the time that new F&O Contracts arise. The Winning Bidder will become party to new F&O Contracts resulting from the F&O Auction at the time that it is notified by the Clearing House that it is the Winning Bidder, notwithstanding the time at which the establishment of new F&O Contracts is completed in the Clearing House's books and records.
- 6.6 Once new F&O Contracts have been established between the Winning Bidder and the Clearing House, the bid which gave rise to the F&O Contracts will be treated as valid regardless of any failure of the F&O Auction Participant to have satisfied any participation criteria or otherwise as to the validity of any bid.

7. OTHER TERMS

- 7.1 Neither the Clearing House nor any of its Affiliates makes any representation or warranty as to the accuracy of any records of the Defaulter or any of its Affiliates. In particular, the Clearing House makes no representation or warranty as to whether any F&O Contract recorded in a Proprietary Account or Customer

AUCTION TERMS FOR F&O DEFAULT AUCTIONS

Account, including any Individually Segregated Sponsored Account, of the Defaulter is correctly recorded in such account or as to whether any consent of any Customer, Affiliate or Sponsor of the Defaulter is required to any F&O Auction or the termination of F&O Contracts to which a Defaulter is party. The Clearing House makes no warranty, whether express or implied, as to quality, appropriateness or in respect of the merits of any investment decision relating to any Auction Lot. The Clearing House does not provide, and is not responsible or liable for, any investment advice in relation to any F&O Auction.

- 7.2 Although the information provided by the Clearing House is believed to be accurate subject to the qualifications in paragraph 7.1 above, neither the Clearing House nor any of its Affiliates, nor any of their respective agents, officers, directors, committee members, employees, or advisers makes any representation or warranty, express or implied, as to the accuracy or completeness of such information, including but not limited to the value or marketability of any F&O Contracts or Open Contract Positions. Each F&O Auction Participant is responsible for making its own determination as to whether to proceed with or without further investigation or as to its bidding on any Auction Lot.
- 7.3 The Clearing House is under no obligation to enforce these F&O Default Auction Terms against a bidder at the request of any other bidder.
- 7.4 All F&O Auction Participants are hereby on notice that the Clearing House is not a member of any professional or other association, society, institution or organisation of auctioneers or agents and is not therefore bound by the rules or practices of any such association, society, institution or organisation. The conduct of F&O Auctions may be carried out only to manage an Event of Default in accordance with the Rules and does not constitute the ordinary day-to-day business of the Clearing House. Any standard rules, customs, good practice guidelines or guidance or other industry practices relating to auctions or agency sales are hereby disappplied and disclaimed. All and any rights of any Person bound by these F&O Default Auction Terms which may arise as a result of a liability of the Clearing House pursuant to common law or statutory duties applicable to auctioneers or selling agents are hereby expressly waived by all F&O Auction Participants to the fullest extent permitted by Applicable Laws. The implied term of care and skill under section 13 of the Supply of Goods and Services Act 1982 is hereby expressly excluded in respect of the conduct of any F&O Auction by the Clearing House. The Clearing House expressly disclaims any duty of care or skill in respect of the conduct of any F&O Auction by the Clearing House arising other than expressly pursuant to these F&O Default Auction Terms. The Clearing House will not provide and has not provided any valuation services in connection with any F&O Auction.
- 7.5 The time and date at which bids are due, the time and date for the establishment of F&O Contracts or calling of Permitted Cover or the Closing Time (subject to paragraph 3.4) may be delayed beyond the times and dates set forth in these F&O Default Auction Terms or specified in the F&O Auction Specifications if the Clearing House, in its discretion, considers this to be necessary or appropriate. Notwithstanding anything to the contrary in these F&O Default Auction Terms, to the fullest extent lawfully permissible, the Clearing House may postpone, cancel, adjourn or terminate an F&O Auction at any time, and may withdraw all or any portion of the F&O Contracts from any Auction Lot.
- 7.6 In respect of any F&O Auction, each F&O Auction Participant: (i) agrees and acknowledges that copies of the Auctions (Bidding Agreements) Acts 1927 and 1969 (as amended and including any amendments thereto) have been made available to it online at www.legislation.gov.uk for the duration of the F&O Auction and that it has received any other notices required to be provided to it under Applicable Laws; (ii) agrees and acknowledges that it has received sufficient information concerning the identity of the persons conducting the auction on behalf of the Clearing House; and (iii) waives any right to make any claim that it has not received any information or documentation of a nature referred to in this paragraph 7.6 and agrees in favour of the Clearing House not to make any statement to the contrary to any third party.

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7.7 Without limiting the obligations of F&O Clearing Members, Sponsored Principals, Sponsors and Customers under the Rules, all F&O Auction Participants shall comply with Rule 203 of the Rules and Applicable Laws (including, without limitation, complying with their obligation not to commit any act of fraud or to engage in any behaviour which amounts to market abuse, insider dealing, market manipulation, money laundering or which is in breach of any similar Applicable Laws). In particular, where an F&O Auction Participant receives information in respect of any F&O Auction, including the contents of the portfolio of a Defaulter, the outcome or timing of any F&O Auction, it acknowledges that such information, depending upon price sensitivity, may constitute "inside information" for the purposes of Regulation (EU) No 596/2014 (the "**Market Abuse Regulation**") or fall within the definition of any similar or analogous term under Applicable Law concerning the possession, use or disclosure of such information (any such information, "**Inside Information**" and the Market Abuse Regulation and any such Applicable Law, "**Market Abuse Laws**") in respect of any of the Contracts or Sets of Contracts cleared by the Clearing House or in respect of securities of the Defaulter. Each F&O Auction Participant shall make their own assessments as to whether information in respect of any F&O Auction is Inside Information, and if such information is Inside Information:

- (a) shall comply at all times in respect of that information with applicable Market Abuse Laws;
- (b) agrees that it shall not disclose or make available such information to any Person within or outside of its organisation, with the exception of those who need to receive it to carry out functions in connection with an F&O Auction and who are required pursuant to company policies or contractual requirements to treat such information as subject to the restrictions set out in this paragraph 7.7;
- (c) agrees that no Person within its organisation may engage in any client trading or proprietary trading activities for the F&O Auction Participant or any of its clients while in possession of any such information, until such time as the information ceases to be Inside Information;
- (d) agrees that those in possession of such information shall not trade or otherwise effect any transactions on any Exchange or Market in any Contracts to which such information relates until such time as the information ceases to be Inside Information; and
- (e) where such information constitutes "inside information" for the purposes of the Market Abuse Regulation, agrees to maintain an "insider list" of all persons within its organisation or any third party information who have access to the information, stating:
 - (i) the identity and role of each person;
 - (ii) the reason why each person requires access to the information;
 - (iii) the date and time on which each person obtained access to the information; and
 - (iv) the date and time on which the insider list was created and updated.

7.8 It is the responsibility of each Winning Bidder to make any transaction or other reports or notifications to any Regulatory Authority or Governmental Authority (including, without limitation, any transaction reports) that it is required to make pursuant to Applicable Laws.