

# **TERMS OF USE GOVERNING THE PROVISION OF SERVICES FOR THE EXECUTION OF ORDERS BY DOM MAKLERSKI TMS BROKERS S.A. IN THE MT5 TRANSACTION SYSTEM, MAINTENANCE OF CASH ACCOUNTS AND REGISTERS, AND FOREIGN EXCHANGE**

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## Chapter I - general issues

### §1 Definitions

1. We - stand for Dom Maklerski TMS Brokers S.A. with the registered office in Warsaw, entered to the entrepreneurs register by the District Court for the capital city of Warsaw in Warsaw, 12th Commercial Division of the National Court Register with the number KRS: 0000204776, with the share capital amounting to PLN 3.537.560 paid in full, holding Statistical number REGON 015715078, Tax Identification number NIP: 526-27-59-131,
2. You - stands for You - the Client, with whom We entered the Framework Agreement.
3. All wordings and expressions written in capital letters shall have the meaning given to them in these Terms of Use, even if their form used in the Terms of Use is related to the grammatical variety of the defined wordings or expressions.
4. Transactions you make are unfunded if they involve a Contract for Difference (CFD) and we have no obligation to deliver to you the actual Underlying Instrument on which the Financial Instrument is based.
5. Other definitions:
  - 1) Bank - a bank within the meaning of the Act of 29 August 1997 - Banking Law (i.e. Journal of the Laws of 2017, item 1876, as amended), maintaining on Our behalf a bank account to which You make payments in order to credit the Cash Account and from which the funds are withdrawn;
  - 2) Financial Instrument Characteristics and Risk Description - a document in which we have included, among others, the most important aspects of the risk accompanying the transactions you enter into, constituting an appendix to the Framework Agreement concluded between us;
  - 3) Margin - the amount of funds expressed in the Base Currency of the Account that we block on your Cash Account in order to accept and maintain Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) or to open and maintain individual Positions. The Margin Account value shall be presented to the Client in the Operational Register globally for all Positions and Limit Orders;
  - 4) Contractual documentation - documents that regulate the principles of cooperation between You and us, annexed to the Framework Agreement specified in Chapter II, § 1 point 2 below;
  - 5) Trading Day - it should be understood as the day on which a given Financial Instrument is quoted;
  - 6) Business Day - every day from Monday to Friday, excluding public holidays;
  - 7) Settlement Day - a day on which your Cash Account will be credited or debited with the amount of the financial result in connection with the transactions on your Account (including closing the Positions, charging commissions, posting adjustments);
  - 8) EMIR (EMIR Regulation) - means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;
  - 9) Exposure - the aggregate risk value to which you are exposed for your open Positions in your Account: (i) the absolute value of the difference between your open long positions and your short positions for the purposes of the exposure limits (for the purposes of § 13 of Chapter III of these Terms of Use); (ii) in other cases, the exposure to an instrument shall be the higher of the two absolute values: your long or short position including Limit Orders (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs);

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- 10) Target group - means a group of buyers of a financial instrument, whose needs, characteristics or objectives the financial instrument is compatible with, regardless of the manner in which they acquired or took over the instrument;
- 11) Underlying Instrument - the instrument on which we base Our Quotations of a Financial Instrument;
- 12) Financial Instruments - these are contracts for foreign exchange differences ("CFDs") specified in Article 2(1)(2)(h) of the Act, available to you for trading in the Transaction System. Key information regarding Financial Instruments can be found at [www.tms.pl](http://www.tms.pl);
- 13) Investor - referred to in art. 132 sec. 1 point 1 of the Act; an investor is a natural person, a legal person or an organizational unit without legal personality for whom we provide one of the brokerage services, with the exception of entities specified in Art. 132 sec. 1 point 1 letters a) -t) of the Act;
- 14) Client Data Card - a document that contains data allowing for your identification and quick contact with you, constituting an appendix to the Framework Agreement. The document shall also contain information on the service option;
- 15) Netting Clause - a netting clause within the meaning of the Act of 2 April 2004 on Certain Financial Collateral (i.e. Journal of Laws of 2016, item 891 as amended), contained in the Framework Agreement if you are a Professional who is not a natural person and who authorizes us to immediately set off (set off) Our claims under the Framework Agreement against your claims against the funds held in your Cash Account, including those covered by the Collateral;
- 16) Client - you, i.e. a natural person, a legal entity or an organisational unit without legal personality;
- 17) Professional Client - the Client referred in Art. 3 (39b) of the Act;
- 18) Retail Client - the Client referred in Art. 3 39c of the Act;
- 19) Authorisation code - a code in the form of a text message sent to the mobile phone number defined last in the Client's Data Card;
- 20) Portfolio Compression - a technique consisting in technical closing of many Client's Transactions in a given Financial Instrument and opening one position in a net amount on dates specified in these Terms of Use, carried out directly between two counterparties;
- 21) Conflicts of Interest - circumstances known to us that may lead to a conflict between Our interests, those of an Involved Person and Our duty to act fairly, taking into account Your best interests, as well as circumstances known to us that may lead to a conflict between the interests of several of Our Clients, as set out in Chapter 8 of these Terms of Use;
- 22) Account - the Register of Financial Instruments, the Operational Register and the Cash Account that you hold under a given offer variant. You can have several accounts in one offer variant;
- 23) Quotation Rate - currency exchange rates and rates of Financial Instruments used for Quotation (Settlement) of open Positions in your Account. This is the bid price for the Buy Position and the ask price for the Sale Position of each Financial Instrument in the Transaction System, expressed on the basis of the Quotation at the time of Quotation (Settlement);
- 24) Exchange rate - the price of one currency expressed in another currency;
- 25) Quotation - an indication of the price of a given Financial Instrument in the Transaction System, by giving the buy and sell price at which you can place an Order. Please note that the final price for the execution of your order by us may not be the same as the Quotation as described in detail in these Terms of Use;
- 26) LEI - Legal Entity Identifier, a code that identifies you using 20 alphanumeric characters. The LEI code is particularly needed by self-employed entrepreneurs and companies;
- 27) Lot - the basic unit of transaction determining the value of a given transaction;

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- 28) MIFID II - Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (Official Journal L 173 of 12/06/2014);
- 29) Unrealised Value of Positions - the value of cash corresponding to the result of the current Settlement of open Positions shown in the Operational Register, i.e. the current Quotation of your open Positions;
- 30) One-Click or One-Click Trading - functionality in the Transaction System that allows you to place orders faster by skipping one window in the order placement process. To activate this feature, you must read and accept warnings about the additional risks associated with it;
- 31) Related Person - a person who is in relation to you an ascendant, descendant, sibling, spouse, parent or sibling of a spouse, spouse or descendant sibling, a person undergoing an adoption relationship, or a person using the same IP address of the computer or mobile device used for the Transaction, or a person using the same device as you, or a person having at least one of the following addresses as you: residence, registration or correspondence;
- 32) Involved Person - with respect to Us, means any of the following:
- a) Our director, partner or equivalent, a member of the management staff;
  - b) Our employee and any other natural person whose services are at our disposal and under our control and who participates in the provision by us of brokerage services and activities;
  - c) a natural person who is directly involved in the provision of services to Us pursuant to an outsourcing agreement in connection with the provision of brokerage services and activities by Us;
- 33) Funds Received for Clearing - it should be understood as the value of the Clearing Requirement, determined at least once on each Business Day, which has been established and transferred to us by you;
- 34) Reference Entity - an entity that provides us with market data that enables us to assess whether Trades have been made at market prices. Reference entities may include in particular financial institutions and information agencies (e.g. Bloomberg, Reuters). The names of specific institutions which are our reference entities are listed on our website at [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty), and their list may be amended by Order of the President of the Management Board;
- 35) POK - Our Customer Service Point, i.e. a separate room in our office where you can come and open an account or place a specific order, for example;
- 36) Collateral Level - quotient of (i) the Operating Register Balance (principal) and (ii) the Margin Requirement level. In the Transaction System, the Collateral Level is expressed as a percentage;
- 37) Position - a position in which a given Financial Instrument is held, resulting from executed Transactions and shown in your Register of Financial Instruments; the position may be long - if it results from purchase Transactions and short - if it results from sale Transactions;
- 38) Swap points - related to Rollover accruals for maintaining open Positions in your Register, resulting from the cost of money in time. In the case of Financial Instruments, in one currency they shall mean the cost associated with incomplete coverage of the nominal value of the Positions. With respect to Financial Instruments of different currencies, they reflect the interest rate spread between different currencies and are intended to offset the risk we incur as a result of keeping your Positions open in your Register. Detailed information on swap points can be found in the Swap Points Table;
- 39) Cash Account - the account kept by Us, on which the funds entrusted to you are recorded, used to make Settlements as a result of actions taken with respect to Financial Instruments and to operate the Register of Financial Instruments and the Operational Register kept in the Base Currency of the Account within a given Account;

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- 40) Terms of Use - these Terms of Use governing the provision of services for the execution of orders by Dom Maklerski TMS Brokers S.A. in the MT5 transaction system, maintenance of cash accounts and registers, and foreign exchange.
- 41) Register - a register in which all your open Positions within a given Account are shown. We also write about the Register of Financial Instruments when we point to your account where you see your open Positions and Orders;
- 42) Operational Register - an auxiliary register used for Clearing and Settlement, indicating the amount of Margin and Free Cash within a given Account;
- 43) Rollover - a process carried out in the Transaction System consisting in moving the Settlement Date of the Financial Instrument to the next period or changing the Underlying Instrument (instruments based on futures contracts). Details on rollover can be found in Chapter 4 § 10-12;
- 44) Settlement - (Quotation) - determination of the amount of pecuniary and non-pecuniary benefits resulting from the Transactions concluded at a given moment;
- 45) Clearing - debiting or crediting the Cash Account in connection with a Transaction to sell or purchase Financial Instruments, respectively;
- 46) Specification of Financial Instruments - a list of Financial Instruments quoted by us together with transaction terms and conditions for such Financial Instruments, and in particular the amount of Margin Rates, constituting an appendix to the Framework Agreement;
- 47) Transaction spread - difference between the purchase and sale price of a Financial Instrument at the time of its Quotation. Transaction spread is the transaction costs.
- 48) Client Zone - functionality available after logging in at <https://strefa.tms.pl/login>, which will allow you to access information about your Accounts and will allow you to submit some instructions provided for in these Terms of Use and provide other information and opportunities that we may implement from time to time for your convenience;
- 49) Margin Rate - shall mean the percentage specified in the Specification of Financial Instruments, according to which the Margin Account is calculated;
- 50) Compensation Scheme - a scheme referred to in Section 5 of the Act, established and operated by the National Depository for Securities (Krajowy Depozyt Papierów Wartościowych S.A.) in Warsaw in order to raise funds for the payment of compensation to investors;
- 51) Transaction System (MT5) - an online information and communication system operated by us, designed, among other things, to handle your Account and accept and execute your Orders;
- 52) Order Execution System - the entity to which we execute your order; the order execution system is Our Company (We);
- 53) The Funds for Clearing - it means: (i) in the case of a Retail Client or a Professional Client who is a natural person, a contractual obligation to assign to us the right to a portion of the funds deposited on the Cash Account to secure future cash obligations in respect of the Settlement of the transaction to which we are entitled; (ii) in the case of a Professional Client who is not a natural person, a contractual obligation to transfer to us the right to a portion of the funds deposited on the Cash Account pursuant to the Framework Agreement, which constitutes an agreement to provide the financial security referred to in Article 5(1)(1) of the Act of 2 April 2004 on Certain Financial Collateral (i.e. Journal of Laws of 2016, item 891 as amended) or the subject of this benefit;
- 54) Table of Fees and Commissions - specification of fees and commissions taken from You due to our services. It also indicates which other costs you must take into account when entering into Transactions;
- 55) Swap points table - a table where you can find information about the value of swap points and how to calculate them. The table is published on [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty);

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- 56) Rollover Table - means a table where you will find Rollover dates for Financial Instruments of swap point rollovers, provided that the table is indicative. The table is published on [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty);
- 57) Transaction - an operation to open or close a Position, performed as a result of placing an Order;
- 58) Durable Information Storage Medium - any device that allows you to store information addressed to you personally in a way that enables you to use it in the future for a period of time appropriate to the purposes of the information and to reproduce the information stored unchanged, in particular in paper form or as an electronic file protected against changes (e.g. PDF file), sent to the e-mail address provided by you, if you have specifically chosen such a method of transmitting information on the statement in the Client Data Card. ;
- 59) Framework Agreement - agreement for provision of services consisting in execution of orders to buy or sell financial instruments and safekeeping and registration of financial instruments, including maintenance of cash accounts and currency exchange by TMS Brokers, together with all attachments which constitute its integral part;
- 60) Act - Act on Trading in Financial Instruments of 29 July 2005 (i.e. Journal of Laws No. 2017, item 1768 as amended);
- 61) Account Base Currency - the currency in which your Cash Account is denominated;
- 62) Free Cash - shown in the Operational Register within a given Account as "Free Margin". It is the difference between the value of the current Balance of the Operational Register (i.e. the Accounting Balance less the Settlement of Open Positions) and the value of the Margin Requirement. The free cash represents the funds that you can dispose of in accordance with these Terms and Conditions;
- 63) Exceptional circumstances - Exceptional situations as defined in Chapter 6, § 6;
- 64) Clearing Requirement - the amount of Funds for Clearing to Us which you must place at Our disposal and to which you have transferred your right under a Framework Agreement, which is the sum of the Margin Requirement and the Unrealised Value of your Positions, if the Unrealised Value of your Positions is negative;
- 65) Margin Requirement - funds constituting collateral for an Exposure within a given Account, shown in the Transaction System as the Margin);
- 66) Regulation of the President of the Management Board - orders issued by the President of the Management Board of Dom Maklerski TMS Brokers S.A. with its registered seat in Warsaw based on a detailed authorization contained in the Terms of Use and in order to execute it, which are binding for the Client;
- 67) Corporate Events - changes in the ownership and flows related to decisions made by the issuer of the Underlying Instrument; refers only to the given Shares-based Financial Instruments, ETFs and Financial instruments based on cash indices;
- 68) Order - your declaration of will, made in the manner specified in these Terms of Use, the purpose of which is to conclude a Transaction;
- 69) Source of quotation - an entity that provides with information about prices available on the market at a given time. Suppliers of Quotations may include, but are not limited to, financial institutions and information agencies (e.g. Bloomberg, Reuters). The names of specific institutions which are our source of quotations are listed on our website at [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty), and their list may be amended by Regulation of the President of the Management Board;

## **§2 General provisions**

1. The Regulations define the rules of providing services by us in the scope of:

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- 1) executing orders to buy and sell Financial Instruments on your account;
- 2) keeping accounts and registers related to transactions concluded by You, recording the status of Financial Instruments in the Register of Financial Instruments and keeping a Cash Account used to service your funds and the Operational Register;
- 3) currency exchange;
- subject to the provisions of Chapter 8 § 2 (1) and § 3 (1).
2. The services referred to in section 1 shall be provided only in combination and shall not be capable of being provided separately.
3. We are an entity authorised by the Polish Financial Supervision Authority to conduct the activities referred to in sec. 1. The full list of our permits is available in the public register published on the website of the Polish Financial Supervision Authority.
4. The documents that will help you to get to know us can be found at [www.tms.pl](http://www.tms.pl). Among the documents you will find, among others Contractual documentation, financial statements and disclosures regarding risks incurred by us, information on members of statutory bodies and others.
5. Your funds deposited in the Cash Accounts are covered by the Compensation Scheme in the following cases 0
6. The service of executing orders under the Transaction System is provided in two offer variants:
  - 1) TMS Trader,
  - 2) TMS Connect (including Connect Premium, Connect Professional and Connect Experienced),
  - 3) TMS Prime.
7. The service options differ, among others, from each other:
  - 1) by Types of Financial Instruments available for trading,
  - 2) Method of creating Quotations,
  - 3) Method of orders execution,
  - 4) The method of calculation and the amount of fees charged.
8. You choose the offer variant by filling in the Customer Data Card, which is an integral part of the Contractual Documentation. Adding another offer variant requires filling in a new or updating the existing Client Data Card.
9. Each of the offerings is subject to our obligation to provide new Contractual Documentation. The Framework Agreement and these Terms of Use are the same for each offer variant of the Transaction System.
10. Each of the offer variants generates a login in the Transaction System.
11. Unless otherwise indicated, all end-of-day reports shall be made as of 24.00 local time in Warsaw.
12. We may provide and transfer to clients and potential clients a translation of the Terms of Use into a foreign language, however, in case of doubt in the interpretation of the provisions of the Terms of Use, the Polish version will prevail.
13. Acting on the basis of the Terms of Use, you authorize other entities from the Oanda group in which we operate to receive from us concerning you information which constitute a professional secrecy within the meaning of art. 147 of the Act. Transfer of the above-mentioned information is also necessary to implement Art. 150 sec. 1 point 17 of the Act. The list of entities from the Oanda group is adopted and amended by a Regulation of the President of the Management Board, the current list is available on the website <https://www.tmsbrokers.com/documents>.

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## Chapter II - Framework Agreement

### §1 General provisions

1. The basis for the provision of services pursuant to the principles set out in the Terms of Use is the conclusion of a Framework Agreement in writing, subject to § 2 (1) (3) below. Orders shall be executed on the basis and on the terms indicated in the following:
  - a) Framework Agreement,
  - b) Contractual Documents,
2. The Contractual Documents shall include, in particular:
  - 1) Documents applied in all offer variants:
    - a) these Terms of Use,
    - b) Client Data Card,
    - c) Conflict of Interest Management Policy in Dom Maklerski TMS Brokers S.A.,
    - d) Order execution policy in Dom Maklerski TMS Brokers S.A.,
    - e) Financial Instrument Characteristics and Risk Description,
    - f) Key information on Products,
  - 2) TMS Brokers Information Sheet. Documents relevant to the different offer variants:
    - a) Swap Points Table
    - b) Rollover Table
    - c) Table of Fees and Commissions
    - d) Regulations of the President of the Management Board,
    - e) Specification of financial instruments
3. The documents referred to in paragraphs 1 and 2 may evolve over time or be implemented. The procedure for amending or implementing individual documents or tables is referred in Chapter VII.
4. You will always be informed free of charge about the implementation or changes to the Terms of Use in the manner specified in the Client's Data Card. Other documents will be provided to you on a Durable Information Storage Medium.
5. You are obliged to read the documents mentioned in paragraphs 1 and 2 before concluding the Agreement and during its duration. You will receive all these documents before the conclusion of the Framework Agreement and each time they are changed in the manner specified by you on the Customer Data Sheet. They are directly applicable and form the basis of the rights and obligations of us and yours.
6. If you do not understand what these documents say, you can always ask us to explain what they mean to you. However, our assistance will be limited only to explanations. As part of this service, we do not provide consultancy services, in particular financial, legal or tax advisory services. The investment advisory service is provided on the basis of separate regulations and under another brokerage service.
7. You may ask us, both before and during the term of the Agreement, about the rules of operation of financial markets or the rules of construction of Financial Instruments. Information obtained from us is not part of the provision of brokerage services.

### §2 The process of concluding the Framework Agreement

1. The Framework Agreement may be concluded as follows:
  - 1) Personal - at our headquarters or at any other place agreed with us; your or your agent's presence is required to attend such a meeting.

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- 2) By mail - you print your documents on your printer and send them to us in the form of paper documents.
- 3) By electronic means - requires you to enter into an electronic agreement (ordinary electronic agreement) that allows you to conclude an agreement with us on your computer or mobile device's screen.
2. Our clients include:
  - 1) Natural person, including natural person conducting business activity,
  - 2) Legal persons including entities without legal personality.
3. Conclusion of the Framework Agreement requires, in particular:
  - 1) Provision of the identification details;
  - 2) Submission of tax returns (FATCA, CRS);
  - 3) Submission of declarations concerning the purpose of the agreement, the sources of the funds, the sources of the assets, the identification of the beneficial owner (AML);
  - 4) Selection of the method of correspondence concerning changes in the documentation, which will also include the method of submitting reports on the services provided under the Agreement;
  - 5) Select a service variant;
  - 6) Providing contact information - e-mail, telephone;
  - 7) Specify the currency in which your Cash Account is to be denominated;
  - 8) Acceptance of these Regulations in their full scope and confirmation of their understanding;
  - 9) Read and accept all of the Contractual Documentation.
4. You provide us with these data by completing the Client Data Card in one of the ways specified in point 1 above.
5. Your personal data are processed in accordance with generally applicable law including in particular REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and Polish Act of 10 May 2018 on personal data protection. Details information concerning the rules of processing and personal data protection are available at [www.tms.pl](http://www.tms.pl). In any cases connected with personal data protection You may contact Us via e-mail: [odo@tms.pl](mailto:odo@tms.pl), on the address: ul. Złota 59, 00-120 Warszawa or phone No. 222 766 200.
6. Failure to provide the information referred to in point 3 above shall prevent us from entering into a Framework Agreement.
7. The Framework Agreement is subject to a condition precedent that we must review of the information you provide for the purposes of the risk assessment carried out in the framework of counteracting money laundering and terrorist financing, we must verify this data on the basis of the documents provided by you. After positive verification, the Framework Agreement shall enter into force.
8. In the absence of (i) a positive verification, or (ii) if the verification has not been completed for reasons beyond the control of TMS Brokers within 90 Business Days, the Framework Agreement shall be deemed not to have been concluded and your details provided to us for the purpose of the Framework Agreement shall be deleted by us.
9. In the absence of positive verification of identity in connection with the conclusion of the Framework Agreement and a return transfer of funds equivalent to EUR 15,000 or more (occasional transaction), your personal data will be stored for a period of 5 years from the first day of the year following the year of its execution or until the limitation period for claims arising

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from legal provisions ; in the case of smaller amounts, your personal data (excluding those that are processed for the purpose of providing an information and educational service) will be deleted as soon as the return money transfer is carried out.

10. The conclusion of the Framework Agreement results in the opening of a Cash Account to support your Transactions.
11. You may have multiple Cash Accounts under one Framework Agreement and these Cash Accounts may be denominated in different currencies. The maximum number of Cash Accounts to be maintained for you may be determined by a Regulation of the President of the Management Board. You will be notified of each amendment to the Ordinance on the terms set out in Chapter VIII below of these Regulations. A decrease in the number of Cash Accounts shall be tantamount to a termination of the Framework Agreement in relation to Cash Accounts above the required number. In such a case, we will ask you to indicate which Cash Accounts we have to close for you, and in the absence of an appropriate instruction, with your consent we will close the Cash Accounts where the lowest amount of money is located.
12. Within the scope of freedom of contract, we reserve the right to refuse to conclude a Framework Agreement, in particular in cases where provision of brokerage services would be inconsistent with the Act or other generally applicable regulations.
13. Until obtaining the positive verification referred to in para. 7 above and conducting the assessment of the adequacy and appropriateness, referred to in § 4 below, we will not allow you to place orders.

### **§3 Identification details necessary for the Framework Agreement**

1. If you enter into a Framework Agreement as an individual, you must provide us with identification information:
  - 1) Full name
  - 2) Residential address,
  - 3) Correspondence address - if you want correspondence to be addressed to you at a different address and at the same time you have indicated that you want to communicate with us by mail,
  - 4) Citizenship,
  - 5) Identification/registration number assigned individually in the country of which you are a citizen (e.g. PESEL in Poland; identification number is not assigned in all countries),
  - 6) Number and series of Identity Document which confirms your details, issued by the competent authority,
  - 7) The date of validity of the identity document you are using,
  - 8) place of birth for people with a PESEL number or country and date of birth for people without a PESEL number,
  - 9) Date of birth,
  - 10) Tax Residence Country
  - 11) Tax identification number in the country of tax residence, in the case of an entity for which such an obligation is imposed by law.
2. For natural persons who conduct business activity in addition to the data referred to in section 1, we need to obtain additional data:
  - 1) Active LEI number,
  - 2) Economic sector(s) concerned,
  - 3) The number under which the entity is registered in the relevant register or registers,
  - 4) REGON number or equivalent, if available.

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3. For legal entities and unincorporated entities, you must provide us with identification information:
  - 1) Name of Company,
  - 2) The organisational form of the legal person,
  - 3) Seat office and address,
  - 4) The number under which the entity is registered in the relevant register or registers,
  - 5) REGON number or equivalent, if available.
  - 6) Active LEI number,
  - 7) Tax Identification Number
  - 8) Tax Residence Country
  - 9) Economic sector(s) concerned,
  - 10) A list of persons authorized to make any representations regarding the Agreement on behalf of such entity and to dispose of the accounts maintained by us, together with specimens of their signatures and the documents referred to in paragraph 1;
  - 11) Name and number of the PESEL, or date of birth in the case of a person without a PESEL number, of the person representing that legal person;
  - 12) Real beneficiary identification data,
  - 13) Other documents, if such obligation results from separate regulations or if the statement cannot be verified by us in electronic registers.
4. We reserve the right to condition the conclusion of the Framework Agreement by providing additional information not indicated in points 1-3 above. In particular, we may require for the Client, for its verification, to perform a verification transfer via the Client's account at the entity providing financial services based in the territory of a Member State of the European Union or an equivalent country. In the event of a negative completion of the verification process or (ii) if the verification could not be completed within 90 Business Days, we will refund all funds transferred to us in the same amount and currency to the bank account from which they were transferred to us, within 7 days from the day of the occurrence of one of the above-mentioned conditions.
5. For foreign natural persons, legal entities and organizations without legal personality, the provisions of this paragraph shall apply accordingly, and if this is not possible, we shall have the right to indicate other documents on which the signing of the Framework Agreement is dependent.

#### **§4 Assessment and suitability of service and products**

1. Before allowing you to place orders at TMS Brokers, we are required to verify: (i) whether you have experience and knowledge in investing in the financial market, (ii) your financial standing, including the ability to incur losses, (iii) investment objectives, including the level of acceptable risk. The motive for conducting an adequacy assessment is to enable us to act in your best interests. To this end, we present you with an adequacy assessment questionnaire.
2. The questionnaire shall be composed of questions about your knowledge and experience in the investment field and shall include the elements listed below to the extent appropriate to the nature of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged, taking into account its complexity and the risks involved:
  - 1) the types of services, transactions and financial instruments of which you are aware;
  - 2) the nature, size, and frequency of transactions in financial instruments that you have carried out and the period over which they have been carried out;

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- 3) your educational level, as well as your current or previous relevant occupation(s).
3. As a result of the adequacy assessment, we can determine that the service and products are for you:
  - 1) adequate, or
  - 2) inadequate.
4. In the case referred to in paragraph 3(2) above, we may provide services to you, but we will notify you on a Permanent Information Storage Medium, that the service may be inadequate for as it involves risks inadequate for your level of knowledge or experience and that Transactions involving Financial Instruments involve with the risk of incurring significant losses in the event of adverse changes in the price of the Underlying and we will provide you services at your request only if you accept the warning.
5. You will be informed of the outcome of the adequacy assessment questionnaire as soon as it is completed. Your result will be recorded and communicated to you in writing or on a Permanent Information Storage Medium. After receiving the result, you should confirm in writing, by return acknowledgment of receipt or by e-mail the result obtained.
6. Before allowing you to place orders at TMS Brokers, we will also ask you to provide information regarding your objectives and investment needs in order to determine which target group you belong to (so-called 'suitability assessment').
7. We will use the information referred to in paragraphs 1 and 6 above to determine your risk profile.
8. Once we have determined which target group you belong to, we will make this information available to you in writing or on other Permanent Information Storage Medium.
9. The target groups you are in may change, in particular if you change the information you provide in accordance with paragraphs 1 and 6 above or if you change the rules for determining the target groups.
10. As a result of the suitability assessment, we can determine that the services offered by TMS Brokers are not suitable for you because of your investment goals and risk aversion. In this case, we will be forced to refuse you brokerage services.
11. You should be aware that the financial markets, Financial Instruments, Underlying Instruments and other phenomena affecting trading in Financial Instruments are subject to rapid change and that the assessment referred to in sections 1 and 6 above must be monitored by you and Us on an ongoing basis. If you find that the information you provided has changed, e.g. your knowledge or experience has changed, please let us know without delay.
12. We have the right to rely on information provided by you unless we are aware, or should be aware, that such information is manifestly out of date, inaccurate, or incomplete.
13. We may also ask you to complete the questionnaire of the adequacy and suitability again.
14. The assessment of the Client's compliance with the target market of financial instruments serves to fulfil the obligation specified in the Act and does not constitute investment advice.

## **§5 Client Classification and its change**

1. As a rule, we classify you as Retail Client.
2. In addition, if you have a place of usual residence or registered office in the territory of the Republic of Poland, you may apply (at your written request) for granting you as part of Retail Client category the status of a Retail Client Experienced.

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3. To obtain the status of a Retail Client Experienced you need to fulfill both of the following conditions:
- 1) carried out any of the following activities over the last 24 months:
    - a) opening at least 10 transactions in contracts for differences with a nominal value of at least the equivalent in Polish zloty of EUR 50.000 each within the quarter in at least four quarters; or
    - b) opening at least 50 transactions in contracts for differences with a nominal value of at least the equivalent in Polish zloty of EUR 10.000 each within the quarter in at least four quarters; or
    - c) opening at least 40 transactions in CFDs within the quarter in at least four quarters, where the total nominal value of all opened transactions for the 24 months period under assessment is at least the equivalent in Polish zloty of EUR 2 000 000;
  - 2) having appropriate knowledge about derivatives, including contracts for differences, means any of the following:
    - a) you hold appropriate professional certificates or completion of a specialist field of study;
    - b) you completed at least 50 hours of training in the last 12 months in the area of derivatives, including contracts for differences, to be confirmed either by the relevant certificates or confirmation issued by the relevant organizer of the training or, in each case provided that the organizer of the training has verified your knowledge before any such certificate or confirmation is issued; or
    - c) at least one year of work experience at a position which requires professional knowledge of transactions regarding contracts for differences or other derivatives.
4. Retail Clients Experienced will be reviewed by us at least once every 12 months in order to check whether they still meet the relevant requirements.
5. Detailed rules for granting the status of a Retail Client Experienced are specified in the *"Policy of Client Categorization in Dom Maklerski TMS Brokers S.A."* available on the TMS Brokers website [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty).
6. As Professional Clients, we classify all the Clients designated in Article 3(1) (39b) of the Act
7. In addition, based on your application, we may qualify you as a Professional Client, which entails a reduction in the scope of protection to which you are entitled, only if you meet conditions pointed in *"Policy of Client Categorization in Dom Maklerski TMS Brokers S.A."*.
8. Before accepting the application referred to in section 7, you will be informed about the principles of treating Professional Clients when providing brokerage services.
9. In order for us to accept the application referred to in section 7, you must submit a written statement on your knowledge of the principles of our treatment of Professional Clients and the consequences of treating you as a Professional Client.
10. If you have been classified as a Professional Client, you may apply to us at any time for reclassification as a Retail Client.
11. In the case of a client qualified as a Professional Client, we believe that such client has the necessary (i) experience and (ii) knowledge to make the right investment decisions and to properly assess the investment risk related to those decisions.
12. Retail Clients have the widest scope of protection, while Professional Clients are considered to have a high level of knowledge of financial markets and products, are able to assess the investment risk on their own, and therefore we offer them a narrower scope of protection.

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## **§6 Recording of data**

1. The activities performed by you in the Transaction System are recorded. This applies in particular to your login times, submitted, modified and cancelled orders. The history shall cover a period of at least 12 months.
2. You can see the history of these activities yourself in the Transaction System, unless more than one calendar year has passed since the activity was recorded. You may then ask us to provide you with certain data or information, and we must provide you with such data if we confirm your right to receive such data or information. We will provide you with data from the Transaction System for a period of 5 years from the first day of the calendar year following the year in which the Framework Agreement ceased.
3. In addition, we record all telephone conversations with you. If you are unable to record your conversation on the number you call us to, we will ask you to contact us on a different number.
4. During the personal meetings, we will take notes of the conversations.
5. Recorded telephone conversations or correspondence between us and you, as well as notes that result or may result in transactions, will be retained for a period of five years from the first day of the calendar year following the year in which the Framework Agreement ceased, and if it requests it supervisory authority, for a period of up to seven years from the first day of the calendar year following the year in which the Framework Agreement terminated. You authorize Us to use such records for evidential purpose.
6. On your request, we shall available copies of the documents referred to in paragraph 1, 3 and 4 for a period of five years counted from the first day of the calendar year following the year in which the Framework Agreement has terminated and, where requested by the competent authority, for a period of up to seven years counted from the first day of the calendar year following the year in which the Framework Agreement has terminated. In the case of selection of certain carriers indicated in the Table of Fees and Commissions, a fee shall be charged in the amount specified in the Table of Fees and Commissions.

## **§7 Remote identification**

1. During the cooperation you will place Orders and instructions remotely.
2. To authenticate such remote Orders and instructions you will use access data (i.e. identifiers and passwords).
3. For telephone instructions and Orders placed as telephone instructions, the identifier is your name or the name of the Client you represent and your telephone password. This password is defined by you in the Client's Data Card. This password may be changed by sending a new one in paper form with a signature consistent with your specimen signatures included in the Client's Data Card. If we have reasonable doubts about the identity of the person placing the order or telephone instruction, we may require additional data for the purpose of verification.
4. For Orders placed through the Transaction System, your login and password will be assigned by us. You will be asked to change your password when you log in for the first time. You can also change this password in the Transaction System at any time (except for the mobile and browser versions) after logging into this System. For security reasons, we encourage you to change your password at least once every 30 calendar days. We reserve the right to force you to change your password regularly.
5. You can also change any of the passwords to the Transaction System by calling Our telephone number, and after your identification and verification we will change your password and send

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you a new password in the form of SMS to the telephone number provided by you in the Customer Data Card. For security reasons, we encourage you to change this password immediately.

6. You should store your identification data in a safe place and not pass it on to third parties. All orders and instructions placed using the authentication data will be treated as authorized by you (subject to sections 7-9 below and the rules of liability and conduct indicated therein). We will have no reason to refuse to execute such an order.
7. We accept no liability for the consequences of disclosing the authentication data by You to third parties.
8. Subject to this paragraph, you are responsible for the consequences of all orders and instructions executed by us based on correct authentication data, therefore protect your password.
9. If you have any doubt or information that third parties may be using or using your authentication information, please contact us immediately by phone or e-mail to block access to the Transaction System and create a new password. In case of phone contact, the password will be changed and after your prior verification we will provide you with a new password. In case of e-mail contact, we will immediately call you back to the phone number given in the Customer Data Card and after your prior verification we will provide you with a new password. For security reasons, we encourage you to change this password immediately.

## **§8 Amendment of identifying data and other claims**

1. You must update your information immediately but no later than 7 days from the date of the change whenever you make any changes to it.
2. You make the update by completing and providing us with your Data Card, either by phone or electronically. The update consists in filling in a new Client Data Card, indicating the first and last name and filling in the data that have changed. If you send us your Data Card electronically, our employee will verify whether you have received it from the e-mail address previously disclosed to us and will then confirm this information with you by telephone. You can deliver the forms by post to our address or by scanning them at the following address [makler@tms.pl](mailto:makler@tms.pl). You make the update by Client's Zone to the extent available.
3. You are required to update your knowledge, experience or risk appetite, immediately, but not later than within 7 days from the date of the change and each time after changing their level.
4. You will update the information referred to in section 3 by completing it again and providing us with a service adequacy questionnaire.
5. We reserve the right not to take into account in whole or in part the updating of the information referred to in sections 1 to 3, if it contradicts data held by us or data available in the public domain.
6. The changes you make will apply to all your contracts.
7. We reserve the right to verify updates by telephone.
8. Updates that fail to pass the verification process will be rejected by us and will have no effect.
9. Updates will be made immediately.
10. We shall not be liable for any damage that you may suffer as a result of your failure to update this information, if your failure to do so is not due to our fault.
11. Amendment of the address of residence, correspondence address, telephone number, e-mail address made in the manner referred to in paragraph 2 above will be used by us to update this

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data in all agreements concluded with you of providing services by us in the scope of executing orders to buy and sell Financial Instruments.

## **§9 Authorizations**

1. You may appoint a proxy or proxies to perform activities related to the conclusion, annexation or termination of the Agreement.
2. The attorney makes declarations of intent on your behalf (e.g. willingness to enter into a contract) as well as declarations of knowledge (e.g. information about your e-mail address or about your knowledge and experience). You can also grant a power of attorney in the presence of our employee.
3. The authorisation must be in writing with notarized signatures and must include a power of attorney to make both declarations of will and knowledge.
4. In addition to the authorisation to conclude the Agreement, you may also appoint a proxy to place orders and instructions under the Agreement (unit agreements).
5. We need the following information for your attorney:
  - 1) for a proxy who is a natural person, the information specified in the par. 3 sec.1 pt. 1-7 and 9,
  - 2) for a proxy who is not a natural person, the information specified in the par. 3 sec. 3.
6. The authorisation may be temporary or unlimited.
7. The power of attorney may be revoked at any time. If the power of attorney is revoked, we will return the power of attorney document to you upon your request.
8. The attorney to conclude the Agreement may not appoint himself as the attorney to place instructions and orders, unless it results directly from the contents of the power of attorney.
9. The provisions concerning you shall apply to the attorney accordingly.
10. If we change our terms of service, we will keep you informed.
11. The specimen power of attorney to submit instructions and orders under the Agreement is determined by the Order of the President of the Management Board and is available at [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty).
12. If we have a reasonable suspicion that you have granted a power of attorney to a person who may perform an asset management service on your Account, in particular without a legally required permit, we reserve the right to block your access for the duration of the investigation. However, this time will not be longer than until you have received your firm statement that you have not granted a power of attorney to a person who may provide an asset management service in your Account.
13. By accepting these Terms of Use you confirm that you are aware that a power of attorney to your Account, if granted to a person or entity that is not authorized by the relevant state authorities to provide asset management services or an entity that is not otherwise authorized to perform asset management activities, even if it is a close person, you are exposed to the risks described above and to the risk of incurring a loss on Transactions. We are not responsible for such actions, because we do not manage your assets and all activities in your Account are undertaken independently, including granting a power of attorney, which is allowed by law and in accordance with the above provisions of the Terms of Use.
14. The attorney may not grant any further powers of attorney.

## **§10 Confidentiality**

1. Each Party to the Framework Agreement undertakes to maintain confidentiality with regard to

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the nature of the matter covered by the Framework Agreement and to use its best efforts to prevent the disclosure of such information, unless such disclosure is required by law, in particular following a request by a competent authority.

2. By signing the Framework Agreement you authorize us to provide all necessary information regarding you, your Cash Account, Registry and Operations Register upon request of the authorized authorities, to ensure compliance with the law, without the need for prior notice to you.
3. You acknowledge that we may be required to provide information regarding the beneficial owner of a Trade in Financial Instruments where the Underlying Instrument is a financial instrument that is listed on a foreign regulated market. This applies in particular to the Large Trade Reporting programme. You agree to disclose any necessary data concerning such reporting, including those constituting Professional Secrecy with respect to the Beneficiary of the Transaction and details of the open Positions, to the authorities authorised by the local law of the exchange competent to process such data.
4. You are aware that you are aware of reporting obligations resulting from entering into transactions with the use of Financial Instruments. This applies in particular to reporting foreign currency exposures for the needs of the National Bank of Poland and reporting under Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.
5. We are obliged to provide information on the Transactions you have entered into to the competent authorities of financial market supervision by virtue of the fact that you enter into transactions. In the case of natural persons, information on concluded transactions also includes personal data.

## **§11 Risk Awareness**

1. By signing the Framework Agreement you represent that you have read and understood the document "Characteristics of Financial Instruments and Risk Description", which is an integral part of the Framework Agreement.
2. Remember that the risks described below are one of many that accompany the implementation of the Framework Agreement. Please note that if you are unsure of the possibility of incurring a risk, or if you are unsure whether you may incur a risk in a particular situation, you may contact us to explain the exact content of the risks
3. By signing the Framework Agreement you further represent that you are fully aware in particular of the fact that, due to, but not limited to, the high leverage of transactions under the Agreement concluded between us, there is a high risk of incurring financial losses that may exceed the amount of funds deposited on the Cash Account, including the Margin Account. In particular, you represent that you are aware that:
  - 1) Due to the low value of the Margin in relation to the nominal value of the Transaction, a change in the price of the Underlying Instrument underlying the Financial Instrument may result in a loss exceeding the level of cash deposited,
  - 2) if we exercise our rights under the Framework Agreement or the Terms of Use to execute a Transaction on your account without an order or instruction, any financial result arising from the Transaction will be credited to your Cash Account,
  - 3) it is not possible to guarantee the realisation of a profit or avoidance of a loss on a Trade in Financial Instruments, you have never received such a guarantee from us, and the fact of signing the Framework Agreement was not dependent on the receipt of such guarantee in the future.

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4. You guarantee that you are able to financially and in any other way accept the risk of entering into transactions, including highly leveraged ones.
5. When we are making general recommendations, we exercise due diligence to ensure that such information is presented objectively.
6. When we are preparing general recommendations, we do not take into account the individual needs and situation of a given investor. Investments and services presented or included in a general recommendation may not be suitable for a particular investor, therefore, if in doubt about such investments or investment services, we recommend that you consult an independent investment advisor. Before investing on the basis of a general recommendation issued by us, you must make your own assessment as to whether an investment in any instrument to which the recommendation relates is appropriate for you based on the benefits and risks, taking into account your own strategy and legal situation and financial.

## **Chapter III - Unit agreements - Transactions**

### **§1 Orders, Transactions and Positions - general provisions**

1. The basis for concluding a Transaction is placing an Order in the manner described in these Terms of Use, which is subject to disclosure in the Transaction System.
2. An order may be placed by you, your attorney or by us if the conditions set out in these Terms of Use and in the Contract Documentation are met.
3. The execution of the Order depends on the fulfilment of the conditions set forth in this Order (in particular through the occurrence of market conditions for the execution of such Order) and on the fulfilment of the requirements arising from these Regulations (e.g. the requirement to have sufficient cash resources on the Cash Account).
4. Execution of the Order results in concluding a Transaction.
5. A Trade may result in the opening of a new Position or in the closing of an existing Position.
6. Orders shall be executed only on the Transaction System transaction server.
7. You may place Orders through the Transaction System or by telephone during the business hours of the Customer Service Department or in person at our offices.
8. Orders shall be executed in accordance with the Policy of Order Execution in Dom Maklerski TMS Brokers S.A.

### **§2 Types of Orders**

1. As part of the Transaction System, we provide you with the following types of Orders:
  - 1) "**Market**" - immediate orders executed at the market price. This means that after you place such an Order, it is executed at a price that is available in the Order Execution System at the moment of its execution. As a result, the execution price may be different from the price you see on the Transaction System at the time you place such an Order, and the target execution price may be both better and worse.
  - 2) "**Limit**" - a pending order activated on the terms set out in the Order Execution Policy of Dom Maklerski TMS Brokers S.A.
  - 3) "**Stop**" - a pending order activated on the terms set out in the Order Execution Policy of Dom Maklerski TMS Brokers S.A.
  - 4) "**Stop Loss**" - a pending Order aimed at closing an open Position in order to limit losses, an Order activated if the price Quoted in the Transaction System reaches the level specified in the Order;

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- the Order is executed in the "market" mode, for a Stop Loss Order, it is executed at the "bid" price: for a Stop Loss Order, it is executed at the "ask" price.
- 5) "Take Profit" - a pending order aimed at realizing profit from an open Position, an order activated if the price Quoted in the Transaction System reaches the level specified in the order; the order is executed in the "market" mode, for a Take Profit Order, it is executed at the "bid" price: for a Take Profit Order, it is executed at the "ask" price.
  2. Price levels specified in Stop Loss, Stop, Take Profit and Limit Orders are only the levels that activate the Order. Realization of Your Order after its activation goes into the "market" mode, This means that the Order can be made at a better, inferior or same price as specified in the Order. We execute such Orders in accordance with our Order Execution Policy in Dom Maklerski TMS Brokers S.A. i.e. immediately, however, it should be taken into account that between the activation and the completion of the Order the time in which the price may change. The order fulfillment price reflects the market price, which takes into account our commission from the moment the order is processed.
  3. In addition, you have the possibility to place a **"Trailing Stop"** Order - this Order is activated in the case of achieving a defined profit expressed in quotation points. When the Trailing Stop activation level is reached, it works in such a way that the Trailing Stop execution rate is reached:
    - 1) for a long Position - increased by the value of trading points by which the current price quoted in the Transaction System increased, while maintaining a constant difference between the current price and the defined value of profit expressed in trading points, and the execution of the trailing stop shall take place when the price falls by the defined value of profit expressed in trading points, subject to sub-paragraph 4,
    - 2) for a short Position - reduced by the value of quotation points by which the current price quoted in the Transaction System decreased while maintaining a constant difference between the current price and the defined value of profit expressed in quotation points, and the execution of the trailing stop shall take place when the price increases by the defined value of profit expressed in quotation points, subject to sub-paragraph 4.
  4. The trailing stop can only be submitted, modified or cancelled by you at your end of the MT5 Terminal Transaction System (installation version). A trailing stop order remains active provided that you are logged in to the MT5 Terminal internet channel (installation version). In case of logging out from the Transaction System (installation version) (on condition of earlier activation of the Trailing Stop), the Order is automatically converted into the Stop Loss Order at the last price of the active Trailing Stop.
  5. A trailing stop order may not be placed, modified or cancelled by you through a written or telephone instruction.
  6. Trailing Stop Orders are not available via the Internet browser (version of the Transaction System) or via the version of the Transaction System for mobile devices.
  7. For one position, Trailing Stop cannot occur more than once every 10 seconds.
  8. Only one Trailing Stop can be set for each open position or pending order.
  9. If there are several positions with Trailing Stop at a single symbol, the Trailing Stop is processed in a specific way. When a tick arrives, only a Trailing Stop of the last opened position is processed. If yet another tick arrives for the same symbol within 10 seconds, a Trailing Stop of the next position (opened second last) is processed. If the next tick arrives later than 10 seconds, a Trailing Stop of the position opened last is processed again.

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10. When placing a stop, limit, stop loss or take profit order, a minimum distance from the current market price may be required. The minimum distance to the current market price will be specified by us in the Financial Instrument Specification.
11. When placing a Limit Order, Margin may be required. The required Margin is specified in the Specification of Financial Instruments.
12. You can also place "market" orders using the "One-Click" function.
13. Orders may be placed or modified only during the trading hours of a given Financial Instrument except for orders on Financial Instruments for which the underlying instrument is a share or ETF, which cannot be modified, subject to paragraph 17.
14. Orders shall have the following validity dates:
  - 1) GTC - valid till cancellation,
  - 2) GTD - Valid until the specified time of the specified day,
  - 3) The default validity term is "valid until cancellation" (GTC) - unless you indicate otherwise, this is the validity term of the order.
15. Pending orders can be deleted in the following situations:
  - 1) Stop out;
  - 2) Rollover;
  - 3) failure to meet the requirements necessary for the relevant Transaction;
  - 4) closing the account;
  - 5) Corporate event;
  - 6) 365 days after its submission, immediately after the expiry of that period;
  - 7) after removing the Financial Instrument being the subject of the offer from the offer;
  - 8) After the financial instrument offered has been transferred to the "close only" mode.
16. Upon your request, we may prepare and provide you with information on the current status of Order execution (applies to pending Orders).
17. We may introduce periodic interruptions to trading during trading hours (applicable to Financial Instruments based on crypto-currency) to perform maintenance on the technical IT infrastructure used to accept and execute orders. TMS Brokers will notify you of planned trading interruptions via email or website with reasonable advance notice or via an announcement at <https://www.tmsbrokers.com/news>.

### **§3 Quotations of financial instruments**

1. Quotations available in Our Transaction System may be Quotations created by Us on the basis of information and market from Quotations Sources (processed data).
2. Quotations available in Our Transaction System may also be Quotations directly from Quotations Sources. If so, you may request information from Us about the Quotation from the Quotation Source and its data under these Terms of Use.
3. Detailed rules of creating Quotations for particular Financial Instruments are specified in the Order Execution Policy in Dom Maklerski TMS Brokers S.A.
4. If we have reasonable grounds for doubting that you are entering into a Trade in bad faith with the purpose of using a wrong quotation or that you are pursuing a strategy of investment that is inconsistent with the equality of the Parties under this Agreement and that is designed to exploit a technological or information advantage, we reserve the right referred in subparagraph 5 and 15 § 15 in this chapter.
5. You have the right to withdraw from a Transaction in a Financial Instrument for which the Underlying Instrument is a financial instrument traded on the trading venue if the Transaction

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was executed at the price at which the Transaction would not have been executed on the trading venue (the Transaction was executed outside the maximum limits set by the trading venue), pursuant to the rules set out in subparagraph 5 § 15 in this chapter, respectively.

6. Request for price - we will respond to your request for a price; in your request for a price you will indicate important terms of the Transaction, in particular the Financial Instrument, the denomination of the Transaction and the Transaction Party. In response to your request, we will provide you with information on the price at which we are able to execute the Transaction. Once you have received our offer you can either accept or reject it. In accordance with the Policy of Order Execution in Dom Maklerski TMS Brokers S.A., your acceptance of the price does not guarantee the execution of the Order.
7. We offer a fixed or variable trading spread. In the case of a fixed transaction spread, its target value is specified in the Financial Instruments Specification Table, subject to subparagraph 8 below.
8. Spreads may be extended beyond the scope specified in section 7 and the customary scope specified in the Specification of Financial Instruments:
  - 1) outside working hours of the local market for a given Financial Instrument,
  - 2) in a situation where there are above-average fluctuations of exchange rates,
  - 3) in a situation where there is limited liquidity in respect of Financial Instruments,
  - 4) in the light of important economic and political developments affecting the market situation,
  - 5) within holidays of the local market for a given Financial Instrument,
  - 6) in the event of the occurrence of any of the events defined in Chapter 6 § 6 of the Regulations as Exceptional Circumstances.
9. Extension of transactional spreads on the principles referred to in section 8, does not require Your prior notification.
10. At your request, we may provide individual terms of concluding a Transaction after you meet the requirements individually set by us.

#### **§4 Execution of the Order**

1. We will execute Orders by entering into transactions for our own account with you, which you consent to by signing the Framework Agreement.
2. We are an Order Executing System, but we do not operate a trading system.
3. Execution of your Order may result in:
  - 1) Opening of position
  - 2) partial closure of the current position,
  - 3) the position is closed completely.
4. We may refuse to accept or execute an Order or any other instruction from you if:
  - 1) the price has changed since you placed your Order,
  - 2) The Financial Instrument is not Quoted at a given time,
  - 3) you place an Order to open a new Position, while the Financial Instrument is offered only in close only mode,
  - 4) you place an Order to open a new Position, while the Financial Instrument is offered only in short only mode and long only mode,
  - 5) other conditions specified in the Policy for Order Execution or in the Specification of Financial Instruments have not been met,
  - 6) in the event of exceeding the exposure limits referred to in § 13,

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- 7) in the event of the occurrence of one of the events defined in Chapter 6 § 6 of the Terms of Use as Exceptional Circumstances.
- 8) The subject of the order are instruments not included in the Financial Instruments Specification,
- 9) in the case of pending orders for which the required margin is specified in the Specification of Financial Instruments, you do not have sufficient funds in the Cash Account at the time of placing the Order.
- 10) the Order or instruction was placed in breach of the provisions of generally applicable law (in particular the Act on Trading in Financial Instruments, the Act on Counteracting Money Laundering and Terrorism Financing), the Framework Agreement or the Regulations,
- 11) in other cases provided for by law (in particular the Act on Trading in Financial Instruments, the Act on Counteracting Money Laundering and Terrorism Financing), or specified in the Regulations, the Framework Agreement, the Contractual Documentation,
- 12) we have a reasonable suspicion that you are manipulating the trading system on which the Underlying Instrument is listed.
5. If it is not possible to execute your Order, we will notify you of this fact immediately in the Transaction System.
6. Upon your request, we will provide you with information on the status of Order execution.
7. Trades in Financial Instruments are executed by us by entering into a transaction directly with you which creates a Conflict of Interest. A detailed description of the Conflicts of Interest is included in Chapter VIII § 1 of these Regulations.

## **§5 Procedure and conditions for submission of written Orders**

1. You may submit written Orders to buy or sell Financial Instruments, as well as instructions concerning modification or cancellation of previously issued Orders.
2. Written orders, their modifications (if it is allowed under the terms of these regulations) or cancellations may be submitted only by you or your attorney, if you personally appear in the Customer Service Centre in order to submit such an order.
3. Your written Order should contain the following parameters:
  - 1) Name and surname (name)
  - 2) name and surname of the person placing the Order, if the Order is placed by a person acting on your behalf,
  - 3) Account number,
  - 4) date and time of placing the order
  - 5) type of transaction (buy/sell)
  - 6) Type of order
  - 7) Name of the Financial Instrument being a subject of the order:
  - 8) the denomination of the transaction being the subject of the Order,
  - 9) price of execution of a pending Order - price at which you would like the Order to be executed (remember that we do not guarantee execution at the price specified by you),
  - 10) Order validity date,
  - 11) a specific designation to distinguish the Order from other Orders,
  - 12) Signature,
4. other elements, if their presentation is required by the template of written Order. If you place several Orders, you are obliged to specify the order in which they are to be sent for execution, otherwise transactions are concluded in the order in which they were placed.
5. A specimen of a written order is available in the Customer Service Point and on our website.

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6. Written Orders are accepted in our Customer Service Point during the Customer Service Point operating hours.
7. Cancellation of an Order consists in indicating its number and submitting a declaration of will on its cancellation.
8. Modification of the Order shall consist in indicating and determining the changed Order parameters.
9. Our authorized employee shall confirm receipt of a written Order for execution by signing a document containing an Order or Orders.
10. If the Order does not contain all the information referred to in 2 or cannot be accepted by us for any other reason, we will promptly notify you thereof in the manner agreed in the concluded Framework Agreement.
11. Information on the working hours of the Customer Service Centre and our working hours is available on our website.
12. You may submit written Orders to cancel and modify your Orders during trading hours. The trading hours for a given financial instrument are specified in the Specification of Financial Instruments available at [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty) and provided to you upon conclusion of the contract and in the case of a change provided each time on a Durable Medium in the manner specified in the Customer Data Sheet.

## **§6 Telephone instructions to issue Orders**

1. You may submit telephone instructions to issue Orders, as well as instructions concerning modification (if it is allowed under the terms of these regulations) or cancellation of previously issued Orders.
2. You may submit the telephone instructions referred to in §6 during your working hours only to the telephone numbers indicated by us in the TMS Brokers Information Sheet.
3. By signing the Framework Agreement you grant us a power of attorney to issue and sign Orders on your behalf on the basis of instructions given by telephone.
4. Acceptance of the telephone instruction referred to in §6 is preceded by identification.
5. You acknowledge that a fee will be charged for placing a Phone Order in accordance with the Table of Fees and Commissions.

## **§7 Procedure and conditions for submission of telephone instructions**

1. In order to submit telephone instructions, you set a telephone password in the Client's Data Card.
2. It is in your interest to keep your password confidential to prevent it from being disclosed to unauthorized persons. If you suspect that your password is in the possession of unauthorized third parties, you are obligated to notify us of this fact in order to set a new password.
3. Acceptance of an Order issued on the basis of a telephone instruction for execution does not have to be confirmed by us.
4. For evidential purposes, we record instructions by telephone. We can record phone calls in other situations as well. You agree to the recording of calls in order to document the provision of brokerage services.
5. We record your telephone instructions on a Permanent Information Media. These carriers are stored for a period specified by law.
6. *Annulled*

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7. Your Phone Order should contain the following parameters:
  - 1) Name and surname (name)
  - 2) name and surname of the person placing the Order, if the Order is placed by a person acting on your behalf,
  - 3) account number (login),
  - 4) type of transaction (buy/sell)
  - 5) Type of order
  - 6) Name of the Financial Instrument being a subject of the order:
  - 7) the denomination of the transaction being the subject of the Order,
  - 8) price of execution of a pending Order - price at which you would like the Order to be executed (remember that we do not guarantee execution at the price specified by you),
  - 9) Order validity date, if different than GTC,
  - 10) other elements, if their presentation is required by the Transaction System due to the nature of the Financial Instrument being the subject of the order.

## **§8 Orders placed directly in the Transaction System**

1. Under the Framework Agreement and these Terms of Use, we allow you to place Orders directly in the Transaction System.
2. We accept Orders directly to the Transaction System via Internet and mobile access channels to the Trading System. We recommend that you use multiple access channels to the Transaction System.
3. Individual access channels to the Transaction System may differ in terms of available functionalities.
4. Updating the software, specified by Us, is essential for the proper operation of the Trading System and performance of the Agreement. You may report any irregularities in the operation of the Transaction System to the following address: [support@tms.pl](mailto:support@tms.pl). The elements required for placing Orders directly in the Transaction System are limited to the selection of the direction of the Order, the nominal value of the Transaction and other elements appropriate for a given type of Order specified in the Transaction System.

## **§9 Procedure and conditions of placing Orders directly in Transaction System**

1. In order for you to enter into a Trade directly on the Transaction System, we will provide you (and when we provide such functionality you will be able to define yourself) with the following personally identifiable information to enable you to access the Transaction System:
  - 1) login,
  - 2) password.
2. On the basis of the same login and password established on the basis of para. 1 above, log in to your Client Zone.
3. Identification data shall be provided upon opening a Cash Account by e-mail, telephone, against a receipt or by registered mail with a return receipt.
4. It is in your interest to keep your identification data confidential to prevent it from being disclosed to unauthorized persons. If you suspect that your identification data for accessing the Transaction System is held by unauthorized third parties, you should change your password or contact us in accordance with Chapter II § 7 sec. 9 of the Terms of use. In the event that the disclosure of identification data took place in a situation for which we are not responsible, then

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we are not responsible for damages arising in connection with the execution of Orders and instructions given prior to your notification to us of the possible use of your personally identifiable information.

5. In the event that you generate a significant number of inquiries materially debiting the Transaction System, we reserve the right to temporarily block your accounts, which will be preceded by a notification to you via e-mail or telephone.
6. We may set in the Order of the President of the Management Board a limit on the number of requests for the price of a financial instrument or orders, their modification or cancellation submitted by clients directly to the Transaction System, as well as the procedure for blocking clients' accounts.
7. Remember, that all activities we undertake in the Transaction System, as far as they are covered by these Terms of Use and result from the willingness to provide you with security, are aimed at protecting your financial means against incurring a loss. Due to the complexity of the Transaction System, the risks associated with it and the Financial Instruments, we will not always be able to provide you with security and protection against loss, so you must be aware that we will not accept our responsibility if we acted in the best faith to protect your funds. However, you may not be held responsible for protecting your funds if the loss resulted from open Positions or closed Positions but not cleared (not cleared) or other acts or omissions that resulted from your will, and we had no material and serious reason to interfere with the Transaction System and the right to intervene did not arise directly or indirectly from the legal basis described in these Terms.

## **§10 Instruments**

1. All Financial Instruments on which we execute orders are specified in the Financial Instruments Specification: TMS Trader, TMS Connect, TMS Prime depending on the offer variant you have selected.
2. As part of our Transaction System, we may amend the list of Financial Instruments available in our Transaction System by adding new or removing existing Financial Instruments and other parameters set out in the Contractual Documentation. We will keep you informed of any changes in accordance with these Terms of Use.

## **§11 Opening of position**

1. A Position shall be opened as a result of execution of an Order and execution of a Transaction.
2. The opening of a Position means the creation of rights and obligations related to the purchase or sale of a Financial Instrument.
3. The opening of the Position results in opening to investment risk and risk the currency conversion of the result on an instrument denominated in a currency other than the one in which your Cash Account is denominated. These risks and their potential consequences are explained in the Risk Characterisation and Description of Financial Instruments.
4. Opening and maintaining the Position may involve charging fees as specified in the Table of Fees and the Swap Points Table on the terms set out in these Regulations.
5. Unless otherwise stated in the Contractual Documentation, you have the option of opening opposing Positions.
6. Opposing positions, although included on the same denomination and on the same Financial Instrument, have the following effects:

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- 1) we will charge separate Swap Points for long positions and separate Points for short positions,
- 2) You will be exposed to the risk of widening the spreads (we measure the long and short position separately),
- 3) you will be exposed to the risk of currency conversion (converting your result into an open position in the Base Currency of your Account).
7. The condition of executing the Order opening the Position or accept Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) is having the Order covered in cash, which means having Free Cash in the Operational Register in the amount not lower than the Margin Account necessary to secure this Position or Limit Order. If we execute the opening Order, you are aware of and agree that the Free Cash, without any prior notice to you, will be used as a Margin.
8. If the Margin Account required to execute the order opening the Position exceeds the Margin Account amount recorded in the Operational Register, the Order shall not be executed by the Transaction System.
9. Pending orders (except for Financial Instruments, the price of which is based on the price of shares or ETFs) may be placed and accepted by the Transaction System. Verification of the coverage of this Order shall take place at the moment of its transfer for execution after meeting specific conditions set forth in the Order (in particular, the price defined by the Client appears). If the Margin Account required to execute the order exceeds the amount of Free Cash recorded in the Operational Register, the order shall be cancelled and automatically removed from the Transaction System and no Transaction shall be executed.
10. Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) may be placed and accepted by the Transaction System when the Margin Account required to accept this Order does not exceed the amount of Free Cash recorded in the Operational Register. Verification of the coverage of this Order shall take place at the moment of its placing. The coverage of this Order shall be updated immediately after its execution (partial execution or full execution).
11. If the Margin Account required to accept this Order exceeds the amount of Free Cash recorded in the Operational Register, this Order will be rejected.

## §12 Closing of position

1. Closing of a Position means the termination of rights and obligations related to the purchase or sale of a Financial Instrument and results in a change in the Exposure and a change in the value of the Margin Requirement.
2. A Position is closed when you indicate a selected open Position(s) recorded in the Register and then place a closing order for the indicated Position(s) in whole or in part, or when you indicate opposing Positions and link them for the purpose of Settlement.
3. If the denominations of the Open and Closed Positions differ, the Position will only be partially closed up to the height of the lower Position.
4. Opposing positions can be closed with the use of the "Close by" function available in the Register of Financial Instruments.
5. *Annulled*
6. Your Positions may be closed by us in the event that any of the following events occur that cause us to close the Positions immediately after they have occurred:
  - 1) lapse of 365 calendar days from the date of opening;

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- 2) in the event of exceeding the exposure limits referred to in § 13 below,
- 3) achieving "stop-out" referred in Chapter 4 § 4 sec. 4;
- 4) withdrawal of financial instrument;
- 5) withdrawal of underlying instrument;
- 6) some Corporate Events e.g. a division or merger of securities and Underlying Instrument;
- 7) termination of the Framework Agreement;
7. other events resulting from the Terms of Use or the EMIR Regulation or Act on Counteracting Money Laundering and Financing of Terrorism. The consequence of closing the Position is the settlement of the result on account of closing the Transaction, made immediately on the Cash Account.
8. If the financial result arising from the closing of a position is denominated in a currency other than the Account's Base Currency, such result shall be translated into the Account's Base Currency at the Exchange Rate at the time of the Settlement of such result.
9. The Closing of the Position may involve charging fees as specified in the Table of Fees and the Swap Points Table on the terms set out in these Regulations.

### **§13 Limits of exposure**

1. We reserve the right to set limits on exposure in particular Financial Instruments or groups of Financial Instruments or in relation to the entire exposure or individual Cash Accounts.
2. The exposure limits are specified in the Specification of Financial Instruments.
3. There are two types of limits:
  - 1) The limit on a Financial Instrument is your maximum total volume on Positions and pending orders in one direction (e.g. buy);
  - 2) Exposure Limit - the maximum amount of Exposure that you will be able to have open in a Financial Instrument or a group of Financial Instruments (e.g. oil-based instruments).
4. The exposure limit referred to in section 3 item 2 above shall apply to all Accounts held by you, as well as Accounts of Related Persons.
5. You are required to monitor your exposure, including in particular the continuous monitoring of the exposure to all your Accounts, so as not to exceed the limits set out in this paragraph.
6. The Transaction System shall prevent you from placing an Order which will result in exceeding the exposure limit referred to in sub-paragraph 3 (1) of this paragraph above.
7. If it is found that you have exceeded the exposure limit referred to in sub-paragraph 3(1) or (2), we will close your position in the Financial Instrument in question in whole or in part (up to the exposure limit) without further notifying you.
8. The closing referred to in section 7 above shall be carried out starting from the largest Transactions, calculated by denomination; the second one shall be the date and time of opening the Transactions (starting from the earliest Open Transaction), provided that a given market is open.
9. After the closing, referred to in subparagraph 7 above, we will notify you of this fact by e-mail or through the Transaction System.

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## **§14 Algorithmic mechanisms**

1. In the Transaction System, we may provide you with the opportunity to place Orders based on algorithmic mechanisms, provided that all parameters concerning the algorithm have been specified by you.
2. The algorithms you create, as referred to in §14, may lead to a Transaction without your participation, provided that the conditions specified in the algorithm are met.
3. You use the mechanisms referred to in section §14 and 1 above at its own risk and liability.
4. If you use your algorithmic mechanisms, we are not responsible for your losses or lost profits related to the execution of Orders using these algorithmic mechanisms. In such a situation, we are also not responsible for the lack of execution of Orders, for any delays in execution, failure to generate, as well as incorrect generation of Orders using the algorithmic mechanisms you upload.
5. We do not have access to your algorithms and therefore we do not guarantee a specific financial result on transactions concluded with the use of algorithmic mechanisms.
6. We treat algorithmic trades as if they were yours.
7. We shall not be liable for errors related to the operation of the algorithmic mechanism and the execution of Orders generated with the use of the algorithmic mechanism.
8. If you wish to enter into an algorithmic Trades, you may not:
  - 1) use external data sources, in particular quotes, prices, exchange rates, quotation time data, the quotation provider and other price parameters,
  - 2) change the prices, times, quotes, spreads, limits and any other parameters of the Financial Instruments We quote,
  - 3) change the settings, parameters and other features of the Transaction System and Financial Instruments, in particular the values related to the Quotation of open positions, the value of the Account Balance, the Balance of the Operational Register, the Registration Register, the Operational Register, the values of Swap Points, trading hours, the Rollover time,
  - 4) otherwise affect the Transaction System and the features and parameters of your Financial Instrument for any purpose other than by placing Orders to Trade solely on the basis of the trading parameters and the Transaction System as defined by us.
9. Placing, removing or modifying Orders by you with the use of algorithmic mechanisms is treated as Orders placed by you.
10. You may not modify the Orders, quoted in the section §14 by submitting a written instruction or by telephone.
11. It is not possible to run automatic strategies in web or mobile versions.
12. We will be able to remove you from algorithmic trading at any time if we have reasonable grounds to believe that orders placed by you may adversely affect Our Transaction System and the trading venues on which the Underlying Instrument on which we have based is traded.

## **§15 Quotations Errors**

1. Price quotations in the Transaction System from the Sources of Trading may contain errors in the price level that existed in the market at the time of execution of your Order. Such erroneous Quotations are for reasons for which we are not responsible and have no influence.
2. We make every effort to ensure that such situations occur as rarely as possible, but due to the unpredictability of such events, you must take into account the fact that events of this type are possible even in the course of cooperation with reputable Quotation Sources.

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3. You should be aware that we are not responsible for errors in the Quotations due to reasons beyond our control.
4. In certain circumstances, the Quotations in the Transaction System may contain errors as a result of a limitation or loss of liquidity in the relevant market, extraordinary price fluctuations, other circumstances defined as Exceptional Circumstances or technical errors in the transmission of data from Quotations Sources (hereinafter, "**Erroneous Quotations**" or "**Erroneous Price**"). A transaction concluded at an incorrect price is deemed:
  - 1) a transaction in the Transaction System, which was concluded at a price deviating from the price presented by two independent Reference Entities, one of which is simultaneously the Quotation Sources from which the price used to quote a given Financial Instrument in the Transaction System came at the moment when there were premises for executing the Order in the Trading System, above the value indicated in the Specification of Financial Instruments indicated for a particular Financial Instrument in the column "**Quotation tolerance**". In the case of transactions on the Financial instrument whose underlying instrument is listed on a regulated market - the price presented by one Reference Entity at the moment when there were premises for executing the Order in the Trading System, above the value indicated in the Specification of Financial Instruments indicated for a particular Financial Instrument in the column "**Quotation tolerance**",
  - 2) The Organized Market on which the Underlying Instrument underlying the Quotation of the Financial Instrument is listed shall cancel the Transactions on which the Quotation was determined or the Underlying Instrument quoted on an Organized Market underlying the Quotation was suspended and you entered into a Trade with Us in that Financial Instrument after the suspension of the Quotation.
5. If the events referred to in section 4 occur, both we and you are entitled to:
  - 1) a change in the transaction price (the price of the Financial Instrument) at which the Transaction was concluded with the prior consent of the other Party (where the change in the transaction price shall also be deemed as a posting on the Cash Account reflecting such change in price); or
  - 2) withdraw from the Transaction, and in the event of cancelling the Transaction closing the open Position, the position will be reopened (if the Transaction is withdrawn on the same day as the Transaction) or by adjusting the Balance on the Cash Account (if the Transaction is withdrawn on the next day as the Transaction is concluded), which entails for you the risk of higher losses or activation of the "stop out" mechanism We do not guarantee that as a result of withdrawing from the Transaction closing a position on your Cash Account, there will be no negative balance (debit) as a result of the Settlement made at market prices,
  - 3) cancellation of the Transaction concluded with the use of funds derived from Transactions withdrawn - if you did not have sufficient funds on the Account to conclude the Transaction if it were not for funds derived from Transactions withdrawn pursuant to these Regulations.
6. If we enter into a Trade in Erroneous Quotations as a result of an event described in section 4.2, we will not be able to engage in any of the activities described in section 5 after 60 minutes of the suspension of trading in the Underlying Instrument by the Organized Market.
7. In the event of the occurrence of the events referred to in section 4, the notifying Party shall immediately, but no later than within 2 Business Days from the date of entering into the Transaction, notify the other Party thereof, informing it of the type of the event that occurred, the Transactions in respect of which the notifying Party has the right referred to in section 5 and the type of selected solution provided for in section 5.
8. In the Exceptional Circumstances, the term referred to in section 7 above may be extended to 14 calendar days where the term defined by us (if we are the Notifying Party) or by you (if you

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- are the Notifying Party).
9. A change in the transaction price (the price of the Financial Instrument) at which the Transaction referred to in section 5(1) was executed shall result in the Transaction being deemed to have been concluded at a changed price.
  10. Withdrawal from the Transaction referred to in section 5(2) shall result in the Transaction being deemed unsuccessful. In this case, we will make appropriate entries in the Register of Operations to bring it to the condition it existed before you entered into the Transaction. At the same time, in the case of withdrawal from a Transaction, the Parties shall be entitled to cancel pending Orders related to the Transaction from which the Party has withdrawn.
  11. The notification referred to in paragraph 7 shall be made in at least one of the following ways:
    - 1) by telephone in the same mode as for placing telephone instructions, or
    - 2) by sending a letter by courier, or
    - 3) by electronic means, to the e-mail address provided by the Website; in our case, the relevant address is makler@tms.pl
  12. The right to withdraw from the Transaction shall not exclude contractual liability.
  13. We are responsible for Erroneous Quotation when the damage to You is caused by circumstances arising out of Our wilful misconduct or gross negligence. We shall not be liable for damage suffered as a result of a Trade based on an Erroneous Quotation if you knowingly use the Erroneous Quotation.
  14. In the event of justified circumstances indicating that:
    - 1) you enter into transactions in bad faith, the purpose of which is to use Wrong Quotes,
    - 2) you use the information advantage, or
    - 3) you conclude transactions whose purpose was to exert an appropriate, desired effect on the quotations of prices of financial instruments (in particular in the case of concluding transactions of significant volume in conditions of reduced liquidity of a financial instrument),We reserve the right referred to in paragraph 5. In such a case, the withdrawal from the Transaction referred to in point 5, does not require the prior consent of the other Party. The provisions of point 6-11 above shall apply accordingly.
  15. In the event that we determine that you have entered into several transactions based on Erroneous Quotations, we reserve the right to terminate the Framework Agreement with immediate effect.
  16. The Erroneous price verification rules defined in section 4 point 1) above apply in cases indicated in The Order Execution Policy in Dom Maklerski TMS Brokers S.A.
  17. If an Oanda Global Corporation group company that is a Quotation source cancels the concluded Transactions or makes other adjustments that will affect the balance of Your Account, We will reflect these operations in Your Account and You will be informed of the same immediately.

## **§16 Short selling (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs)**

1. TMS Brokers will allow you to make a short selling in Financial Instruments where the Underlying Instrument is shares prices and ETFs prices.
2. In case of:
  - 1) the exchange changes the applicable rules on short selling of the Financial Instrument or Underlying Instrument,

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- 2) Exchanges applies special conditions for short selling,
  - 3) the Liquidity Provider withdraws the possibility of short selling for a given Financial Instrument or Underlying Instrument,
  - 4) the Liquidity Provider withdraws the possibility of holding a short Position or requests the return of the Underlying Instruments,
  - 5) Underlying Instrument becomes hard to borrow due to circumstances that are beyond our control (low liquidity, high lending costs).
3. TMS Brokers will close previously specified short Positions in your Account in order to close the short Positions in our Liquidity Provider's Account.
  4. TMS Brokers will notify you of the number (ticket) of short positions and when they will be closed in one of the following ways:
    - 1) via telephone - to the number indicated by you on the Customer Data Card,
    - 2) via e-mail - to the e-mail address indicated by you in the Customer Data Card.
  5. Closing a short Position, on the principles referred to in § 16, does not require Your prior notification.
  6. The list of Financial Instruments for which short selling is possible is available directly in the Trading System.

## Chapter IV - Maintenance of the Cash Account and related records

**Information:** The Cash Account is used to service your assets with us - it is your account that receives your deposits and we process your withdrawals. We also use this account to book your results on your transactions. On the Cash Account we present you with the Amount of Clearing Requirement resulting from the Positions on Financial Instruments opened by you.

### §1 Cash Account

1. In order to enable you to execute your orders, we open an individual Cash Account for you, which is maintained with us on your behalf.
2. You can only be the owner of a Cash Account.
3. The Cash Account is used to:
  - 1) handling of your deposits and withdrawals in the form of remittances and transfers - it is not possible to fund the account in cash,
  - 2) Settlement of your transactions - as a result of closing your positions, cash flows are created, the result of which we book on the Cash Account,
  - 3) charging commissions for completed orders and other fees resulting from the Table of Fees and Commissions,
  - 4) crediting or debiting due to interest,
  - 5) disclosure of the value of the Clearing Requirement,
  - 6) other cash-flows agreed by the Parties,
4. You are obliged to maintain the cash balance at the level necessary to Settlement of the result of the Transactions, i.e. to ensure that the balance always allows to withdraw the Clearing Requirement.

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5. The Cash Account may be maintained for you in one of the currencies selected in the Client's Data Card. Please note that the currency in which your Account is denominated affects your risk in relation to the final settlement of your Positions, as the Settlement of the Transactions is made automatically in the Base Currency of your Account.
6. You may have more than one Cash Account, and each of such accounts is equivalent, subject to the express provisions of these Terms of Use.
7. The funds deposited on the Cash Account are interest-free. The interest earned on the cash deposited on the Cash Account constitutes our remuneration for maintaining the Cash Account and is intended to improve the quality of services provided through the development of IT infrastructure, including Transaction System.
8. The first Cash Account is opened during the Agreement conclusion process and is available for execution of Transactions by you within 5 business days from the date of the Framework Agreement conclusion. You may open further Cash Accounts under the same Agreement on the basis of:
  - 1) a written instruction to open an account submitted to the Customer Service Point at our registered office,
  - 2) a written instruction to open an account sent by correspondence - after we have verified your signature with a specimen of your signature; for persons who have concluded an Agreement in electronic form, the written instruction must be confirmed by a notary public,
  - 3) via telephone - upon verification of your phone password,
  - 4) instruction to open the account submitted in the Client Zone (in case of Clients who entered into the Framework Agreement in electronic form in Polish language version).
9. It may happen in special circumstances that a Settlement on your Cash Account results in a negative balance (debit). In such a case we will adjust on the Cash Account on the conditions specified in the Regulation of the President of the Management Board. Cash accounts may be closed at your request or by our notice. Upon your request, the Cash Account will be terminated 7 days after we receive your notice. We shall be subject to the provisions of Chapter 7 to terminate the Cash Account.
10. The minimum number of Cash Accounts we may maintain under the Framework Agreement is one. If there is no Cash Account, the Agreement may not be performed and shall be terminated.
11. Once your Cash Account is closed, we will deactivate your Account and its services, and you will be able to access your historical information from us based on the request for which you may incur the fees indicated in the Table of Fees and Commissions. For your convenience, we recommend that you archive your daily reports regularly and send them to your e-mail address.
12. The maximum amount of adjustments made by TMS Brokers in relation to all negative balances on your Cash Accounts in TMS Brokers in the TMS Trader, TMS Connect, TMS Prime products may not exceed the equivalent of the amount specified in the Regulation of the President of the Management Board. The amount referred to above may depend on Clients Classification to which you have been qualified, the amount of funds accumulated on your Cash Accounts or the Margin applicable to You.

## **§2 Deposits**

1. You can deposit into a Cash Account in any of the following ways:
  - 1) transfer to the bank account appropriate for the operation of the Transaction System in the variant specified by you: TMS Trader, TMS Connect or TMS Prime,

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- 2) Quick transfer through payment institutions. Detailed information on payments can be found in the Regulations of payments to the Cash Account through the website for TMS Brokers S.A. Clients available on our website.
- 3) by an internal transfer from another Cash Account that we hold for you.
2. The payment should include in its title the designation of the Cash Account that we are to fund for you. If you do not do this, our employee will contact you to explain which account you want to credit. Please note that in such a case, posting is not automatic, so that your Cash Account will be credited later than if it is properly marked at the time of deposit.
3. Subject to section 2 above, deposits shall be made immediately after they are credited to our bank account or upon receipt of reliable information from an operator of prompt payment about such crediting, but no later than 2 Business Days after the events specified in this section and section 2.
4. annulled.
5. You make payments to the bank accounts indicated in the TMS Brokers Information Sheet in the currency in which the accounts are maintained.
6. Cash payments to the Cash Account shall be accounted for in the following order;
  - 1) To cover commissions and fees due to us,
  - 2) To cover any interest owed to us for a negative balance on your Cash Account,
  - 3) To cover negative balance on the Cash Account,
  - 4) To be used to open new Positions.
7. Making a payment to a bank account in a currency other than the currency in which the account is maintained will result in automatic currency conversion of the payment by the Bank in accordance with the table applicable at that Bank on a given day and may involve additional costs beyond our control.
8. If you make a deposit to a bank account in the same currency in which it is maintained, but it will be a currency other than the Account Base Currency that we maintain for you, we will contact you and offer you one of the options:
  - 1) Opening a Cash Account in this currency
  - 2) Currency conversion of funds by us at the rate applied by the Bank.
9. It is our decision to choose the Banks that hold our customers' funds, however, with the reservation that the Banks are monitored with respect to the manner of providing the service of depositing the customers' funds.
10. Bank accounts used to hold our customers' funds are specially designated for the Bank.
11. Your funds are kept separate from ours. Bank accounts used to hold our customers' funds are not used by us to hold our funds.

### §3 Withdrawals

1. Withdrawals from the Cash Account may be made only to your bank account specified in the Client's Data Card. We do not make any cash withdrawals.
2. You can add your bank account number that will be used to proceed with your withdrawal requests, by indicating it once in Client's Data Card when you fill in the real account opening form or through functionality available in Client Zone.
3. You can add bank account number through Client Zone only once, this functionality is available only for Retail Clients.
4. We will send you Authorization code to verify your intention to add bank account number through Client Zone.

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5. Your request to add bank account number through Client Zone is understood as an update of Client's Data Card.
6. Making a withdrawal from a bank account in a currency other than the currency in which the account is maintained will result in automatic currency conversion of the payment by the Bank in accordance with the table applicable at that Bank on a given day and may involve additional costs beyond our control.
7. You may submit an instruction to withdraw funds from your Cash Account after you have authenticated yourself with us:
  - 1) personally, at our registered office,
  - 2) by phone - within Our working hours to the number provided on TMS Brokers Information Sheet,
  - 3) in the Client Zone.
8. You may submit an instruction to withdraw in the Client's Zone within the hours indicated at [www.tms.pl](http://www.tms.pl) in the "Contact" tab.
9. A specimen withdrawal instruction can be found at [www.tms.pl/dokumenty](http://www.tms.pl/dokumenty)
10. The withdrawal instruction must contain, among other things, the following elements:
  - 1) Name and surname of the Client,
  - 2) Name and surname of the representative, if any,
  - 3) Number of the Cash Account, from which the withdrawal is performed,
  - 4) Withdrawal amount,
  - 5) Withdrawal currency,
  - 6) indication of your bank account number if you have defined more than one withdrawal account in the Client Data Card.
  - 7) Instructions in the scope other than the above may be made in person at the Customer Service Point.
11. Instructions for withdrawal from the Cash Account submitted in the Client's Zone require authentication by means of an Authorisation Code.
12. Telephone instructions for withdrawal from the Cash Account require authentication with the use of a password specified in the Client's Data Card.
13. You must not question the authenticity of a properly authenticated withdrawal instruction.
14. Before authenticating a withdrawal instruction, you should ensure that it is unambiguous and in accordance with your intention.
15. We will confirm the acceptance of the withdrawal instruction submitted to the Client Zone by an appropriate message, subject to subparagraph 19 below.
16. Execution of a withdrawal order means the transfer of funds by us to our Bank in accordance with the conditions specified in the withdrawal order.
17. We do not execute any payment instructions with a future date.
18. We shall execute the payment instructions immediately, however not later than within 3 Business Days. In the Exceptional Circumstances, this time may be extended.
19. We do not check the currency of the bank account to which you have ordered the withdrawal of your funds.
20. We will not process your withdrawal if:
  - 1) you will not indicate your bank account number in Client's Data Card,
  - 2) the funds were seized on the basis of an enforcement order, either judicial or administrative,
  - 3) you will not have sufficient funds to carry it out - this will happen if the amount of the ordered withdrawal is higher than the value of the Free Cash,

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- 4) we will be required to block your withdrawal in accordance with generally applicable laws and regulations on the basis of instructions from government agencies,
- 5) we have a reasonable suspicion that the funds booked on your Cash Account are the result of Transactions made at non-market prices,
- 6) the funds booked are the result of technical accounting related to the mechanism of correcting Transactions,
- 7) The transaction is made by a payment institution that has not yet provided funds to your Cash Account, although they may already be visible in your Operational Register.

#### **§4 Operational Register**

1. The data supplying the Operational Register comes from the transaction server of the Transaction System.
2. The balance of the Operational Register is created by adding to (i) the balance of the Cash Account (ii) Settlement of all items shown in the Register of Financial Instruments according to the Base Currency of the Account.
3. The Free Cash shown in the Transaction System as a "Free Deposit" represents the funds to which you have the right, i.e. you can withdraw them, use them to open new positions or you can use them as a reserve for potential unfavourable Quotation of your Positions. This right is limited by your obligations to us.
4. Collateral Level, visible in the Transaction System as the "margin level" is a quotient of (i) the Operating Register Balance (principal) and (ii) the Margin Requirement level. The Security level is used to activate the stop out mechanism. The Operational Register contains information on the margin level.

#### **§5 Register**

1. The Register serves after the presentation of all relevant information on the positions on your account including:
  - 1) name of financial instrument;
  - 2) position number (ticket)
  - 3) date and time of opening,
  - 4) Direction of the position - buy/sell (type),
  - 5) nominal value of the position (Volume),
  - 6) opening price of a position (it means the opening price of a given Position),
  - 7) current price of the Financial Instrument,
  - 8) Take profit and Stop Loss (T/P and S/L),
  - 9) accrued Swap points (swap)
  - 10) accrued commission (commission),
  - 11) the result on the position expressed in the Base Account Currency (Profit).
2. Register is available in the Transaction System. The Register also presents your pending orders.
3. The Register of Financial Instruments is fed with data from the Transaction System transaction server - all Quotations are current prices.
4. The aggregate value of open Positions is the Exposure.

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## **§6 Settlement (Quotation)**

1. We will keep track of your receivables and liabilities on each of your Open Positions in the Trading Register (Quotation of open Positions) until the close of the Positions.
2. Settlement of Positions takes place in the Register of Financial Instruments for each of your open Positions separately.
3. Settlement is carried out on the basis of Quotation Rates available in the Transaction System in accordance with the following rules:
  - 1) long positions are valued to selling price (bid),
  - 2) Short positions are valued to purchase price (offer).

## **§7 Clearing**

1. The clearing occurs at the moment:
  - 1) Opening of position,
  - 2) Closing of position.
2. The clearing at the moment of opening the Positions shall consist in debiting the amount of the fees charged to the Cash Account in accordance with the Table of Fees and Commissions.
3. The clearing at the moment of closing the Positions shall consist in crediting or debiting to the Cash Account the amount of the result on the closed Position.
4. In addition to the amount resulting from the exchange rate differences between the opening price and the closing price, at the time of the Clearing any debits or credits listed in the "swap" column of the Transaction System (e.g. swap points accrued in respect of the maintenance of such Position) and in the "commission" column shall be credited to the Cash Account.
5. Adjustments may also be entered in the accounts as part of the Clearance of Accounts.
6. In the event that a debit occurs on your Cash Account as a result of the Clearance of Positions and you do not have sufficient funds/assets on your accounts, we will adjust the closing prices of the Transactions so that the balance on your Cash Account is 0 (zero), net of any mutual liabilities or receivables, subject to the provisions of Chapter 4, § 1 (9) and § 1 (13).
7. The adjustment of closing prices of a Position referred to in Section 6 shall not require your consent.

## **§8 Collateral for receivables resulting from Transactions entered into on the basis of the Framework Agreement**

1. Pursuant to the Framework Agreement, you agree to provide security to Us by transferring to Us, together with each opening of a Position, ownership of a portion of the funds in the Cash Account in the amount of the Clearing Requirement as determined in accordance with the [Quotation] Settlement (current value of the Item).
2. The collateral referred in sec.1 above shall be established at the latest at the moment of opening of the position and shall last until the settlement of transactions concluded under the Framework Agreement. The purpose of this collateral is to secure our future cash claims against you arising out of the Clearing of Trades under the Framework Agreement.
3. The collateral referred to in section 1 above may be released in full only when all Positions have been closed.
4. For the purposes of establishing the collateral referred to in section 1 above, we shall calculate at least once on a Business Day:

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- 1) amount of Clearing Requirement,
  - 2) amount of Funds Received for Clearing,
  - 3) amount of Required Margin,
  - 4) value of Unrealized Position.
5. Apart from the consent referred to in section 1 above, pursuant to the Framework Agreement you agree to change the amount of the security referred to in section 1 above each time as a result of the calculations made by us referred to in section 4 above, including the change in the amount of funds transferred to us together with each opening of the Positions, which may occur prior to the Settlement of Transactions entered into under the Framework Agreement.
6. The collateral referred to in section 1 above shall be established in the Base Currency of the Account. The value of the Clearing Requirement and the value of the Funds Received for Clearing are the amounts expressed in the Base Currency of the Account. Margin Requirement and Unrealised Position Value, if denominated in a currency other than Account Base Currency, shall be converted into the Account Base Currency at the Exchange Rate.
7. If after the calculation of the value, mentioned in subparagraph 4, it turns out that the value of the Clearing Required is higher than the value of the Funds Received for Clearing, we shall be entitled to demand from you the delivery of cash in the amount equal to the difference between the value of the Clearing Requirement and the value of the Funds Received for Clearing. In such a case, you are obliged to make an immediate payment to the Cash Account.
8. If after the calculation of the value, mentioned in subparagraph 4, it turns out that the value of the Clearing Required is lower than the value of the Funds Received for Clearing, we shall transfer the funds from Our account to the Cash Account in the amount equal to the difference between the value of the Funds Received for Clearing and the value of the Clearing Requirement.
9. We shall be entitled to satisfy ourselves from the collateral, mentioned under section 1 above, in the case when at the time of the Transaction Clearing, the amount sufficient for the Transaction Clearing is not present on the Cash Account. We will notify you of the expiry of your claim for the release of the collateral referred to in section 1 above by posting a notice in the Operational Register that the Unrealised Position Value is 0.
10. If the Settlement referred to under section 9 above results in a payable liability exceeding the value of collateral referred to under section 1 above, in such a case a negative (debit) balance shall be recorded on the Cash Account. You are obliged to repay the resulting liability immediately.
11. Our claims under the Master Agreement may be subject to immediate set-off by us against any claims of a Professional Client who is not a natural person, including those covered by the security referred to in clause 1 above, under the Netting Clause. The offsetting under the Netting Clause shall also be permitted where claims are not due.
12. Our claims under the Framework Agreement may be subject to immediate set-off by us against any claims of a Retail Client, including those covered by the security referred to in clause 1 above, on the basis of the legal relationship established between the civil law entities.
13. Under the set-off referred in sec. 11 of the Agreement:
- 1) the net amount resulting from the calculation of mutual receivables of TMS Brokers and the Client shall be paid to the party whose receivables or the sum of receivables is higher;

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- 2) a claim for payment of the amount referred to in item 1) above shall be due, even if the offset receivables were not due.
14. Under the set-off referred in sec. 12 of the Agreement:
  - 1) the net amount resulting from the calculation of mutual receivables of TMS Brokers and the Client shall be paid to the party whose receivables or the sum of receivables is higher;
  - 2) a claim for payment of the amount referred to in item 1) above is due, also even if the receivables of the deducting party is also due.
15. We shall be entitled to set off any mutual claims against each other on the basis of the Netting Clause without prior notice to the Client of our intention to do so and without the Client's instructions.
16. The deduction referred in sec. 12 above shall be made under Our declaration submitted to the Client. The declaration shall have retroactive effect as from the date on which the offsetting becomes effective.
17. We may set off our mutual claims against each other pursuant to the Netting Clause and the set-off referred to in section 12 above, in particular in the event of the total or partial closure of the Positions and Settlement of the Transactions.
18. The security referred to in section 1 above shall be established in order to enable the provision of services on the basis of the Framework Agreement and the Terms of Use.

## **§9 Transaction Collateral**

1. Acceptance or execution of the order placed by you depends on the establishment of a collateral for the execution of the Transaction.
2. Collateral for the execution of a Transaction may take the form of a Margin Account only.
3. In respect placing Limit Orders (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) of Transactions concluded, we shall collect Margin Account collateral from you for future Settlement of your Positions.
4. We charge your Margin in the Base Account Currency that you specify.
5. We calculate the Margin Account according to the formula: nominal value of the Transaction / Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) \* Margin Account Rate \* Exchange Rate.
6. The Exchange Rate applied to calculate the Margin Requirement at the opening of the Positions shall remain unchanged until the Positions are closed irrespective of any market changes. The Exchange Rate applied to calculate the Margin Requirement at the accepting of the Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) shall remain unchanged until the Limit Order are executed irrespective of any market changes.
7. The Margin Rate may be changed in accordance with the values set out by us in the Specifications for Financial Instruments. The revised Margin Rate applies to all existing and new Positions and Orders.
8. Remember that you must maintain on each Cash Account an adequate level of the Clearing Requirement in the amount necessary to cover the liabilities resulting from the Transactions you have entered into.
9. If the Collateral Level falls to 100% or lower, we notify you by changing the color of the lower bar in the Transaction System in the installation version. It is a situation in which you get a so-

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called "Margin call". Opening a new position or accepting Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) in the transaction system is possible in principle when the Free Margin level is positive and the level of the newly opened position or Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) is sufficient to cover the Margin. There is a special case in which it will be possible to open an opposite position when the Collateral Level will show a value of 100% or below. Such a situation will arise when, as a result of opening a new opposite position to already existing on the same Financial Instrument or placing Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs), the total value of the Margin for all open positions on that Financial Instrument will not be greater than the Margin for all open positions and Limit Orders refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) on the same Financial Instrument before the new opposite position is opened or placing the new Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs).

10. In the event that the Collateral Level reaches or falls below 50%, we will be required to cancel one or more of your Limit Orders refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) (that are currently not in the process of execution) requiring the greatest amount of margin or close one or more of your Positions in whole or in part in order to improve the level of the Collateral Ratio (stop-out mechanism).
11. The operation referred to in point 10 above will be executed starting from the Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) requiring the greatest amount of margin, provided that the given Financial Instrument is available for trading. If the Collateral Level is still not above 50%, the next Limit Order (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) is deleted. Pending Orders with no margin requirements are not deleted. If You don't have pending Limit Orders (refers only to Financial Instruments, the price of which is based on the price of shares or ETFs) the operation will be executed starting from the Transaction which generated the highest loss, provided that the Financial Instrument on which it was generated is available for trading (trading hours are specified in the Financial Instruments Specification).
12. The operation referred to in point 11 above will continue until the Collateral Level rises above 50%.
13. If the balance of the Cash Account shows a negative value, we may charge interest for each day of shortage in the amount specified in the Table of Fees and Commissions.
14. You agree that we may charge to your Cash Account the amount of accrued interest referred to in sec. 14.
15. You should observe the level of collateral as often as possible. For your convenience, we have made available a version of the Transaction System for mobile devices (phones and tablets) to manage your Positions and pending Orders.

## **§10 Rollover of open positions in Financial Instruments**

1. Open Positions on the title Financial Instruments - not closed by midnight of each Trading Day are subject to the automatic Rollover Process for the next Trading Day.
2. There may be deviations from the standard Rollover rules due to e.g. public holidays on the market to which the transaction relates.
3. The rollover involves the calculation of swap points. The values of the calculated swap points are presented in the Register of Financial Statements in the "swap" column.

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4. Swap points for individual Financial Instruments are calculated separately for long and short positions, at least once a week on Monday, and then published on the TMS Brokers website in the Swap Points Table. We reserve the right to make more frequent changes in the situation of significant changes in the interest rates of loans and deposits on the interbank market.
5. Position Rollover Operation is repeated each Trading Day for a given Financial Instrument until the Position closing date.
6. Swap points are calculated in the trading system around midnight CET.
7. Swap points are calculated for each of the held Positions.
8. Swap points covering the Saturday and the Sunday for Financial Instruments based on currencies, gold and silver are calculated on a Wednesday basis.
9. Swap points for Financial Instruments other than indicated in paragraph 8 above covering the Saturday and the Sunday are calculated on a Friday basis.
10. The value of swap points is indicated in the Register until the closing of the Position.
11. Detailed information, including the formula of calculation and parameters adopted for the calculation of swap points, are presented in the Swap Points Table.
12. The provisions of this paragraph apply to Rollover of all Financial Instruments indicated in the Rollover Table.

## **§11 Rollover of Financial Instruments based on futures contracts**

1. An Open Position in a Financial Instrument based on a futures contract that has not been closed by the end of the day on which the series of that contract is changed shall be subject to the Rollover Process.
2. Rollover involves calculating the base difference (the contract price of a new series minus the contract price of an old series). The values of the calculated swap points are presented in the Register in the "swap" column. Costs resulting the Rollover are presented in the Table of Fees and Commissions.
3. A change in the contract series, which is the Underlying Instrument for a Financial Instrument based on the quotation of futures contracts, results in a change in the price at which the financial instrument is measured. As a result, the diagrams show spaces (gaps).
4. In the event of changing the Underlying Instrument series, we shall not change, cancel or modify your Orders, in particular the parameters of these Orders. The Rollover may result in the closure of your open Positions (stop-out, stop-loss), especially in situations described in Chapter 3, § 12 (8), so monitor your Accounts carefully.
5. If you have limit and stop Orders on a Rolled Financial Instrument based on a futures contract close to the current price, adjust them to updated prices of a new series of the underlying contract and adjust the amount of cash on the Cash Account to a level enabling you to maintain your Position after calculating the base difference.
6. We will inform you about the date of the series change on our website in the Rollover Table. These dates may change due to low liquidity of the current underlying contract or high volatility in the market of this Underlying Instrument series, which is currently used in Quotations.
7. The value of calculations resulting from the difference in the base is indicated in the Register until the moment of closing the Positions.
8. Rollover dates for individual Financial Instruments are available in our Customer Service Centre and on our website.
9. Indicative base differences rates are available on our website on Rollover Day. Indicative rates result from the fact that until the end of trading in instruments the base may change, so it is not possible to determine it precisely in the session tractions.

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10. The provisions of this paragraph shall apply to Rollover of all Financial Instruments indicated in the Rollover Table.
11. Rollover of Financial Instruments based on futures contracts is performed by simultaneous counting Swap points for open positions as described in § 10; and difference of base due to change of base contract series.

## **§12 Rollover of Financial Instruments based on crypto-currency**

1. *Annulled*

## **§13 Equivalent of Corporate Events**

1. Corporate Events may include, but are not limited to, the payment of dividends, pre-emptive rights, distributions and consolidations of shares.
2. The price of the Financial Instrument reflects the impact of property events that occur on the Underlying Instrument. It means, in particular:
  - 1) if a company on a spot market, e.g. pays a dividend, we reflect the same flow on our Financial Instrument. If you do not close your Positions by the end of the Trading Day on which the dividend right to dividend on the Underlying is determined, your Cash Account will reflect the equivalent (positive or negative depending on your position) which will be the dividend, subject to this that the flow from holding long positions will be adjusted for the dividend tax equivalent. The flows resulting from the dividend equivalent and the dividend tax equivalent of a Financial Instrument based on a cash index depend on the weight of the share (to which the Corporate Event relates) in the cash index.
  - 2) If the Company issues pre-emptive rights on the first Trading Day of the Underlying Instrument without pre-emptive rights, the equivalent of the value of such rights shall be reflected in your Record Account.
  - 3) If the Company divides or merges shares constituting the Underlying Instrument for Financial Instruments recorded in your Account, there will be a change in the number of Financial Instruments in your Record Account corresponding to an event on the Underlying Instrument. If the number of Financial Instruments on your Record Account is indivisible by the merger factor, the indivisible part shall be closed and settled by posting it to your Cash Account.
  - 4) In the case of other Corporate Events of the nature of property rights, we will strive to take into account the equivalent of significant economic aspects resulting from such events through appropriate entries in your Accounts.
3. Equivalents resulting from Corporate Events are presented in the Register of in the "swap" column or on the Cash Account.
4. Equivalents arising from Corporate Events relate to both long positions (purchased contracts) and short positions (sold contracts).
5. Information regarding the calculation of equivalents resulting from Corporate Events is presented on the following website [www.tms.pl/aktualnosci](http://www.tms.pl/aktualnosci)
6. Financial Instruments do not include personal rights arising from the Underlying Instruments, e.g. The Client is not able to participate in the General Meeting of Shareholders of the Company having an open long position in the Financial Instrument.

## **§14 Blockades and pledges**

We do not execute any blockades or pledges on cash or Financial Instruments.

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## Chapter V - Currency exchange

**Information:** Currency exchange occurs when you trade in a currency other than the Account's Base Currency. This applies in particular to the charging of commissions or the recording of the result on your Transactions.

### §1 Currency exchange

1. The currency exchange is automatic and does not require any instructions or orders from you.
2. Currency exchange takes place only at the moment when operations are carried out on your Cash Account in a currency other than the Account's Base Currency - this applies in particular to the Settlement and posting of fees and commissions expressed in other currencies.
3. Currency exchange on currency-based Financial Instruments is carried out according to the following rules:
  - 1) for costs and liabilities - is carried out at the buying (offer) rate of the currency in which the liability or cost arises in relation to the Account Base Currency. The rate shall originate from the Transaction System at the time of the execution of the source transaction,
  - 2) for receivables (e.g. profits from your transactions) - is made at the bid rate of the currency in which the receivable arises in relation to the Base Currency of the Account. The rate shall originate from the Transaction System at the time of the execution of the source transaction,
  - 3) if a given currency pair is not offered directly in the Transaction System, the first currency change is according to the following formula the U.S. dollar and then the Account Base Currency,
  - 4) the result on Financial Instruments other than those based on currency pairs is converted at the bid rate, regardless of whether you have a profit or loss.

## Chapter VI - Miscellaneous

### §1 Fees and Commissions

1. For the services covered by the Agreement you will pay the costs and fees disclosed in the Table of Fees and Commissions. The Table of Fees and Commissions is established and amended by the Regulation of the President of the Management Board.
2. The spread is charged by us on account of the market risk borne by us in connection with the execution of your Orders. Similarly, for a commission charged in the form of a separate flow on your Cash Account.
3. The fees and commissions specified in the Table of Fees and Commissions are charged by us from the Cash Account without the need to obtain your consent each time.
4. At least once a year, we provide you with a collective statement of all costs and fees charged in accordance with Art. 50 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65 / EU of the European Parliament and of the Council with regard to organizational requirements and operating conditions for investment firms and defined terms for the purposes of this directive.

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## §2 Complaints and disputes

1. You may file a complaint about our action or omission. Complaint shall be understood as any speech made by you to us, which shall relate to your dissatisfaction or reservations concerning services provided by us pursuant to this Terms of Use.
2. The complaints may be submitted in the following forms:
  - 1) sending a message via the complaint form available for you at [www.tms.pl](http://www.tms.pl) in the "Contact" tab,
  - 2) in writing to the correspondence address of Dom Maklerski TMS Brokers S.A., Złota 59, 00-120 Warszawa,
  - 3) personally, at our registered office, (ul. Złota 59, 15th floor, 00-120 Warszawa) in writing or orally to the protocol,
  - 4) by phone - within Our working hours to the number provided on TMS Brokers Information Sheet.
3. We accept complaints from both you and the people who represent you (e.g. your Attorney). You will receive a response to your complaint.
4. The complaint should:
  - 1) include:
    - a) name and surname or company name of the Account owner;
    - b) name and surname of the person submitting the complaint, unless the same as in a)
    - c) number of Cash Account/Client Number;
    - d) for the Orders and Transactions - the number of the Order and Transaction;
    - e) in the case of execution of a deposit or withdrawal - the date and amount or number of dispositions of the deposit or withdrawal request;
    - f) in the event of failure to fully or partially update the information referred to in Chapter II § 8 subpara. 1-3 above - information about what part of the data has been, which data has not been updated by us despite the notification;
    - g) a description of the events, including a description of what the Client considers to have been carried out in breach of its instructions, the Framework Agreement or these Regulations;
    - h) how to obtain an expected response to a complaint, in particular whether you want to receive an e-mail response,
  - 2) describe the subject of the complaint (indicate, inter alia, whether the complaint concerns the opening of the Position, closing of the Position, non-performance of the Order, the Order execution price), the time covered by the complaint,
  - 3) include definition of your expectations regarding the way your complaint will be handled (e.g., refunding funds, reopening a position, closing a position, changing of the transaction price price) as far as possible.
5. If the information provided in the complaint is insufficient for its processing (e.g. no indication of the subject of the complaint), we will ask you to complete it. If you do not provide us with the required information within 7 days of such a request, we will have to leave it unrecognized.
6. You must be aware that submitting a complaint immediately after the You have received the objections will facilitate and accelerate reliable processing of the complaint by TMS Brokers.
7. Upon your request, we will send you an acknowledgement of receipt, in the manner indicated by you in the Customer Data Card.
8. We are obliged to examine and respond to your complaint without undue delay, however, not later than within 30 days from the date of receipt.
9. In the particularly complicated cases, which make it impossible to consider a complaint and give an answer within 30 days, TMS in the information provided to You:
  - 1) explains You the reason of delay;

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- 2) indicates the circumstances which must be established in order for the case to be dealt with;
- 3) specifies the expected time for processing the complaint and answering it, which may not exceed 60 days from the date of receiving the complaint.
10. If the subject matter of the complaint cannot be determined from its content, we shall call upon You to submit, within 30 days from the date of receiving the call, an explanation or supplementation of the complaint, with the instruction that failure to remove such deficiencies shall cause the complaint to be left unprocessed.
11. During the complaint handling process, you may be requested to provide additional information and documents necessary for the complaint handling.
12. We respond to the complaint in writing, by registered mail or by courier service to the address indicated in the Client Data Card. We send a request to supplement the complaint referred to in paragraph 11 in writing, by registered mail or by courier service to the address indicated in the Client Data Card or on another Permanent Storage Medium.
13. The reply to the complaint may be delivered to the e-mail address only at your request.
14. The request referred to in paragraph 13 should be submitted in writing, by telephone or by e-mail.
15. Cooperation with us in the course of the complaint handling help speed up to resolve.
16. You have a right of appeal from our decision. For appeal, the same procedure and deadlines apply as for complaint. Your appeal is considered by a person other than the person who dealt with the complaint. If a negative decision is maintained as a result of an appeal lodged by You, we reserve the right not to consider your further appeals, unless you disclose new facts that will give rise to a change in the current position of TMS Brokers.
17. We provide for the possibility of out-of-court settlement of the dispute with the Client, i.e. through mediation. We anticipate the possibility of using the Court of Arbitration at the Polish Financial Supervision Authority.
18. In the event of a dispute with individuals, we designate the Financial Ombudsman as the competent body for out-of-court settlement of disputes with individuals. Website of the Financial Ombudsman: <https://rf.gov.pl/>
19. If the claims resulting from the complaint are not accepted:
  - 1) you have the right to appeal, which you are entitled in the same procedure and deadlines apply as for complaint, additionally specifying the data identifying the complaint you are appealing against,
  - 2) you have the right to request the Financial Ombudsman to examine the matter (if the Client is an individual),
  - 3) You have also the right to bring an action before a common court against us. The court having jurisdiction to hear the case shall be common court having jurisdiction over the seat of Dom Maklerski TMS Brokers S.A. or over the place of executing the agreement.
20. Complaints and objections not directly related to services provided on their basis of these regulations will be treated as comments. Therefore, the above provisions shall not apply to such claims.
21. The particularly complicated case referred to in point 9 above should be understood as the circumstance, in which during the process of considering complaint, it is necessary to analyze additional data submitted or obtain explanations from a third party, cooperating with TMS Brokers.

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### §3 Mitigation of the operational risk

1. For the purposes of this paragraph, the following definitions shall apply:
  - 1) **Key Terms** - means, with respect to a Transaction, its denomination, currency, underlying instrument, Transaction Party, settlement date, execution date, effective date and valuation;
  - 2) **Divergence** - means any divergence between you and us in respect of any Key Terms relating to a Trade
  - 3) **Transaction** - a transaction entered into between you and us in a Derivative Instrument;
  - 4) **Derivative** - means a financial instrument as defined in Article 2(5) of the EMIR Regulation;
  - 5) **Counterparty** - You, i.e. Our Client who is also a financial counterparty or non-financial counterparty within the meaning of the EMIR Regulation and who has entered into a Master Agreement with TMS Brokers and a Trades under that Agreement;
  - 6) **Portfolio** – all open Positions on Your Account.
2. The Transaction System provides the Counterparty with reports on the Transactions entered into, their Key Terms and collateral value. It is the Counterparty's duty to monitor the Transactions entered into and to confirm the Key Terms of the Transaction entered into and the value of collateral within the shortest possible time but no later than on the next Business Day following the Transaction conclusion date. For Trades entered into after 4 p.m. Polish time or entered into with a Counterparty based in different time zone, the time limit shall be extended by another Business Day.
3. Failure to report a Deception on the Key Terms of Transaction or on the value of the portfolio hedge within the timeframe referred to in sub-paragraph 2 shall mean that the Counterparty absolutely confirms the Key Terms of Transaction and the value of the portfolio hedge.
4. The Counterparty's Portfolio shall be deemed confirmed pursuant to article 11(1)(b) of the EMIR Regulation if all the Transactions opening a Position have been confirmed as specified in para 3 above.
5. At least once every six months we will conduct a Portfolio Compression Analysis. The analysis of the possibility of Portfolio Compression will be carried out if the Counterparty holds at least 500 open positions.
6. The compression of the Portfolio shall consist in the combination of the open Counterparty's Positions. In particular, the Portfolio Compression will consist in closing many Open Positions in the Financial Instrument based on the same Underlying Instrument and then opening one Transaction in the net denomination of the Positions before the Portfolio Compression. We charge the fees indicated in the Table of Fees and Commissions for the Portfolio Compression.
7. Each time before the Portfolio Compression attempt, we make contact with the Client. The Portfolio may only be compressed if the Counterparty has given its consent. A refusal to consent must be reasonably justified by the Counterparty.
8. In the event of a material Divergence in the Key Terms of Transactions entered into, their valuation or collateral value, the Counterparty should raise its reservations to [emircomplaint@tms.pl](mailto:emircomplaint@tms.pl) within the deadline referred to in sub-paragraph 2.
9. For the purposes of the definition of the Divergence, it is agreed that the value of the Divergence should exceed EUR 5.000,00 (say: five thousand euro) in order to be considered in the manner specified in this paragraph.
10. The issuance of a Statement of Divergence shall include, but not be limited to:
  - 1) information that the objection is being made in the "EMIR discrepancies" mode
  - 2) the date on which the Divergence was identified by the Counterparty,

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- 3) indication of the Transaction and the Key Terms of the Transaction or the value of the collateral in the portfolio, in relation to which the Counterparty has identified the Divergence;
- 4) the Counterparty estimates the Key Value of the Transaction or the value of the portfolio security, which in its opinion should be included in the reports provided by TMS Brokers in the TMS Brokers Transaction System.
11. Information on discrepancies which do not meet the conditions set forth in this paragraph shall be identified and dealt with as a complaint in accordance with the provisions of these Terms of Use.
12. We will review your concerns under paragraph 8 within five Business Days of the date of your Divergence.
13. If you fail to resolve the Divergence within the time period referred to above, you and We agree to inform our Management Boards of the subject matter of the Divergence and that the Divergence has not been resolved. The Board of Directors shall attempt to resolve the Divergence in good faith within the next 10 Business Days.

#### **§4 Reports from services**

1. Due to the provision of services under the Agreement, we provide you with the following reports confirming the transactions, costs and operations on your Accounts on a Permanent Storage Medium:
  - 1) Confirmation of the Order execution,
  - 2) Specification of financial instruments.
2. Reports are sent to you free of charge on a Permanent Information Storage Medium to the e-mail address defined in the Client's Data Card or, for a fee, (i) by correspondence, (ii) in person at the Customer Service Point according to the rate specified in the Table of Fees and Commissions.
3. At the end of each Business Day on which you concluded an operation (including a transaction) on your account, we will provide you on a Permanent Information Storage Medium with a report including a list of closed positions on a given day, a list of open positions and a list of pending orders together with a summary of the cash balance on your Cash Account, as well as an indication of the current values (resulting from the last Quote): (i) Clearing Requirement, (ii) Funds Received for Clearing, (iii) Margin Account and (iv) Unrealized Position Value.
4. The confirmation of the Order execution shall include the following information:
  - 1) We, as the entity submitting report,
  - 2) Account ID,
  - 3) date and time of Transaction,
  - 4) Type of order,
  - 5) Symbol of the system,
  - 6) buy/sell ID or nature of the order for orders other than buy/sell,
  - 7) symbol of financial instrument;
  - 8) number of financial instruments subject to the Order (quantity),
  - 9) the unit price at which the Order was executed, or if the Order is executed in lots, we may provide you with information on the price of each lot or an average price; in the latter case, we will provide you, upon your request, with information on the price of each lot,
  - 10) total price (understood as the total value of the transaction),

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- 11) the total amount of commissions and expenses charged and, where applicable, a breakdown of individual items, including, where applicable, the amount of any additions or write-downs where we have made a transaction on our own account and are responsible to you for doing so in the best possible manner,
  - 12) the exchange rate obtained where the transaction involves a currency conversion,
  - 13) Your obligations in relation to the settlement of transactions, including time limits for payment or delivery and the relevant account details, unless such details and obligations have been notified to you in advance,
  - 14) if we, or any member of the group to which we belong, or any other member of our customer, were your counterparty, an indication of this fact, unless the order has been executed through a trading system that facilitates anonymous trading.
5. Confirmation of Order execution shall be delivered at the latest on the first Business Day after the order execution. Where the confirmation is received by the TMS Brokers from a third party, no later than the First Business day following receipt of the confirmation from the third party.
  6. If we operate a Retail Client's Cash Account that includes positions in High Risk Financial Instruments or Contingent Liabilities, we will notify the Client that the initial value of each instrument has decreased by 10% and then by a multiple of 10%. Reporting shall be done on an instrument-by-instrument basis, unless otherwise agreed with the client, and shall take place no later than the end of the business day on which the threshold is exceeded or, if the threshold is exceeded on a non-working day, before the close of the following business day.
  7. The list of your financial instruments and funds includes the following information:
    - 1) details of all Financial Instruments or funds held by us for you as at the end of the period covered by the statement,
    - 2) the extent to which your financial instruments or funds have been traded in securities,
    - 3) the amount of any benefit accruing to your account from your participation in the securities transactions and the basis on which such benefit accrues,
    - 4) a clear indication of the assets or funds which are subject to the provisions of MIFID II and its implementing measures and those which are not,
    - 5) a clear indication of which assets are affected by which specific features relating to their ownership, for example in terms of collateral, apply,
    - 6) the market value or estimate, if market value is not available, of the Financial Instruments included in the summary, together with a clear indication that a lack of market price is likely to indicate a lack of liquidity.
  8. The list of financial instruments referred to in section 7 will be forwarded to you at least on a quarterly basis on a Permanent Storage Medium.
  9. Upon your request, we may prepare other reports or confirmations regarding the operations performed on your Cash Account. The cost of preparing such reports is specified in the Table of Fees and Commissions.
  10. The reports or confirmations referred to in paragraph 8 shall be provided in the manner specified by you. Shipping costs shall be calculated in accordance with the relevant tariffs of the entities acting as intermediaries in their delivery and shall be borne by the Client.

## **§5 Compensation and guarantee schemes**

1. Our clients' assets are protected under the Compensation Scheme in accordance with the Act. The purpose is to protect the assets of the Investors by providing the Investors with cash

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disbursements and to compensate for the value of lost financial instruments pursuant to the rules set forth in the Act.

2. The Compensation Scheme shall protect investors' assets in the following cases:
  - 1) declaring the brokerage house bankrupt or opening restructuring proceedings, or
  - 2) legally valid rejection of the motion to declare bankruptcy due to the fact that the assets of the brokerage house are not sufficient or only sufficient to cover the costs of the proceedings, or
  - 3) the Polish Financial Supervision Authority finds that the brokerage house, for reasons strictly related to its financial situation, is not able to fulfil its obligations arising from investors' claims and it is not possible to execute them in the nearest future.
3. Compensation shall be paid to Investors in respect of the funds covered by the scheme, less Our claims on Investors for services rendered, as at the date of occurrence of one of the events specified in paragraph 2, up to the following amounts:
  - 1) the PLN equivalent of EUR 3,000 - 100% of the value of the funds covered by the Compensation Scheme, and
  - 2) 90% of the surplus of the funds covered by the Compensation Scheme over the amount specified in item 1), however, the maximum limit of the funds covered by the Compensation Scheme is the PLN equivalent of EUR 22,000.
4. The detailed rules for the operation of the Compensation and Compensation Scheme are set out in Articles 132 to 146 of the Act.

## **§6 Exceptional circumstances**

1. Exceptional circumstances may be deemed to be important, reliable or exceptional market events in the cases set out below:
  - 1) in a situation of extraordinary volatility resulting in activation of volatility mechanisms with respect to most of the Financial Instruments or underlying instruments of such instruments;
  - 2) in case of war, protest, terrorist attack, social unrest or cyber sabotage, introducing an epidemic, emergency, or natural disaster;
  - 3) in the event of a power shortage, IT or telecommunications system failure for which we are not responsible and are caused by extraordinary circumstances;
  - 4) in the event of the destruction of our registered office or justified circumstances preventing us from conducting operating activities;
  - 5) in the event of trading disruptions threatening the ability to conclude transactions in a fair, correct and transparent manner, provided that there is evidence that any of the following circumstances have occurred:
    - a) significant capacity reductions due to delays and interruptions;
    - b) a series of erroneous orders, quotes or transactions;
    - c) the situation where the capacity of the system to provide services becomes insufficient;
  - 6) where we are no longer able to maintain prudent risk management practices because of any of the following problems:
    - a) technical problems, including problems with the data-sharing system or with another system;
    - b) risk management problems in relation to regulatory capital, margins and access to clearing;
    - c) the position cannot be secured;
  - 7) for non-equity instruments, during the suspension period as referred to in Article 9(4) of Regulation (EU) No 600/2014,
  - 8) in the event of the need to extend the investigation procedure with the competent supervisory authorities in relation to the impediments to the functioning of these bodies.

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2. In the event of Exceptional Circumstances, we will use our best endeavours to enable you to use Our services, which may not be possible in full.
3. We also reserve the right to limit the scope of operation of the Transaction System.

## **§7 Responsibility of the Parties of the Framework Agreement**

We are not liable for lost profits or losses that you may incur for reasons beyond our control, as long as we have taken reasonable care in the service provided. This applies in particular to:

- 1) Errors in Quotations,
- 2) Errors in the Transaction System,
- 3) Delays in Order execution,
- 4) Activities of bodies, including enforcement bodies,
- 5) Use of your access data by unauthorized persons,
- 6) No Underlying Instrument Quotations;
- 7) Existence of circumstances referred to in Chapter 7, par. 1. sec. 1

## **Chapter VII - Amendments to Documents and Termination of the Agreement**

### **§1 Amendments to Documents – general provisions**

1. Whenever we refer to important causes in this chapter ("Important Reasons") this means the following circumstances:
  - 1) riots, strikes, acts of terror, terrorist attacks, fire, lack of electricity, breakdown of communication, cataclysm, armed conflict, orders of authorities and state administration,
  - 2) destruction of our registered office or occurrence of circumstances which make it impossible to conduct operations,
  - 3) suspension of trading in financial instruments or closing of the market,
  - 4) suspension of the possibility of short selling or buying financial instruments on a given market,
  - 5) above-average price volatility or loss of liquidity of financial instruments,
  - 6) publication of political information having a significant impact on the quotation of financial instruments,
  - 7) occurrence of any irregularities in the functioning of the Transaction System for which we are not responsible,
  - 8) failure of information systems or failure of computer hardware which prevents normal functioning of information systems and for which we are not responsible,
  - 9) failure of telecommunications systems for which we are not responsible,
  - 10) Breakdowns and errors Sources of quotations for which we are not responsible,
  - 11) changes in product design,
  - 12) changes in the product offer,
  - 13) changes in the functionality of the services provided by us under these Terms of use,
  - 14) changes in generally applicable legal provisions regarding services provided by us on the basis of these Terms of use,
  - 15) adaptation of products and services provided by us under these Terms of use to market conditions and changes in the Transaction System,

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- 16) changes or the emergence of new interpretations of generally applicable legal provisions as a result of court judgments or decisions, recommendations or guidelines of the National Bank of Poland, the Polish Financial Supervision Authority or other authorities and public administration affecting the services provided by us on the basis of these Terms of use,
- 17) identification of new risks in the conducted activity.
2. Correction of typographical errors or changes to remove ambiguities without changing the meaning of the entry shall not be treated as changes of documents.
3. No changes to the terms and conditions shall be deemed to constitute an addition to the Terms of Use if they do not affect the rights acquired by our customers (e.g. the addition of new functionalities or products, reduction in fees and commissions). You are also informed about such changes by us, subject to the fact that we do not have to keep the deadlines for informing you in advance about the introduced changes indicated in these Terms of use.

## **§2 Amendments to the Terms of Use and the Table of Fees and Commissions**

1. We may amend the Terms of Use or the Table of Fees and Commissions due to Important Reasons affecting the content of these documents.
2. The Terms of Use are amended by a resolution of our Management Board.
3. The table of fees and commissions shall be amended by the Regulation of the President of the Management Board.
4. We will inform you about any changes to the Terms of Use or the Table of Fees and Commissions as specified in the Client Data Card.
5. Amendments to the Terms of Use or the Table of Fees and Commissions shall come into force for existing clients not earlier than on the 14th day after notification of the amendment.
6. The provisions of the Terms of Use or the Table of Fees and Commissions in the wording containing the changes made will be binding on you, provided that you do not send us the termination of the Framework Agreement in accordance with Chapter VII par. 6 of these Terms of use (the termination period for the Framework Agreement indicated therein applies) within 14 calendar days from the date of receipt of information about their making. Failure to receive notice of termination of the Framework Agreement within the period referred to in the previous sentence means that you accept the provisions of the Terms of Use or the Table of Fees and Commissions in the new wording.

## **§3 Amendments to the Specifications of Financial Instruments**

1. We may change the Specifications of Financial Instruments: TMS Trader, TMS Connect, TMS Prime due to Important Reasons affecting the content of these documents.
2. Changes are made by Regulation of the President of the Management Board.
3. The provisions of the Specifications of Financial Instruments in the wording containing the changes made will be binding on you, provided that you do not send us the termination of the Framework Agreement in accordance with Chapter VII par. 6 of these Terms of use (the termination period for the Framework Agreement indicated therein applies) within 2 calendar days from the date of receipt of information about their making. Failure to receive notice of termination of the Framework Agreement within the period referred to in the previous sentence means that you accept the provisions of the Specifications of Financial Instruments in the new wording.

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4. In the event that Exceptional Circumstances occur or there is a high probability that Exceptional Circumstances may occur - we may set a shorter deadline for the changes to enter into force.

#### **§4 Amendments to the Order Execution Policy in Dom Maklerski TMS Brokers**

##### **S.A.**

1. The Order Execution Policy in Dom Maklerski TMS Brokers S.A. is made available on the TMS Brokers website.
2. We may make changes to Order Execution Policy in Dom Maklerski TMS Brokers S.A. for Important Reasons affecting the content of these documents.
3. We will inform you about the changes by sending you an e-mail along with an indication of the content of the changes and sending a new document.
4. Changes are made by a resolution of the Management Board.
5. The provisions of the Order Execution Policy in Dom Maklerski TMS Brokers S.A. in the wording containing the changes made will be binding on you, provided that you do not send us the termination of the Framework Agreement in accordance with Chapter VII par. 6 of these Terms of use (the termination period for the Framework Agreement indicated therein applies) within 14 calendar days from the date of receipt of information about their making. Failure to receive notice of termination of the Framework Agreement within the period referred to in the previous sentence means that you accept the provisions of the Order Execution Policy in Dom Maklerski TMS Brokers S.A. in the new wording.

#### **§5 Amendments to the other documents**

1. We may also amend other documents listed in the Agreement or these Terms of Use due to Important Reasons affecting the content of these documents.
2. The provisions of these documents in the wording containing the changes made will be binding on you, provided that you do not send us the termination of the Framework Agreement in accordance with Chapter VII par. 6 of these Terms of use (the termination period for the Framework Agreement indicated therein applies) within 3 calendar days from the date of receipt of information about their making. Failure to receive notice of termination of the Framework Agreement within the period referred to in the previous sentence means that you accept the provisions of these documents in the new wording.
3. Regardless of the form of correspondence indicated in the Customer Data Sheet, information on changes to the documents covered by this paragraph will be provided via e-mail.
4. The change of the Swap Points Table shall take effect on the day of its publication.

#### **§6 Termination of the Framework Agreement by notice**

1. You have the right to terminate the Framework Agreement by providing us with a notice of termination in the form in which you entered into the Framework Agreement. The notice period is 7 days. During this time, you should close your Positions and withdraw your funds.
2. You also have the right to partially terminate the Framework Agreement in the scope of:
  - 1) accepting and transmitting orders to buy or sell financial instruments and the related storage and registration of financial instruments, including keeping cash accounts and foreign exchange; or
  - 2) execution of orders to purchase or sell Financial Instruments and the related storage and registration of Financial Instruments, including keeping Cash Accounts and currency exchange;

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- your will to partially terminate the Framework Agreement must be clearly indicated by you in the notice of termination of the Framework Agreement.
3. The termination notice period is 7 days. During this time, you should close your Positions and withdraw your funds.
  4. We may terminate the Framework Agreement by giving you notice of termination in the form in which we entered into the Framework Agreement with you in the following cases:
    - 1) Initiating the judicial or administrative enforcement of the Client's claim against you,
    - 2) your liquidation or bankruptcy,
    - 3) discontinuation of the service or the service variant,
    - 4) if within 3 months you have not made any transactions on the account, or the balance of your Cash Account will be 0 for a period of at least 3 consecutive months.
    - 5) failure to comply with the provisions of the Agreement and these Regulations.
    - 6) where there is a reasonable suspicion that your conduct is in breach of money laundering or market abuse laws and at a time when or when the cooperation will pose a high reputational risk.
    - 7) in the case of Exceptional Circumstances and when it is not possible for you to use our services even to an incomplete extent.
    - 8) the closure by you or Us of the last Cash Account we hold for you under a Master Agreement between you and us,
    - 9) the cessation or planned cessation of the provision by us of the service of maintaining the Cash Account opened pursuant to the Framework Agreement concluded between you and us, if you do not have another Cash Account maintained by us for your benefit.
  5. The Framework Agreement terminated by us shall be terminated within 7 days from the date of receipt by you of the notice of termination.
  6. The Framework Agreement will be terminated upon our becoming aware of the total and permanent loss of legal capacity if you are a natural person, or liquidation if you are a legal person.
  7. Due to the nature of the service covered by the Framework Agreement, you are not entitled to withdraw from the Framework Agreement concluded electronically in accordance with Art. 38 point 2 of the Polish Act of 30 May 2014 on consumer rights.

## **§7 Termination of the Agreement with immediate effect**

1. We reserve the right to terminate the Framework Agreement with you immediately if your actions violate money laundering or market abuse laws and at the time or in the event that the cooperation involves a high reputational risk.
2. We may also terminate the Framework Agreement immediately if we are unable to continue to provide you with the services covered by this Agreement due to a change in law.
3. You have the right to terminate the Agreement with immediate effect in the event of a change to the Agreement Documentation by sending us information about the termination of the Framework Agreement within the time specified in par. 2-5 above.
4. We also reserve the right to terminate the Framework Agreement with immediate effect if we can demonstrate that you are systematically entering into transactions in bad faith or at erroneous prices.

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## **§8 Effects of termination**

1. As of the date of termination of the Framework Agreement, all the accounts and registers that we kept on your behalf under the Framework Agreement shall be closed. In the event of a partial termination of the Framework Agreement, all accounts and registers that we have kept for you in the indicated scope will be closed. In the event of a partial termination of the Framework Agreement to an extent not covered by the Terms of use, the provisions of another, relevant regulations for the provision of a given service variant (subject to partial termination) shall apply.
2. Before the end of the day on which the Master Agreement is terminated, you should close all your positions in the Financial Instruments and give an instruction for the funds registered in your Cash Account. In the event of a partial termination of the Framework Agreement, you should dispose of all the Financial Instruments in your Account and issue an instruction regarding the funds registered in your Cash Account within the scope covered by the Terms of use. In the event of a partial termination of the Framework Agreement to an extent not covered by the Terms of use, the provisions of another, relevant regulations for the provision of a given service variant (subject to partial termination) shall apply.
3. If you do not do this, then:
  - 1) at the last moment of trading a given Financial Instrument on a given day, we will close your open positions,
  - 2) the funds remaining on your account will be transferred to a separate, non-interest-bearing bank account not covered by the Compensation Scheme and the guarantees of the Bank Guarantee Fund,
  - 3) we will call you to submit a withdrawal instruction by providing you with information to the addresses indicated in the Client Card.
4. You will be able to submit a written withdrawal instruction to us at any time.

## **§9 Procedure in the event of Your death**

1. If You are an individual, the rules in this paragraph determine what will happen in the event of Your death. If You are an entrepreneur, go to the last section of this paragraph.
2. In We receive credible information about Your death (in particular, that a third party present Your death certificate to Us), the Framework Agreement shall be terminated on the date marked as the date of Your death. In this case, as soon as We receive the information above, We will close the Register of Financial Instruments maintained for You and all positions opened in Your Account.
3. Your heir or other heir (if they provide documents proving their succession rights in advance) will be able to make an order to withdraw Free Cash, not a Margin Requirement, that was registered in Your Account. For this purpose they will use the disposition model available on Our website in the "Documents" tab.
4. The termination of the Agreement shall not terminate Our claim for payment of the amount of the negative balance if such balance has occurred in Your Cash Account. We may claim this payment from You or from authorized persons (heir and other heir) to dispose of Your assets. Until all accounts and records held by Us are closed for Your benefit (i.e. Register of Financial Instruments, Operating Register and Cash Account) We may charge and charge fees due and commissions in accordance with the Table of Fees and Commissions.
5. If You are a natural person entrepreneur and who carries out an economic activity in his own name on the basis of an entrance in the Polish Central Register and Information on Economic Activities,

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then rules above do not apply. The provisions of the Law of 5 July 2018 on the management of a succession business of a natural person and other facilitations related to the succession of enterprises will then apply.

## **Chapter VIII - Final provisions**

### **§1 Conflict of Interest**

1. Conflicts of Interest arise in particular if any of persons referred in Chapter I par. 1 sec. 5 (21):
  - 1) we can make a financial gain or avoid a financial loss at your expense;
  - 2) we have an interest in a particular result of a service provided to the Client or a transaction carried out on behalf of the Client and the result is inconsistent with the Client's interest;
  - 3) we have financial or other reasons to place the interests of another client or group of clients above your interests;
  - 4) we do the same business as you;
  - 5) we receive or will receive from a person other than you, in connection with a service provided to you, an inducement in the form of a pecuniary or non-pecuniary benefit or service.
2. If any Conflicts of Interest exist in relation to the provision of services to you, which are the subject of the Framework Agreement and the Terms of Use:
  - 1) prior to entering into a Framework Agreement, we will notify you in writing or through a Permanent Information Medium of any Conflicts of Interest and you acknowledge receipt of such information from us,
  - 2) we make the signing of the Framework Agreement with you conditional upon your confirmation - in the form of a separate statement or directly through the signing of the Framework Agreement - of your willingness to conclude the Agreement despite the existence of Conflicts of Interest.
3. The information referred to in section 3 shall include an indication that the organisational and administrative arrangements we have established to prevent or manage any Conflicts of Interest may not be sufficient to ensure that the risk of damage to your interests will not materialise. The disclosure of the Conflict of Interest shall include a detailed description of the Conflicts of Interest arising in the provision of the service, taking into account the nature of the client. This description shall explain the general nature and sources of the Conflicts of Interest and the risks that arise to you from them and the steps taken to mitigate those risks, in sufficient detail to enable you to make an informed decision with regard to the investment service or ancillary service in the context in which those Conflicts of Interest arise.
4. Our policies for dealing with conflicts of interest shall apply on a continuing basis to the disclosure of conflicts of interest, i.e. both prior to and after the conclusion of the Framework Agreement, unless our organisational and administrative arrangements to prevent or manage conflicts of interest ensure that your interests are not prejudiced.
5. In the event that a Conflict of Interest arises in relation to the provision of services to you which are the subject of the Framework Agreement and the Terms of Use after the conclusion of the Agreement:
  - 1) we inform you of the existence of a Conflict of Interest in the manner set out in section 3 subsection 1), providing the information set out in section 3, and you acknowledge receipt of information from us about the existence of a Conflict of Interest,

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- 2) we will continue to provide services to you unless you provide us with notice of termination of the Master Agreement in accordance with these Terms and Conditions upon receipt of notice of any Conflicts of Interest, in which case we will regard your submission of Orders or Transactions as not having been notice of termination.
6. We make available the full content of the Terms of Use for managing conflicts of interest in Dom Maklerski TMS Brokers S.A. on the website <https://www.tms.pl/dokumenty>

## **§2 Recommendations**

1. We may, at no charge or for a fee, make current general recommendations regarding the execution of transactions in Financial Instruments.
2. The recommendations referred to in sub-paragraph 1 shall not apply. The information referred to in paragraph 1 above may be provided orally by our employees or in the information section of the Transaction System, as well as by other electronic means of communication.
3. Recommenders give recommendations within the limits of written authorization granted by the President of the Management Board on the basis of their own studies and other available sources of information, provided that this information is obtained in a manner consistent with the applicable law. Detailed rules of preparing and disseminating information by us that constitutes recommendations concerning financial instruments, their issuers or exhibitors are contained on our website.
4. A recommendation cannot be based on an analysis of other clients' orders, guarantee or suggest protection against financial loss or profit.
5. We are not responsible for the consequences of investment decisions made on the basis of the recommendations provided that we have taken due care in granting them.
6. The recommendations referred to in this paragraph are not investment advisory services within the meaning of Article 76 of the Act, as they are not based on the individual situation of clients and do not take into account their investment objectives. It is your responsibility to verify that the general recommendations contained in the materials are appropriate for you.
7. Detailed rules for granting recommendations are contained in dedicated regulations applicable to the recommendation service.

## **§3 Information part of the Transaction System**

1. You may use the comments and information placed in the information section of the Transaction System, which have been:
  - 1) developed and published by Us,
  - 2) developed by others and posted by Us.
2. We shall exercise due diligence in preparing our own comments and analyses contained in the information section of the Transaction System.
3. We undertake to exercise due diligence in selecting the entities whose comments and analyses will be included by us in the information section of the Transaction System.
4. We shall not be liable for the consequences of investment decisions made on the basis of comments or analyses referred to in sec. 1 Item 1), provided that we exercised due diligence in preparing such decisions. We are not liable for damages incurred by you as a result of the implementation of investment decisions made on the basis of the comments and analyses referred to in 1, for reasons attributable to third parties for which we are not responsible.

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#### **§4 Validity of the Terms of Use**

1. The provision of brokerage services based on contracts concluded before the entry into force of the Terms of Use shall take place on the terms set forth in the Terms of Use, provided that it is made possible by the content of the following contracts.
2. Any correction of obvious clerical errors shall not constitute an amendment to the Terms of Use.
3. The Terms of Use shall apply from January 7<sup>th</sup>, 2022.

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