

**TERMS AND CONDITIONS
OF THE INFORMATION AND EDUCATIONAL SERVICE
(REAL ACCOUNTS)**

OANDA TMS BROKERS S.A.

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§ 1 Definitions

1. **Declaration** — declaration of will or other declaration related to the provision of **Services** by **TMS Brokers**,
2. **Telecommunications Law** — the act of 16 July 2004 — Telecommunications Law,
3. **GDPR** – 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),
4. **Terms and Conditions** – this document setting out the terms and conditions of provision of the **Service**, made available on the **Website**,
5. **Website** - the website of **TMS Brokers** available at www.tms.pl or its foreign equivalents (<https://www.tmsbrokers.com/>, <https://www.tmsbrokers.com/es>, <https://www.tmsbrokers.com/lv>, <https://www.tmsbrokers.com/lt>, <https://www.tmsbrokers.com/ru>),
6. **ICT System** — a set of cooperating IT devices and software, allowing to process, store, transmit and receive data via telecommunications networks with the use of a

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telecommunications terminal equipment appropriate for a specific type of the network within the meaning of the Telecommunications Law,

7. **Electronic Communication Means** — technical solutions, including ICT equipment and software tools cooperating with them, allowing individual communication at a distance using data transmission between **ICT Systems**, in particular electronic mail,
8. **Provision of Electronically Supplied Services** — provision of the **Service** provided without the simultaneous presence of the parties (at a distance), through the transmission of data upon an individual request of the **User**, transmitted and received with the use of the electronic processing equipment, including digital compression and data storage, which is entirely sent, received or transmitted by means of a telecommunications network within the meaning of the Telecommunications Law,
9. **TMS Brokers** — OANDA TMS Brokers S.A.— controller of **Users'** data, providing services ordered by the **User**, with its registered office in Warsaw (00-120) at ul. Złota 59, entered into the register of entrepreneurs by the District Court for the Capital City of Warsaw in Warsaw, 12th Commercial Division of the National Court Register under number KRS 0000204776, Statistical Identification Number (REGON) 015715078, Tax Identification Number (NIP) 526-27-59-131. E-mail contact details: dommaklerski@tms.pl, tel. +48 602 348 048. **TMS Brokers** is regulated by the Polish Financial Supervision Authority on the basis of the authorisation of 26 April 2004,
10. **Agreement** — a general agreement concluded between **TMS Brokers** and the **User**,
11. **Framework Agreement** — agreement for the provision of services consisting in the execution of orders to buy or sell financial instruments, keeping and recording financial instruments, including the maintenance of cash accounts as well as currency exchange by **TMS Brokers**.
12. **Service** — service supplied electronically by **TMS Brokers** under these **Terms and Conditions** and the **Agreement**,
13. **User** — a natural person, legal person or organisational unit without legal personality, who ordered the **Service** via the registration form and declared that it read the provisions of the **Terms and Conditions** and acknowledged the acceptance thereof.

§ 2 General provisions

1. The **Terms and Conditions** are addressed to **Users** intending to use the **Service** and to open a real account in **TMS Brokers** (to conclude the **Framework Agreement**).
2. By providing the **Service**, **TMS Brokers** shall enable **Users** to conclude the **Framework Agreement** and provide the information and educational materials aimed at increasing the knowledge of future investors and thus at making the right investment decisions as well as proper risk assessment related to these decisions.
3. **TMS Brokers** provides the **Service** in the belief that the knowledge and skills obtained owing to the information and educational materials provided will allow investors using the **TMS Brokers** investment platform to make right investment decisions more often.
4. The **User** shall follow the recommendations of **TMS Brokers** with regard to security rules when using **Means of Distance Communications**.
5. **TMS Brokers** reserves the right to temporarily suspend for the **Users** the possibility to submit **Declarations** electronically (e.g. a declaration on a change of personal data):

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- 1) if the **User** is found to act in a manner contrary to the **Terms and Conditions** or generally applicable laws;
 - 2) in cases justified by security reasons;
 - 3) if the **User** provides incorrect, incomplete or untrue data.
6. The **User** agrees to **Declarations** related to the performance of the **Agreement** and the **Terms and Conditions**, including all correspondence with **TMS Brokers**, to be provided in an electronic form and/or by telephone.

§ 3 Terms of the provision of the Service

1. The provision of the **Service** shall commence after the **Agreement** for the use of the **Service** is concluded.
2. The **Agreement** shall be concluded upon effective transmission of the registration form together with a **Declaration** of reading the provisions of the Terms and Conditions and of the acceptance thereof.
3. The **Service** is free of charge.
4. The **User** using the **Service** shall refrain from providing unlawful content during the registration or data updates, in particular from providing third parties' data without the consent of authorised persons.
5. Individual messages sent as part of the **Service** may constitute works within the meaning of copyright law and shall be protected by the law. Any duplication, modification and use in a manner contrary to the purpose or without the consent of **TMS Brokers** may constitute a violation of law.
6. When registering, the **User** shall enter data consistent with the facts and in the event of their change the **User** shall update them also truthfully.
7. The **Agreement** shall be concluded for an indefinite period of time.
8. In order to provide the **Service**, **TMS Brokers** shall use electronic means of communication, telecommunications terminal equipment and automated calling systems in the form of e-mail, voice calls, SMS and push notifications in order to transfer the information ordered.
9. Phone calls related to the **Service** are recorded about which the **User** has been informed and hereby accepts.

§ 4 Conditions precedent for the conclusion of the Framework Agreement

1. In order to successfully complete the process of opening a brokerage account, the **User** shall complete electronic forms by providing his/her personal data, answer questions about experience and knowledge of investing in financial instruments and risk approach, as well as read the terms of **the Framework Agreement** and accept them.
2. The **Framework Agreement** shall be concluded under the condition precedent, consisting in positive verification of the **User's** identity by **TMS Brokers** performed in accordance with the internal procedures of **TMS Brokers** on the basis of data and documents concerning the **User**, in particular as regards the risk of money laundering and terrorist financing. **TMS Brokers** shall perform the above check and inform the **User** whether the above condition precedent was satisfied no later than within 90 days of their conclusion. The **Framework Agreement** shall

enter into force as soon as **TMS Brokers** informs the **User** that the above condition precedent was satisfied.

3. Detailed conditions of the conclusion of the **Framework Agreement** as well as detailed conditions of the provision of brokerage services by **TMS Brokers** are available on the **Website**.

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§ 5 Detailed scope of the Service

1. As part of the provision of the **Service**, **TMS Brokers** shall provide **Users** with:
 - 1) educational materials related to investing in the form of e-books, audiobooks, video recordings, reports and analyses;
 - 2) information on the methods of investing with **TMS Brokers**;
 - 3) information on investment events organised by **TMS Brokers**;
 - 4) substantive support in investing (e.g. conversations with consultants);
 - 5) information on significant market events;
 - 6) technical and substantive support in opening and maintaining brokerage accounts;
 - 7) news concerning **TMS Brokers**;
 - 8) statistics on the activity related to the use of investment tools.
2. The type of the communication channel (e-mail / sms / telephone conversation) via which the content referred to in clause 1 will be delivered to **Users**, shall be conditioned by the choice made by **TMS Brokers**, depending on the type and quantity of content and the circumstances.

§ 6 Technical requirements

1. Up to date information about the function and purpose of the software or data that are not a component of the **Service**, entered into the **ICT System**, is contained in the relevant privacy policy.
2. In order to use the **Services**, the User shall meet the following minimum technical requirements necessary for the cooperation with the **TMS Brokers' ICT System**:
 - 1) access to the Internet,
 - 2) possession of an e-mail account,
 - 3) up to date version of the web browser,
 - 4) program allowing to open documents saved in PDF format.

§ 7 Personal data processing

1. **TMS Brokers** is the controller of personal data processed in order to provide the **Service** on the basis of the **Agreement** concluded, in accordance with Article 6 clause 1 (b) of the GDPR and on the basis of a legitimate interest, in accordance with Article 6 clause 1 (f) of the GDPR.
2. Detailed provisions regarding the processing of personal data can be found in the information clause (privacy policy).

§ 8 Principles of liability

1. **TMS Brokers** shall not be liable for any interruptions in the provision of the **Service** resulting from failures or malfunctioning of **ICT Systems**.
2. **TMS Brokers** reserves that the use of **Electronically Supplied Services** may involve risk. Any threats related to the use of these **Services** as well as technical means available to Users in order to minimise them are specified in the Addendum to the Terms and Conditions published on the **Website**.
3. The User shall comply with the prohibition of misusing **Electronic Communication Means** and delivering via or to **TMS Brokers ICT Systems** the following content:
 - 1) causing overload of **ICT systems** of **TMS Brokers** or other entities that participate directly or indirectly in the **Provision of Electronically Supplied Services**,

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- 2) in compliance with generally applicable laws,
- 3) violating the rights of third parties, generally accepted social and moral norms or breaching the decency, offensive or violating anyone's dignity.
4. **TMS Brokers**, by providing **Service** pursuant to the **Terms and Conditions**, undertakes to provide the **User** with security in making **Declarations**.
5. It is in the **User's** interest to keep the login data confidential in order to prevent disclosure to unauthorized persons. If there is a suspicion that these data were in the possession of unauthorized third parties, the **User** should immediately notify **TMS Brokers**. Until the **User** performs the abovementioned obligation, **TMS Brokers** shall not be liable for damages suffered by the **User** as a result of actions of third parties in connection with the disclosure of login data or loss thereof, unless their disclosure occurred for reasons for which **TMS Brokers** is responsible.
6. After notifying **TMS Brokers** about possible access to the security granted by third parties, **TMS Brokers**, with accurate precision, takes steps to prevent the use of this information by unauthorized persons.

§ 9 Terms of opting out of the Service

1. **TMS Brokers** and the **User** may unilaterally terminate the **Agreement** for the provision of the **Service** without giving a reason upon a 14-day notice period.
2. The **User** may opt out of the **Service** by terminating the **Agreement** by sending an appropriate declaration via e-mail to the following address: odo@tms.pl or in writing to the following address: ul. Złota 59, 00-120 Warsaw or in person at the registered office of TMS Brokers.
3. **TMS Brokers** may terminate the **Agreement** by sending an appropriate declaration via e-mail to the **User's** address.

§ 10 Complaints

1. Complaints may be submitted in the following forms:
 - 1) by sending a message via the complaint form available at www.tms.pl/formularz-reklamacyjny,
 - 2) by sending an e-mail to the following address: skargi@tms.pl; Complaints sent to other addresses shall not be considered,
 - 3) in writing to the postal address of OANDA TMS Brokers S.A. ul. Złota 59, 00-120 Warsaw,
 - 4) in person at the registered office of **TMS Brokers** in writing or orally with a complaint to be recorded in writing,
 - 5) by phone during **TMS Brokers** business hours at +48 602 348 048.
2. A complaint may be submitted by the **User** or a representative, e.g. an attorney-in-fact, however, a response to the complaint shall be sent to the **User**.
3. A complaint shall:
 - 1) be submitted without undue delay after becoming aware of the occurrence of circumstances causing reservations, in order to allow a fair consideration of the complaint,
 - 2) contain:
 - a) **User** forename and surname;
 - b) forename and surname of the person submitting the complaint, unless it is identical as in item a);

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- c) number of Cash Account/Client number — if any;
 - d) a description of the activities including a description of non-conformity;
 - e) expected manner of receiving a response to the complaint, in particular whether it is to be an e-mail response.
- 3) describe in detail the subject of the complaint, the time covered by the complaint and the circumstances justifying the complaint,
- 4) unequivocally specify expectations regarding the manner of handling the complaint.
- 4. If the complaint does not meet the criteria set out in clause 3 **TMS Brokers** shall request that it be supplemented. A failure to provide the required data within 7 days of such a request shall mean that the complaint will not be considered.
- 5. A claim may only relate to financial losses incurred. Punitive damages or damages for lost profits cannot be the subject of claims — such claims can only be settled in court.
- 6. Complaints shall be considered without undue delay, however no later than within 30 days from a receipt of the complaint. To comply with the time limit it shall be sufficient to send a reply before its expiry.
- 7. In particularly complicated cases, making it impossible to consider the complaint and reply within 30 days, the information provided to the **User** shall:
 - 1) explain the reason for a delay;
 - 2) specify circumstances which must be established in order to examine the case;
 - 3) specify the expected date of considering the complaint and providing a reply, not longer than 60 days from a receipt of the complaint.
- 8. If the subject of the complaint cannot be determined from the content of the complaint, **TMS Brokers** shall request the User to submit, within 30 days from a receipt of the request, a clarification or addition to the complaint, advising the User that a failure to remove such defects shall mean that the complaint will not be considered.
- 9. When considering the complaint, **TMS Brokers** may request the User to provide supplementary information and documents necessary to consider the complaint.
- 10. Replies to complaints shall be given in writing, by registered mail or by courier to the address specified in the complaint. A response to the complaint may be delivered to the e-mail address only at a request of the User.
- 11. The request referred to in clause 10 shall be submitted in writing, by phone or via electronic mail.
- 12. The User shall have the right to appeal against the decision of **TMS Brokers**. An appeal shall be subject to the same procedure and time limits as those applicable to the complaint. An appeal shall be considered by a person other than the person who dealt with the complaint. If the decision to refuse the complaint is upheld, **TMS Brokers** reserves that it is not obligated to consider subsequent appeals, unless the **User** reveals new facts that will give rise to a change of the current position.
- 13. **TMS Brokers** permits a possibility of out-of-court settlement of a dispute with the **User**, i.e. through mediation or arbitration. **TMS Brokers** designates the Financial Ombudsman as the competent entity for out-of-court settlement of disputes with natural persons. Website of the Financial Ombudsman: <https://rf.gov.pl/>.
- 14. If claims arising from the complaint are not accepted:
 - 1) the **User** shall have the right to submit an appeal which shall be lodged in the same manner and time limit as those applicable to complaints and shall additionally provide the data identifying the complaint against which the appeal is lodged;
 - 2) the **User** shall have the right to request the Financial Ombudsman to consider the case,
 - 3) the **User** may also bring an action to a common court against **TMS Brokers**. In such a case, the court having jurisdiction to hear the case shall be a common court competent for the

registered office of OANDA TMS Brokers S.A. or the place of performance of the **Agreement**.

15. **TMS Brokers** reserves the right to evaluate the correspondence received. Complaints about the activities of **TMS Brokers** not directly related to the implementation of the **Service** shall be treated as comments and reservations. Therefore, the above provisions shall not apply to this type of complaints.

§ 11 Final provisions

1. **TMS Brokers** reserves the right to amend the **Terms and Conditions** for important reasons, e.g. changes in the law. The correction of obvious typing mistakes shall not constitute an amendment to the Terms and Conditions.
2. In the event of amendments to the Terms and Conditions **TMS Brokers** shall make available the consolidated text of the **Terms and Conditions** by publishing on the Website in the document section.
3. Any matters not provided for in these **Terms and Conditions** shall be governed by the provisions of applicable laws.
4. In the event of discrepancies between the **Agreement** and the **Terms and Conditions** in the Polish language and other language versions of the referenced documents, the relevant provisions in the Polish language shall prevail.
5. These **Terms and Conditions** shall apply as from January 25, 2021.