

Regulations on the conclusion of agreements for the provision of brokerage services in electronic form

Article 1

GENERAL PROVISIONS

1. These "*Regulations on the conclusion of agreements for the provision of brokerage services in electronic form*" set out the type, scope and conditions of the Provision of Electronically Supplied Services, including technical requirements necessary for cooperation with the ICT system used by TMS Brokers, prohibition of delivery of unlawful content by the Client, terms of concluding and terminating the Agreement and the complaint handling procedure.
2. The Terms and Conditions are available on the TMS Brokers website at <https://www.tms.pl/dokumenty>.

Article 2

DEFINITIONS

The terms used hereinafter shall mean:

- a. **Identification password** — password chosen by the Client during the process of registration on the Website, necessary for the correct authorisation of the Client,
- b. **Client** — a natural person, legal person or organisational unit without legal personality with whom TMS Brokers entered into the Agreement or the Framework Agreement,
- c. **Declaration** — declarations of will or other declarations related to the provision of services by TMS Brokers,
- d. **Telecommunications Law** — the act of 16 July 2004 — Telecommunications Law (Journal of Laws of 2018, item 1954 as amended),
- e. **Terms and Conditions** — these "*Terms and conditions of entering into agreements for the provision of electronically supplied brokerage services*",
- f. **Website** — TMS Brokers website at www.tms.pl,
- g. **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 telecommunications terminal equipment appropriate for a specific type of the network within the meaning of the Telecommunications Law,
- h. **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,
- i. **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 Client, 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,
- j. **TMS Brokers** — OANDA TMS Brokers S.A. with its registered office in Warsaw (00-120) at ul. Złota 59, entered into the register of entrepreneurs kept 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. Contact details: e-mail dommaklerski@tms.pl, tel. +48 602 348 048. TMS

OANDA TMS Brokers S.A. (dawniej: Dom Maklerski TMS Brokers S.A.) Złote Tarasy (Budynek Skylight),
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Brokers is regulated by the Polish Financial Supervision Authority on the basis of the authorisation of 26 April 2004 (KPWiG-4021-54-1/2004),

k. Agreement — “*Agreement on the conclusion of agreements for the provision of brokerage services in an electronic form*”,

l. **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,

m. **Service** — service provided under these Terms and Conditions and the Agreement, consisting in:

I. concluding or amending the Framework Agreement in an electronic form,

II. making Declarations related to the execution of orders to buy or sell financial instruments,

III. making Declarations related to keeping and recording financial instruments, including to the maintenance of a cash account;

IV. making Declarations related to currency exchange.

Article 3

CONCLUSION OF THE AGREEMENT

1. The Agreement shall be concluded after relevant fields in the registration form on the Website are filled in, upon giving consent to the conclusion of the Agreement.

2. The Client shall be granted access to the conclusion of the Framework Agreement in electronic form after the conclusion of the Agreement and the correct completion of the registration form on the Website. When completing the registration form, the Client shall provide up to date and true information.

Article 4

SECURITY MEASURES

1. When providing the Services on the basis of the Terms and Conditions, TMS Brokers undertakes to ensure to the Client the security of making Declarations and concluding the Framework Agreement.

2. The Client shall follow the recommendations of TMS Brokers with regard to security rules when using means of distance communications. It shall be in the Client's interest to keep the Identification Password confidential in order to prevent unauthorised disclosure. In the event of suspicion that these data are in the possession of unauthorised third parties, the Client shall immediately notify TMS Brokers of the same in order to set up a new Identification Password.

3. TMS Brokers reserves the right to temporarily suspend for the Client the possibility to submit Declarations electronically:

a. if the Client is found to act contrary to the Agreement, the Framework Agreement, the Terms and Conditions, the regulations applicable to the service selected by the Client or generally applicable laws,

b. in cases justified by security reasons,

c. if the Client provides incorrect, incomplete or untrue data.

Article 5

PRINCIPLES OF LIABILITY

1. Until the Client fulfils the obligation specified in Article 4 clause 2 sentence 3 above, TMS Brokers shall not be liable for damage incurred by the Client as a result of acts of third parties in connection with the disclosure or loss of the Identification Password, unless the Identification Password was disclosed due to the fault of TMS Brokers.
2. After TMS Brokers is notified of a possible access to assigned security measures by third parties, TMS Brokers shall, while exercising due diligence, take steps to prevent unauthorised use of this information.
3. TMS Brokers shall not be liable for any interruptions in the provision of the Service resulting from failures or malfunctioning of ICT Systems.
4. 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 Clients in order to minimise them are specified in **Appendix No. 1** to these Terms and Conditions.

Article 5

TECHNICAL REQUIREMENTS

1. The up to date information about the function and purpose of the software or data not being a component of the Service, entered into the ICT System used by the Client (*cookies*), is contained in the "*Privacy Policy of OANDA TMS Brokers S.A.*".
2. In order to use the Services, the Client shall meet the following technical requirements necessary for the cooperation with the TMS Brokers ICT System:
 - a. access to the Internet,
 - b. possession of an e-mail account,
 - c. current version of the web browser,
 - d. program allowing to open documents saved in PDF format.

Article 6

UNLAWFUL CONTENT

The Client shall comply with the prohibition of misusing Electronic Communication Means and delivering by or to TMS Brokers ICT Systems the following content:

- a. causing overload of ICT systems of TMS Brokers or other entities that participate directly or indirectly in the provision of electronically supplied Services,
- b. incompliant with generally applicable laws,
- c. violating the rights of third parties, generally accepted social and moral norms or breaching the decency, offensive or violating anyone's dignity.

Article 7

COMPLAINT PROCEDURE

1. The Client may lodge a complaint regarding the act or omission of TMS Brokers, including issues related to the performance of the Agreement and resulting from these Terms and Conditions.
2. The complaints may be submitted in the following forms:
 - 1) sending a message via the complaint form available for the Client at www.tms.pl in the "Contact" tab,
 - 2) sending e-mail to the address skargi@tms.pl; the Client must take into account that by sending a complaint to a different address, especially a technical address or a non-existent complaint, you may be late or not be able to deliver it to us effectively at all.
 - 3) in writing to the correspondence address of OANDA TMS Brokers S.A., Złota 59, 00-120 Warsaw,
 - 4) personally at TMS Brokers registered office, (ul. Złota 59, 15th floor, 00-120 Warsaw) in writing or orally to the protocol;
 - 5) by phone - within TMS Brokers working hours to the number provided on TMS Brokers Information Sheet.
3. We accept complaints from the Client you and the people who represent the Client (e.g. Attorney). The Client will receive a response to your complaint.
4. The complaint should:
 - 1) be filed immediately after being informed of the circumstances giving rise to concern, in order to enable the complaint to be dealt with fairly,
 - 2) include:
 - a. name and surname 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 of the deposit or withdrawal request;
 - f. 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,
 - g. how to obtain an expected response to a complaint, in particular whether the Client want to receive an e-mail response.
 - 3) describe the subject of the complaint in detail (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 and the circumstances justifying the complaint,
 - 4) include a clear definition of expectations regarding the way the Client complaint will be handled.
5. If TMS Brokers complaint does not meet the criteria set out in paragraph 4, TMS Brokers will ask the Client to complete it. If the Client do not provide us with the required information within 7 days of such a request, TMS Brokers will have to leave it unrecognized.
6. The Client claims may concern only the incurred material losses. Claims may not concern compensation for moral damage or lost profits - such claims may be settled only in court.
7. The Client must be aware that submitting a complaint immediately after the received the objections will facilitate and accelerate reliable processing of the complaint by TMS Brokers.

8. Upon the Client request, TMS Brokers will send the Client an acknowledgement of receipt, in the manner indicated by the Client in the Customer Data Card.
9. TMS Brokers is obliged to examine and respond to the Client complaint without undue delay, however, not later than within 30 days from the date of receipt. In order to meet the deadline, it is sufficient to send a reply before the deadline expires.
10. In the particularly complicated cases, which make it impossible to consider a complaint and give an answer within 30 days, TMS Brokers in the information provided to the Client:
 - 1) explains the reason of delay;
 - 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.
11. If the subject matter of the complaint cannot be determined from its content, TMS Brokers shall call upon the Client 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.
12. During the complaint handling process, the Client may be requested to provide additional information and documents necessary for the complaint handling.
13. TMS Brokers respond to the complaint or sends a request to supplement the complaint referred to in paragraph 12 in writing, by registered mail or by courier service to the address indicated in the Client Data Card or other Permanent Information Storage Medium.
14. The reply to the complaint may be delivered to the e-mail address only at the Client request.
15. The request referred to in point 14 should be submitted in writing, by telephone or by e-mail.
16. The Client should cooperate with TMS Brokers in the course of the complaint handling process and in the scope of fulfilling the Client claims or repairing damage. Lack of cooperation may cause the complaint to be resolved on the basis of the data that TMS Brokers have at disposal, and may have further consequences, e.g. consisting in particular in your contribution to the creation or increase of damage.
17. The Client has a right of appeal from TMS Brokers decision. For appeal, the same procedure and deadlines apply as for complaint. The Client 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 the Client, TMS Brokers reserves the right not to consider the Client further appeals, unless the Client disclose new facts that will give rise to a change in the current position of TMS Brokers.
18. TMS Brokers provide for the possibility of out-of-court settlement of the dispute with the Client, i.e. through mediation
19. In the event of a dispute with consumers, TMS Brokers designate the Financial Ombudsman as the competent body for out-of-court settlement of disputes with consumers. Website of the Financial Ombudsman: <https://rf.gov.pl/>
20. If the claims resulting from the complaint are not accepted:
 - 1) the Client has the right to appeal, which the Clients are entitled to under paragraph 2, additionally specifying the data identifying the complaint are appealing against;
 - 2) the Client has the right to request the Financial Ombudsman to examine the matter,
 - 3) the Client has also the right to bring an action before a common court against TMS Brokers. The court having jurisdiction to hear the case shall be:
 - a) District Court for Warsaw-Śródmieście in Warsaw, regarding the dispute to PLN 75 000;

b) Regional Court in Warsaw, regarding the dispute over PLN 75 000.

Article 8

MISCELLANEOUS

1. Amendments to these Terms and Conditions shall enter into force for existing Clients within 7 days from notifying the Client of the amendment. TMS Brokers shall inform the Client about the amendment electronically and by posting the current version of the Terms and Conditions on the Website.
2. The correction of obvious typing mistakes shall not constitute an amendment to the Terms and Conditions.
3. Each Party may terminate the Agreement upon a 14-day notice period, subject to the provisions of the Agreement.
4. Any matters not provided for in these Terms and Conditions shall be governed by the provisions of the applicable law.
5. 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.
6. These Terms and Conditions shall apply from 04 March 2019.

Appendix No. 1 — Information on threats related to the use by Clients of electronically supplied services

Acting on the basis of Article 6 clause 1) of the Act of 18 July 2002 on the provision of electronic services, TMS Brokers informs about special threats related to the use by Clients of electronically supplied services. This information applies to threats which may occur only potentially but which should be taken into account by the Client.

The basic threats related to the use of the Internet include:

- a. malware — various types of applications or scripts that have harmful, criminal or malicious effect in relation to the Client's ICT system, such as viruses, worms, Trojans, keyloggers, dialers;
- b. spyware — programmes that track Client's actions, gather information about the Client and send it — usually without his knowledge or consent — to the author of the programme;
- c. spam — unwanted and unsolicited electronic messages sent simultaneously to numerous recipients, often containing advertising content;
- d. phishing of confidential personal information (e.g. passwords) by impersonating a trustworthy person or institution;
- e. hacking the Client's ICT system with the use of, among other things, such hacking tools as *exploit* and *rootkit*.

In order to avoid the above threats, the Client should install an antivirus software on his computer and other electronic devices that he uses when connecting to the Internet. Such software should be constantly updated.

Protection against threats related to the use by Clients of electronically supplied services is also provided by:

- a. enabled firewall,
- b. updating all software,
- c. not opening attachments in e-mails of unknown origin,
- d. reading application installation windows as well as their application licences,
- e. disabling macros in MS Office files of unknown origin,
- f. regular comprehensive system scans with anti-virus and anti-malware software,
- g. encryption of data transmission,
- h. installation of preventive programs (detection and prevention of intrusion),
- i. using the original system and applications from a legitimate source.