



**Terms of Business**  
of  
**TMS BROKERS EUROPE LTD.**

Dated: July 6<sup>th</sup>, 2018

**Terms of Business governing the provision of services consisting in executing orders to purchase or sell financial instruments and dealing on own account, operating accounts and keeping records relating to such trading by TMS Brokers Europe LTD. as well as the currency exchange – TMS Trader**

Contents

§ 1. Definitions.....	3	§ 46. Rollover of Instruments Based on the Futures Contracts.....	38
§ 2. Subject of the Terms of Business - General Terms of Business .....	7	§ 47. Rollover of Financial Instrument based on shares and Exchange Traded Fund (ETFs).....	38
§ 3. Licensing Details.....	8	§ 48. Equivalent of Dividend .....	39
§ 4. Client Classification .....	9	§ 49. Equivalent of Other Corporate Events.....	39
§ 5. Client Profiling - Assessment tests .....	10	§ 50. Opposite Transactions .....	39
§ 6. Reporting obligations and disclosure of information to clients .....	11	§ 51. Closing a Position.....	40
§ 7. Best Execution Arrangements and Policy .....	11	§ 52. Settlement on Account of Concluded Transactions .....	41
§ 8. Clients' Assets and Money .....	11	§ 53. Margin for Transaction Execution .....	41
§ 9. Investment advice and service offered by TMS Europe .....	12	§ 54. Rules Regarding the Calculation of and Supplementing the Margin Deposit .....	41
§ 10. Decisions and Resolutions of the Board of Directors of TMS Europe .....	12	§ 55. Increase of the Margin Deposit.....	42
§ 11. Registering and recording Contacts with Clients.....	13	§ 56. General Market Outlook.....	42
§ 12. Data Protection and Confidentiality .....	14	§ 57. Information Section of the Transaction System .....	43
§ 13. Identification Password .....	14	§ 58. Quoting Errors .....	43
§ 14. Non-Confidentiality .....	15	§ 59. Algorithmic Mechanisms .....	45
§ 15. Investment Risk .....	16	§ 60. Correspondence with the Client .....	46
§ 16. Conclusion of the Framework Agreement .....	16	§ 61. Communication via the Transaction System .....	47
§ 17. Prevention of Money Laundering – Client identification and source of funds and wealth .....	17	§ 62. Reports from brokerage services .....	47
§ 18. Client's Data Change.....	19	§ 63. Correspondence Verification by the Client.....	49
§ 19. Entry into Force of the Framework Agreement and the Opening of the Cash Account.....	19	§ 64. Correspondence Addresses .....	49
§ 20. Client's Specimen Signature.....	20	§ 65. Basic Rules of Conduct in the Case of Conflict of Interests .....	49
§ 21. Client's Exposure Limit.....	20	§ 66. Reservation and Pledge .....	50
§ 22. Power of Attorney.....	21	§ 67. Fees and Commissions .....	50
§ 23. Further Powers of Attorney .....	22	§ 68. Liability and indemnity of the Parties to the Framework Agreement .....	51
§ 24. Operating the Cash Account and Keeping Registers .....	22	§ 69. Exclusion of Liability of TMS Europe.....	52
§ 25. Cash Account .....	23	§ 70. Comments and Objections.....	53
§ 26. Depositing Funds on the Cash Account .....	23	§ 71. Placement and Examination of a Complaint.....	53
§ 27. Client's Instructions regarding the Cash Account .....	24	§ 72. Correcting Transactions.....	54
§ 28. Balance on the Cash Account .....	26	§ 73. The Compensation Scheme.....	54
§ 29. Operational Register .....	26	§ 74. Entrusting a Third Party by TMS Europe with the Performance of Certain Activities in Respect of the Brokerage Activities .....	55
§ 30. Register of Financial Instruments .....	27	§ 75. Termination of the Framework Agreement by the Client.....	56
§ 31. Collateral for Receivables on Account of Transactions Entered into on the Basis of the Framework Agreement.....	28	§ 76. Termination of the Framework Agreement by TMS Europe .....	56
§ 32. Safeguarding of Client's money .....	29	§ 77. Effects of termination of the Framework Agreement.....	57
§ 33. Quotations of Financial Instruments.....	30	§ 78. Termination of the Framework Agreement by TMS Europe without the Notice Period .....	57
§ 34. Entering into Transactions on Financial Instruments .....	30	§ 79. Disposition of Assets by the Client following the Termination of the Framework Agreement .....	58
§ 35. Trading in the Transaction System.....	31	§ 80. Settlement of Disputes .....	58
§ 36. Refusal to Enter into Transaction, Place an Order or Instruction .....	31	§ 81. Competent Courts.....	59
§ 37. Procedure and Conditions Relating to the Placement of Written Orders.....	31	§ 82. Amendments to these Terms of Business, Financial Instruments Specification, Information Card about TMS Europe, Characteristics of Financial Instruments and Risk Specification .....	59
§ 38. Phone Instructions for placing of Orders.....	33	§ 83. Compliance .....	60
§ 39. Procedure and Conditions Relating to the Placement of Phone Instructions.....	33	§ 84. Applicable Law .....	60
§ 40. Orders Placed Directly in the Transaction System .....	34	§ 85. Language Versions .....	60
§ 41. Procedure and Conditions Relating to the Placement of Orders Directly in the Transaction System .....	34	§ 86. Mitigation of Operational Risk.....	60
§ 42. Orders Placed by the Client.....	34	§ 87. Promotions .....	61
§ 43. Executions of Transactions .....	35	§ 88. Validity of the Terms of Business.....	62
§ 44. Executing an Order which results in Opening a Position .....	36	Appendix 1.....	63
§ 45. Rollover of Open Positions based on currency pairs .....	36		



## § 1. Definitions

The terms when used in the Terms of Business shall have the following meaning:

- 1) **Account Deposit Currency** – currency in which the Client’s Cash Account is operated.
- 2) **Algorithmic Mechanism** - a mechanism facilitating the conclusion of transactions by the Client by employing mechanisms (mathematical formulas) that operate based on the Client’s algorithms.
- 3) **Annual Report** – a statement of stored and recorded assets, including, in particular cash, the indication of type, name and number or amount of Financial Instruments which shall be dispatched at year-end for which a report is prepared that shall be delivered to the Client in the terms specified in the Terms of Business.
- 4) **Authorization Code** – code expressed as a text message, sent to the last known mobile phone number of the Client.
- 5) **Available Cash** – disclosed in the Operational Register as “Free Margin” – the difference between the value of Operational Register (presented in the Trading System as Equity) and the value of the Required Margin.
- 6) **Bank** – a credit institution, authorized and subject to prudential regulation by a relevant regulatory authority, operating one or more accounts for TMS Europe, including Cash Accounts, Europe onto which the Client deposits money for the purposes of the performance by TMS Europe’ of its obligations to the Client in terms of the Framework Agreement and from which withdrawals are conducted. List of banks shall be part of “Information Card about TMS Europe (MIFID)”.
- 7) **Business Day** – a day on which Malta Stock Exchange is open and it is possible to conclude transactions on financial instruments.
- 8) **Cash Account** – an individual account opened <https://www.tmseurope.com/documents> for each Client with TMS Europe used for the purposes of safekeeping and administration Client’s money and handling the Register of Financial Instruments and Operational Register, opened on the basis of the Framework Agreement concluded with the Client and operated in the Account Deposit Currency. The Balance on the Cash Account is disclosed in the Operational Register under “Balance”. Cash deposited by a Client in a Cash Account is segregated from TMS Europe own funds.
- 9) **Characteristics of Financial Instruments and Risk Specification** – a document constituting an integral part of the Framework Agreement in which the most important aspects of the instruments and risk accompanying the conclusion of transactions on Financial Instruments have been specified.
- 10) **Client** – a natural person, legal person or organizational unit without legal personality with whom TMS Europe has concluded the Framework Agreement.
- 11) **Client Zone** – a function available within the nonstop.tmseurope.com website or other address as indicated in Information Card about TMS Europe, accessible to the Client without any additional registration and within the www.tmseurope.com website.
- 12) **Client’s Data Card** – a document constituting an integral part of the Framework Agreement in which identification data of the Client has been provided.
- 13) **Collateral** – means a contractual obligation to transfer by the Client to TMS Europe a part of cash deposited on the Cash Account as a collateral for claims to which TMS Europe is entitled in relation to the Client.
- 14) **Compensation Scheme** – the scheme specified in Investor Compensation Scheme Regulations (Subsidiary Legislation 370.09) in order to collect funds for the purposes of paying compensation to Investors.
- 15) **Conflict of Interests** – any of the circumstances known to TMS Europe which cause a conflict between



the interests of TMS Europe (or certain persons connected to it or to its group) AND the best interest to act in the clients' interest duty TMS Europe owes to a client; or between the differing interests of two or more of its clients, to each of whom TMS Europe owes a duty (see TMS Europe web site, <https://www.tmseurope.com/documents>).

- 16) **Contract for Differences (CFDs)** – A contract for differences is an arrangement whereby a seller and buyer will be settling the difference between the current value of the underlying asset and its value at the time the contract is made. If the difference is positive the seller pays the buyer while if the difference is negative the buyer pays the seller. CFDs are considered to be financial derivatives that allow traders to take short or long positions to speculate on the currency or other markets.
- 17) **Conversion Rate** – Currency Pricing Rate being an element of the underlying instrument in relation to the Account Deposit Currency, determined on a current basis according to the current market rate. Some Conversion Rates may not be determined indirectly, i.e. as currency crosses in particular when direct Pricing Rate is not available.
- 18) **Counterparty** – a Client being simultaneously a Counterparty in the meaning of EMIR that has entered into the Framework Agreement with TMS Europe and concludes Transactions pursuant thereto.
- 19) **CSP** – Client Service Point of TMS Europe, separate, dedicated space in the offices of TMS Europe.
- 20) **Derivative** – means a financial instrument defined in Article 2 (5) of EMIR Regulation.
- 21) **Discrepancy** – means any discrepancy between the Client and TMS Europe as regards Key Conditions relating to a Transaction.
- 22) **Eligible Counterparty** – counterparty as defined in Article 30 (2) of the MIFID II.
- 23) **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.
- 24) **EMIR Counterparty** – Financial Counterparty or Non-Financial counterparty as stipulated under regulation 648/2012 (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0648&from=EN>)
- 25) **Equity CFD** – CFD contract in which shares are the underlying investment instruments.
- 26) **Extraordinary Change of Conditions** – each of the events specified in clause § 69 “Exclusion of Liability of TMS Europe”, sub-clause 2 of the Terms of Business.
- 27) **Financial Instruments Specification of TMS Trader (hereinafter: Financial Instruments Specification)** – specification of Financial Instruments offered in the Transaction System together with a specification of detailed conditions for the execution of transactions, including, in particular, the amount of rates of the Margin required for particular instruments, available on the website.
- 28) **Framework Agreement** – the agreement on the provision of services consisting in executing orders to purchase or sell financial instruments as well as safekeeping and administration of clients' money and Financial Instruments, including operating cash accounts and conducting the currency exchange by TMS Europe, together with all appendices specified in the Framework Agreement, constituting an integral part thereof. The document may be found on <https://www.tmseurope.com/documents>.
- 29) **Global Position Exposed to Risk** – a value expressed in a deposit currency resulting from open Clients' positions, exposed to a risk of changes in the financial instruments prices.
- 30) **Investment Risk** – any type of risk related to the conclusion of transactions on the Financial Instruments, described in detail in “Characteristics of Financial Instruments and Risk Specification” and the Terms of Business.
- 31) **Key Conditions** – shall mean, in relation to a Transaction, its nominal value, currency, underlying



instrument, party to a transaction, settlement date, execution date, effective date and quotation. Refers only to EMIR Counterparty.

32) **Key Information Document** – document as described in Regulation EU 1286/2014 available on the TMS Europe website.

33) **Large Trader Reporting Program** – Large trader reporting rule, enacted by the SEC, requires entities or persons who effect transaction volumes of significant specified thresholds during any calendar day or month to register with the SEC.

34) **LEI** – Legal Entity Identifier, an identification code of the Counterparty composed of 20 alphanumeric characters. This is a code unique to a legal entity or structure. The code is included in a global data system and enables every legal entity or structure that is a party to a relevant financial transaction to be identified in any jurisdiction.

35) **Lot** – a transaction unit determining the value of a given transaction; That amount is specified in the Financial Instruments Specification; in the case of currency Financial Instruments, 1 lot constitutes the equivalent of 100 000 units of the base currency, with such a reservation that it is possible to conclude a transaction whose minimum denomination constitutes one-hundredth of a Lot.

36) **Margin**– in relation to any position – value of assets expressed in the account base currency, constituting a product of the rate of the Margin and the value of exposures for the purposes of the Margin expressed in the transaction base currency; the value of the Margin shall be determined in connection with the opening of a position and shall remain unchanged until the settlement of a transaction, subject to clause § 55 “Increase of the Margin Deposit”, as well as provisions of the Financial Instruments Specification. Detailed rules regarding the determination of exposure for the purposes of the Margin shall be specified by the Financial Instruments Specification.

37) **Margin Level** – a percentage indicator of the coverage of the margin requirement calculated as a relation between the Equity and the Required Margin. Disclosed in the Operational Register under “Margin Level”.

38) **Market** – non-regulated international financial market where transactions are concluded on the basis of bilateral agreements and the subject of such transactions are other financial instruments, indices, rates, commodities or assets.

39) **Market Rules** – rules and regulations in force on the currency market and employed financial institutions being participants of this market, developed pursuant to recommendations of renowned international organizations of the currency market participants. In particular, Market Rules shall mean rules included in the first and third part of ACI Model Code 2013. Market Rules shall be applicable in matters not covered respectively by the general provisions and then in the Framework Agreement and the Terms of Business.

40) **MFSA** – the Malta Financial Services Authority, or any other successor regulator, having its offices at Notabile Road, BKR 3000, Attard, Malta.

41) **MFSA Rules** – such rules, license conditions and/ or guidelines as may be applicable to TMS Europe in terms of its license granted by the MFSA in terms of the Act.

42) **MIFID II Directive** - the Markets in Financial Instruments Directive no. 2014/65/EU, transposed in Malta within the Investment Services Act, thereafter ‘the Act’ of Chapter 370 of the Laws of Malta of 1994.

43) **MTF** - a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with Title II of MIFID II.

44) **Non-Market Prices** – Price data feeds that are distant from other independent data sources due to latency, time differences, quoting errors, or connectivity issues amongst others. The allowable tolerance of discrepancy between prices is specified in the Financial Instruments Specification under “quotes tolerance”. Systematically trading at the extremes of these quotes tolerances may also be considered as Trading of non-market prices.



- 45) **One-Click** – a function ensuring the immediate transmission of the Client’s Order with one-click as opposed to two-click (click and verify). With one-click once the client clicks on buy/sell from his TMS Platform, the order may not be verified, cancelled or modified and is immediately sent for execution. The Client should make use of the One-Click function only after having acquainted with its operation in the demo version of the Transaction System.
- 46) **Operational Register** – supplementary register in relation to the Cash Account, used for the purposes of recording the estimates of current amounts due and cash receivables of the Client on account of concluded transactions, and in particular for the purposes of monitoring the current amount of the Margin Deposit. The current Balance on the Operational Register is disclosed under “Equity”.
- 47) **OTF** - multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract in accordance with Title II of MIFID II.
- 48) **Portfolio Compression** – a means of credit risk mitigation consisting in the technical closure of numerous transactions of a Client in a given instrument and the opening of one position in the net amount.
- 49) **Position Rollover, Rollover** – maintaining a position for another day specified in the Financial Instruments Specification.
- 50) **Pricing Rate** – *bid* rate for the purchase position (buy) and *ask* rate for the sale position (sell) of each Financial Instrument in the Transaction System, quoted on the basis of the market rate at the moment of pricing.
- 51) **Professional Client** – a professional client as defined in the MIFID II.
- 52) **Received Collateral** – a value of the Margin, determined no less frequently than once in every Business Day, that was established and provided by the Client to TMS Europe.
- 53) **Register of Financial Instruments** – register of Financial Instruments held by TMS Europe with respect to the trades concluded upon Client’s order, recorded in the accounting and settlement section of the Transaction System. All Financial Instruments will be registered in the name of the Client.
- 54) **Regulated market** - a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorized and functions regularly and in accordance with Title III of MIFID II.
- 55) **Renowned Information Agency** – shall be understood as an entity that discloses market data to TMS Europe on the basis of which the preliminary estimation of the occurrence of wrong [price] quoting is conducted. The list of aforementioned entities shall be specified by a resolution of the Board of Directors of TMS Europe.
- 56) **Required Collateral** – the value of the Margin that should be provided by the Client to TMS Europe, constituting the sum of the Required Margin Deposit and Unexecuted Position Value so long as its value is negative.
- 57) **Required Margin**– cash constituting a margin for a Global Position Exposed to Risk, disclosed in the transaction system as “Margin”. Detailed rules regarding the determination of amount of the Required Margin shall be covered in the Financial Instruments Specification.
- 58) **Retail Client** – Any client that that is not defined as Professional client or Eligible Counterparty.
- 59) **Settlement Day** – a day on which the Client’s Cash Account is credited or charged with the amount of net results on account of a transaction, in accordance with market rules.
- 60) **Spread** – the difference between the purchase rate and the sale rate of a Financial Instrument. In the case of a sale transaction executed by the Client, the *bid* rate shall be employed, and in the case of a purchase transaction the



*ask* rate shall be employed.

- 61) **Systematic Internaliser** – investment firm which, on an organized, frequent, systematic and substantial basis, deals on own account when executing client orders outside a regulated market, an MTF or an OTF.
- 62) **Swap Points** – the value forming the basis for crediting/charging the Client's Cash Account, resulting from the Position Rollover. Crediting and charging is performed at the moment of closing a position (settlement). The goal of Swap Points is to reflect the value of money in time.
- 63) **Table of Fees and Commissions of TMS Europe” (Table of Fees and Commissions)** – a list of fees and commissions due to TMS Europe on account of activities performed under the Framework Agreement.
- 64) **Terms of Business** – shall mean these Terms of Business which binds TMS Europe and the client under the provisions of the said terms for the delivery of services consisting in executing orders to purchase or sell financial instruments and dealing on own account operating accounts and keeping records relating to such trading by TMS Europe – TMS Trader for the client.
- 65) **The Investment Services Act** – The Investment Services Act, thereafter ‘the Act’ of Chapter 370 of the Laws of Malta of 1994, including such subsidiary legislation as may be enacted from time to time and applicable to TMS Europe.
- 66) **TMS Europe** –TMS Brokers Europe Limited incorporated and authorized in Malta, with its registered office at No. 266, level 1, Ta’Xbiex Seafront, Gzira GZR1020, Malta.
- 67) **Trading Venue** – means a regulated market, an MTF or an OTF.
- 68) **Transaction** – agreement concluded between the Client and TMS Europe to exchange financial instruments.
- 69) **Transaction System** – trading system operated by TMS Europe, intended for accepting and transmitting orders and executing orders on Financial Instruments.
- 70) **Underlying Instrument** – a money market instrument, currency, precious metals, cryptocurrency, indicator, interest rate, index, basket or financial instrument, including also a derivative, on the basis of which TMS Europe provides quotations for Financial Instruments. Should an underlying instrument be listed on more than one Venue, TMS Europe shall also indicate a Venue to which the price relates. Where a Financial Instrument trades on multiple markets, even if one of which is the primary market, TMS Europe may but is not required to base bid and ask prices on the aggregate bid/ask prices in the multiply markets.
- 71) **Unrealized Position Value** – cash value being equivalent to a result of the current market valuation of an open position, as disclosed in the Operational Register (profit/loss from open positions). Disclosed in the Operation Register under “Profit” or “Current Result” in summary.
- 72) **Venue** – Systematic Internaliser or Trading Venue.

## § 2. Subject of the Terms of Business - General Terms of Business

These Terms of Business (TOB) lay down the conditions under which TMS Europe provides services to its clients, unless stipulated otherwise in another agreement between TMS Europe and the client. These TOB set out some of the key aspects of the relationship between TMS Europe and its clients and govern the legal relationship between the Client (the ‘Client’) and TMS Europe. These TOB replace any previous TOB as from 3 January 2018 and apply to all services and related transactions unless specifically agreed by both parties. Any conflict between these TOB and other



documentation are prevailed by these TOB. Any reference in the previous TOB shall now be read as reference to these TOB.

The Client should read these TOB together with any documentation provided by TMS Europe carefully and refer any requests for clarification to TMS Europe.

TMS Europe may communicate with the Client by telephone and electronic mail unless otherwise stated by the Client.

TMS Europe will provide the Client with a copy of these TOB and the most recent changes as requested. If agreed, such updates will be accessed to by the Client on TMS Europe's website at <https://www.tmseurope.com/documents>.

### § 3. Licensing Details

1. TMS Europe is authorized by the MFSA under the Act in line with its Category 3 license, to provide the following investment services:

- a) Execution of orders;
- b) Dealing on own account.

TMS Europe is also licensed by the MFSA to hold and control Client's assets.

2. TMS Europe is a limited liability company registered in Malta under company registration number C70460, with its registered office at No. 266, level 1, Ta'Xbiex Seafront, Gzira GZR1020, Malta (Telephone: +356 20341999, e-mail [office@tmseurope.com](mailto:office@tmseurope.com)),

3. The Terms of Business specify the rules governing the performance carried out by TMS Europe with regard to investment services set out in sub-clause 1 of this Section above in relation to its clients by:

- executing orders to purchase or sell financial instruments indicated in sub-clause 5 of this Section either directly on the market or as a counterparty to the transaction;
- operating accounts and keeping records relating to such trading, recording the state of those rights in the Register of Financial Instruments and operating Cash Account and Operational Register;
- holding Client's assets;
- as well as rights and obligations of the parties resulting from the conclusion of the Framework Agreement.

4. TMS Europe performs services specified in sub-clause 1 of this Section under the Framework Agreement, in accordance with rules specified in the Terms of Business and on the basis of applicable provisions of the law and regulations.

5. TMS Europe executes the orders submitted by clients to purchase or sell Financial Instruments indicated in the Financial Instruments Specification available on the website of TMS Europe [www.tmseurope.com](http://www.tmseurope.com).

6. TMS Europe executes orders on behalf of Client in an Execution Venue. TMS Europe shall be a party to the transaction concluded with the Client albeit the order may be executed with a third party.

7. Under the Framework Agreement the Client acquires a right to conclude transactions on any type of Financial Instruments indicated in sub-clause 5 of this Section. TMS Europe may differentiate products, instruments and their features (e.g. Leverage) depending on the Clients' assessment, in particular, but not limited to knowledge, experience,



investment goals and financial situation.

8. In the scope of services specified in sub-clause 1 of this Section above, TMS Europe shall offer to the Client, for the purposes of concluding transactions, a direct access to the Transaction System after the client installs such system himself onto his computer. The Client shall additionally be able to access the Transaction System by means of web and mobile versions. The functionalities of particular versions may differ from one another as regards available Financial Instruments and orders.
9. Whenever the Transaction System refers to time, such reference shall be understood as a local time in Malta.
10. Every balance reported to the Client as at day-end shall be a balance as at 23.59 hours of local time in Malta and is treated as end of day and all the reports and statements sent to the Client refer to it.
11. Brokerage services indicated in sub-clause 1 of this Section shall be performed by TMS Europe collectively and for the reason of their nature it is impossible for TMS Europe to perform them separately.
12. The settlement of concluded transactions shall not impose on any other parties the obligation to deliver the Underlying Instrument. Learn more at <https://www.tmseurope.com/education>.
13. The Client shall be obliged to maintain an appropriate level of the Margin Deposit in accordance with terms specified in clause § 54 “Rules Regarding the Calculation of and Supplementing the Margin Deposit”.
14. TMS Europe will provide the services to its Clients in accordance with the applicable laws, regulations, bye-laws, license conditions, guidelines, exchange requirements and market best practices to which it may be subject from time to time.
15. Any conflict between the Terms and Rules, the latter shall apply.

#### **§ 4. Client Classification**

1. TMS Europe is obliged to classify its Clients as Eligible Counterparties, Professional Clients or Retail Clients. This classification is important because it reflects the level of protection given to such Clients. Accordingly, Eligible Counterparties are afforded the least level of protection because they are deemed to be very knowledgeable about and experienced in the Products and Services which TMS Europe is offering. On the other hand, Retail Clients are afforded the greatest amount of protection because they are deemed to possess little, if any, knowledge and experience in the Services and Products concerned.
2. To ensure highest client protection, unless expressly agreed with a Client upon the conclusion of the Framework Agreement, TMS Europe shall treat all Clients as Retail Clients.
3. At the written request of the Client, and subject to the provisions of law and MFSA Rules, TMS Europe may re-categorize a Client as Elective Professional with the provision of warnings that such clients would be losing protection guaranteed for retail clients and through a written request for such re-categorization by the client and acknowledging that the Client is aware of the consequences of the protections they may lose. Eligible counterparties who wish to be reclassified as a retail or professional client must do so in writing and indicate whether this is being requested generally or in relation to one of more specific services/instruments. Retail clients cannot be elected to Eligible counterparties.
4. The Client must prove to TMS Europe that it qualifies as an Elective Professional Client in line with applicable law and regulation. TMS Europe reserves the right to accept or otherwise this re-classification. In acceptance of such re-classification, TMS Europe will inform the client in writing with the implications of such. The Client agrees to inform TMS Europe of any material changes in the information provided to the latter which might lead to a change in Client



Classification. A professional client can at any time request a variation in the terms of the agreement in order to secure a higher degree of protection.

5. TMS Europe ensures varied levels of protection depending on the category granted to the Client. Retail Clients are entitled to the broadest range of protection, whereas Professional Clients and Eligible Counterparties are deemed entities possessing high level of knowledge about financial markets and products, capable of estimating the investment risk on their own, and thus are offered by TMS Europe a narrower level of protection.
6. Prior to the conclusion of any client agreement, TMS Europe shall notify new clients with their client categorization (retail/professional/eligible) and notify existing clients of any new client categorization, as applicable, following the implementation of the MIFID II framework.
7. TMS Europe shall inform clients in a durable medium about any right that client has to request a different categorization and about any limitations to the level of client protection that a different categorization would entail.

## **§ 5. Client Profiling - Assessment tests**

1. TMS Europe offers non-advisory investment activities and services to clients. In view of the financial instruments offered to the customers are deemed to be complex financial instruments under the MIFID II framework, TMS Europe is obliged to carry out an appropriateness test prior to executing orders on behalf of the clients.
2. TMS Europe carries out an appropriateness assessment to ensure that the product envisaged is appropriate for the Client, in view of his/her particular knowledge and experience, particularly in view of the risks involved in relation to the product or investment service offered or demanded by TMS Europe.
3. TMS Brokers executes trade orders which are related to derivatives and hence are deemed to be complex financial instruments under the MIFID II. Such instruments may not be appropriate for all clients and hence such these assessments help TMS Europe in identifying the knowledge and experience of Clients in relation to these financial instruments.
4. It is the obligation of TMS Europe to determine whether the Client has the necessary experience and knowledge in order to understand the risks involved in relation to the Product or Service offered or demanded when assessing whether such offering or demand, is appropriate for a Client.
5. If TMS Europe, following the appropriateness assessment, considers the product or service offered or demanded is not appropriate for the Client, a separate warning shall be issued to the client notifying the client that in view of the Client's knowledge and experience, the product or service considered for execution may not be appropriate for the Client.
6. When the client chooses not to provide TMS Europe with the necessary information or with incomplete information on his/her knowledge and experience, TMS Europe shall provide a separate warning to the client that such a decision will not allow TMS Europe to determine whether the product or service offered or demanded is appropriate for the Client.
7. If the outcome of such assessment verifies that the client does not have the necessary knowledge and experience, and if TMS Europe considers such product as not appropriate to the client, it shall warn the Client. Such warning will be provided to the Client separately from the assessment.
8. Professional Clients are deemed, by default, to possess the necessary knowledge and experience pre-requisite requirements. Such knowledge and experience, however has to be relevant to the product or service being offered or demanded.
9. In its appropriateness assessment, TMS Europe will test for the information regarding the client's knowledge and experience in the investment field including the sophistication of the client, the nature and extent of the service to be provided and the type of product or transaction envisaged.
10. TMS Europe hereby confirms to its Clients that it is exempted from carrying an assessment of suitability for the Client as it does not offer investment advice (including personal recommendations) or portfolio management.



## § 6. Reporting obligations and disclosure of information to clients

1. TMS Europe will keep records of all the transactions, including non-executed transactions, documentation provided to Clients and communications with the Clients as prescribed by the MFSA and ESMA.
2. TMS Europe shall, in all its communication with its Clients, shall be fair, clear and not misleading, including retail and professional clients and eligible counterparties.
3. TMS Europe, shall provide to the Clients, in good time prior to the initiation of any Client agreement, information on financial instruments, investment strategies, as applicable, guidance and warnings on the financial instruments available, warnings around appropriateness of the product or service, as applicable, execution venues, costs and charges, conflict of interests for the Clients, investor compensation scheme, and complaints handling procedures and periodic reports, amongst others.

## § 7. Best Execution Arrangements and Policy

- TMS Europe executes the Client's orders in accordance with its Best Execution Policy, a copy of which has been provided to the Client or made available on the website <https://www.tmseurope.com/documents> wherein the Client has conformed to have read and agreed to the provisions of the said policy.
- The Client's continued placement of orders constitutes the Client's continued consent to the TMS Europe's Best Execution Policy being in effect and as amended from time to time.
- TMS Europe shall amend the policy as necessary and update the website version accordingly, following a notification to the Client via e-mail or through the communication method agreed.
- TMS Europe will consider the continued placement of orders by the Client as to constitute the Client's continued consent to the TMS Europe's Order Execution Policy as in effect. TMS Europe may amend its Order Execution Policy from time to time to comply with respective law and regulations.
- Notification via e-mail or through the preferred communication channels agreed, will be provided to the clients.
- The Best Execution Policy shall be read jointly with the Framework Agreement and any corresponding documentation.
- TMS Europe shall also, on a yearly basis disclose the top five execution venues, as applicable, on the TMS Europe's website (insert the link to the top 5 disclosure).

## § 8. Clients' Assets and Money

1. TMS Europe takes all the necessary steps to ensure that any client assets and monies of its clients deposited with a third party are separate from the instruments/monies held by TMS Europe and from the instruments/monies of the third party itself.
2. TMS Europe keeps records on accounts as necessary to ensure that clients assets and monies are held separately from its own accounts and that of other clients
3. TMS Europe adopts organizational arrangements to minimize the risk of the loss or diminution of client money
4. TMS Europe shall, upon receiving any client funds, promptly place those funds into one or more accounts opened with a regulated credit institution or bank. To this end, it shall exercise due skill, care, diligence in the selection and appointment and period review of the credit institution or bank.
5. In its choice, TMS Europe exercises all due skill, care, diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those instruments
6. In its choice, TMS Europe takes into account the expertise and market reputation of such third parties as well as any legal requirements or market practices related to the holding of those instruments that could adversely affect clients' rights.



7. TMS Europe is committed to perform regular reconciliation of each clients' money bank account and also on the total balances on all clients; money bank accounts.
8. TMS Europe is obliged to provide its customers with quarterly statements including the details of all the instruments or money held by the investment firm for the clients at the end of the period covered by the statement, if such instruments or money have been the subject of securities financing transactions, the extent of any benefit that accrued to the clients for participation on securities financing transactions and a clear indication of which assets are affected by some peculiarities in their ownership status.
9. Without prejudice to the requirements listed in this clause, TMS Europe shall not be liable for the solvency, actions and omissions of such credit institution or bank.

## **§ 9. Investment advice and service offered by TMS Europe**

1. The details of the financial instruments offered to the clients, together with the description of risk in relation to each financial instrument available, can be found on the website (<https://www.tms europe.com/documents>).
2. By accepting the terms of this Agreement, the Client has confirmed to have read and understood the Characteristics of financial instruments and a description of risk document.

## **§ 10. Decisions and Resolutions of the Board of Directors of TMS Europe**

1. On the basis of and according to the procedure specified herein, the Board of Directors of TMS Europe shall be entitled to issue, under the detailed authorization contained herein and in order to perform these Terms of Business, resolutions and decisions binding on the Client.
2. Information about the introduction, amendment or repeal of a decision of a competent officer or a resolution of the Board of Directors of TMS Europe together with the contents of such resolution shall be published on websites of TMS Europe and in CSP of TMS Europe.
3. Subject to sub-clause 4 of this Section below, a decision of a competent officer or a resolutions of the Board of Directors TMS Europe shall enter into force after the lapse of 3 business days of the day of publication specified in sub-clause 2 above. The provisions on amending the Terms of Business shall not be applicable.
4. TMS Europe reserves the right, in force majeure cases or in special circumstances, to introduce a new or amend an existing decision taken by a competent officer, or a resolution of the Board of Directors of TMS Europe that shall enter into force and shall become binding on the Client immediately upon 3 days of its publication. Force majeure or special circumstances can be any of the following:
  - a. riots, strikes, acts of terror, terrorist attacks, fire, power failure, communication failure, Acts of God, armed conflict, government and public administration orders;
  - b. destruction of the registered office of the company or occurrence of circumstances preventing the operational activity;
  - c. suspension of quotations in financial instruments on a given market or the closure of such market;
  - d. suspension of the possibility of short selling financial instruments on a given market;
  - e. above average price volatility or loss of liquidity of financial instruments;
  - f. publication of political news significantly affecting the quotations of financial instruments;



- g. occurrence of irregularities in the operation of the transaction system for which TMS Europe is not liable;
- h. IT systems failure or failure of computer equipment that prevents the ordinary operation of the IT systems for which occurrence TMS Europe is not liable;
- i. telecommunications system failure for which TMS Europe is not liable,
- j. failure of and errors on the part of quoting providers for which failures and errors TMS Europe is not liable.
- k. lack of quotations or tech problems related to receiving updated market prices for Financial Instruments that TMS has no influence on and is not liable for,
- l. lack of possibility to transact with Liquidity Providers,
- m. amendments in construction of product,
- n. amendments in product offer,
- o. changes in binding regulations,
- p. guidelines issued by relevant supervision authorities.

## **§ 11. Registering and recording Contacts with Clients**

1. TMS Europe is obliged to retain the following records for a minimum period of 5 years or more, as applicable:
  - all communication with the clients;
  - information about costs and charges;
  - information provided to the clients about the financial instruments, the company and services offered and safe guarding of client assets, marketing communications and records of personal transactions.
2. TMS Europe hereby informs the client that all the communications with the client is being documented, including the recoding of telephone calls, documentation of e-mails and other correspondence, requests for transactions, in relation to the execution of orders on behalf of the clients. Documentation and recording of such documentation is required as per MFSA regulations and other regulatory requirements to meet its legal and regulatory requirements and any phone calls are recorded. Any face to face meetings will be minuted and documented accordingly. Such recording and communication shall be made available to the MFSA upon request for a period of 5 years, or more. Such recordings will also cover orders that are not materialized.
3. TMS Europe cannot provide investment services unless such consent is provided by the client. Recording of such communications shall be governed by the internal policies of TMS Europe as mandated by Rules.
4. Reception for execution of orders is primarily received electronically through the trading platform but could, in exceptional circumstances, be received by telephone communications or through other durable mediums such as mails, emails or through face to face meetings with the clients. In such cases any orders placed by clients should be directed to the business correspondence address of the company and in no way to the personal communication addresses of the employees of TMS Europe. As above, such communication shall be recorded and documented, including face to face meetings.
5. Upon the request of the Client, TMS Europe shall make available to the Client copies of records containing order requests as described above, for a minimum period of five (5) years.



6. TMS Europe shall be the sole proprietor of the recorded conversations. TMS Europe does not grant access to these recorded conversations to the Client but shall provide any records if so requested by the client for his/her own records.

## § 12. Data Protection and Confidentiality

1. TMS attaches great importance to client confidentiality. However, TMS Europe reserves the right to disclose any information about the client or its investments that is requested by the MFSA or any other regulatory authority to which TMS Europe is, subject and to any market or exchange on which TMS Europe may deal or to any person to whom TMS Europe is otherwise required by law or Applicable Law to disclose such information.
2. TMS Europe shall respect and protect the confidentiality of all information concerning the Client and shall not, without prior Client's consent, disclose any such information to third parties except in the proper performance of these Terms or as required by Law.
3. TMS Europe adheres to all provisions of the General Data Protection Regulation and to the Data Processing Policy of TMS Europe as found on its website.
4. In processing clients' data, TMS Europe will only collect information that is deemed to be relevant and required to understand the clients' needs in relation to the investment service provided, to enhance its services to clients. If so required, it may pass client information in fulfilling its regulatory duties with governmental bodies, regulators and authority bodies. It shall keep client information up to date and ensure having the highest security standards to protect clients' personal data from unlawful data processing.
5. The Client has the right to require access to his/her personal data held by TMS Europe. The Client may request the revision of any inaccurate, incomplete or non-relevant personal data kept by TMS Europe.
6. The Client will be provided with the Privacy Policy for details of processing of personal data and for necessary consents for processing specific personal data for specific purposes. Details are found on <https://www.tmseurope.com/privacy-policy>.
7. The Client specifically consents TMS Europe to use its information for marketing material related to financial products and services offered by TMS Brokers. The Client has to opt-in for receiving marketing material from TMS Brokers.

## § 13. Identification Password

1. TMS Europe provides the Client with permanent login and starting password to the Trading System. Client is obliged to amend that password immediately during his first login.
2. For the purposes of performing the Framework Agreement the Client shall define an additional identification password used for remote identification (e.g. while placing phone instructions). This password won't be used as a password to the Trading System.
3. The Client shall be obliged on its own to exercise due diligence in choosing, storing and using passwords and data specified in sub-clause 1 and 2 of this Section in such a manner so as to avoid tampering and use of such passwords and data by unauthorized third parties. In particular, the Client shall be fully liable for:
  - a) orders placed in the Transaction System and for the contents of all instructions conferred by electronic means bearing the name of the Client or other credentials granted by TMS and any other element allowing the identification of the Client, and for
  - b) transactions concluded and orders placed by a third party using the name and identification data relating to the Client allowing access to the Transaction System and the Client Zone as well as an identification password that allows



placing phone instructions, even if such person was not authorized by the Client to use such data unless the Client has notified TMS Europe in advance of possible access of unauthorized persons to the aforementioned security measures.

4. Subject to sub-clause 6 of this Section, the Client undertakes to repair the damage that TMS Europe may bear as a result of executing an erroneous instruction or instruction issued by an unauthorized person or by any other person using identification data allowing access to the Transaction System and the Client Zone. The Client shall be liable for actions and omissions of persons specified in the preceding sentence as for its own actions and omissions.

5. In case the Client becomes aware or, had the Client exercised due care, it should have become aware of the fact that unauthorized persons obtained access to passwords and /or data specified in sub- clause 1 and 2 of this Section, the Client shall be obliged to notify TMS Europe of this fact in a manner specified in respect of placing phone instructions.

6. TMS Europe, after receiving from the Client the information specified in sub- clause 5 of this Section, shall without undue delay prevent any possibility of placing phone instructions by the Client and shall lock access to the Transaction System and the Client Zone. From the moment TMS Europe blocks any possibility of placing phone instructions by the Client and access to the Transaction System and the Client Zone, the Client shall not be liable for damage incurred by TMS Europe as a result of issuing instructions by persons other than the Client and persons authorized by the Client. The foregoing does not apply to position which had been opened by the Client – Client is still responsible to the investment risk on these positions.

#### § 14. Non-Confidentiality

1. Each of the parties to the Framework Agreement undertakes to maintain in confidentiality issues specified in the Framework Agreement and to exercise due care in order not to allow the disclosure of the information contained in or relating to the Framework Agreement unless the disclosure of such information is required by the provisions of the law, in particular, but not limited to, information disclosed upon a request from an authorized governmental body.

2. By signing the Framework Agreement, the Client authorizes TMS Europe, without the need to notify the Client in advance, to grant any necessary information regarding the Client, its Cash Account, Register of Financial Instruments and Operational Register at the request of an authorized governmental body, authorized institution or to a court of law in order to assure the compliance of actions with the provisions of the law or Market Rules.

3. The Client acknowledges that he is aware of the fact that executing transactions in Financial Instruments where the underlying instruments are financial instruments listed on either regulated market or multilateral trading facility, TMS Europe may be obliged to deliver information and data regarding the beneficiary of those transactions. This shall apply, in particular, in respect of the Large Trader Reporting Program. The Client grants its consent for the disclosure of any necessary information and data required by such Large Trade Reporting Program, including information regarding the beneficiary of transactions and details regarding open positions to governmental bodies, authorized by the local law applicable to a given stock market, authorized to process such data.

4. Client confirms that he is aware of his reporting obligation arising from the regulations. In particular client should be aware of reporting obligations arising from:

a) 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;

b) 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 (only entrepreneurs and legal entities).

5. TMS Europe is obliged to provide reports from executed trades and positions to competent authorities. In case of trades concluded with individual persons, these reports include personal data of clients. The administrator of these data shall be competent authority designated upon separate regulations.



## § 15. Investment Risk

1. By signing the Framework Agreement, the Client represents that it is fully aware of the fact that due to the high level of leverage, concluding transactions on Financial Instruments involves a significant risk of incurring financial losses that may exceed the amount of the money collected on Cash Account for the transaction. The Client, in particular, represents that it is aware that:

a. due to the low amount of the Margin Deposit in relation to the nominal value of a transaction, a change in the price of the underlying instrument forming the base of the Financial Instrument, may result in the loss in excess of the amount of paid capital;

b. where TMS Europe exercises the rights specified in the Framework Agreement or the Terms of Business, to conclude transactions on the Client's account without the Client's order or instruction, any financial result arising from such transaction shall be booked on the Client's Cash Account;

c. it is not possible to guarantee the making of profits or avoiding loss through transactions in Financial Instruments; the Client has not obtained such guarantee from TMS Europe and the conclusion, validity and enforceability of the Framework Agreement is not conditional upon receiving such guarantee from TMS Europe in the future.

2. In the context of Professional Clients, it shall be deemed that the Client has the financial ability to bear the risk of making high-level transactions.

3. The Client shall indemnify TMS Europe against any losses on account of the Investment Risk or borne as a result of an action or omission performed on the basis of investment information provided to the Client by TMS Europe, as specified in the Terms of Business, provided TMS Europe when granting such investment information exercised due care, and did not act with gross negligence, with willful default or fraud. By signing the Framework Agreement, the Client represents that he has read the contents of all necessary documents, especially, but not limited to "Characteristics of Financial Instruments and Risk Specification", "Financial Instrument Specification", "Key Information Documents", "Table of Commissions and Fees" and fully understands and accepts its provisions.

## § 16. Conclusion of the Framework Agreement

1. These Terms of Business shall apply to all Clients which have concluded a Framework Agreement with TMS Europe. Opening any Cash Accounts within the framework of any type of services does not require an additional form.

2. The execution by TMS Europe of the Framework Agreement shall be dependent on the Client submitting to TMS Europe a statement on his financial standing in writing or via electronic communication. Provided that, where the Framework Agreement is entered into with a Professional Client, and the Professional Client has not demanded that TMS Europe classifies it as a retail client, TMS Europe shall not make the conclusion of the Framework Agreement dependent on the submission by the Client a statement on its financial standing.

3. The information regarding the financial situation of the client or potential Client shall include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.

4. The information regarding the investment objectives of the client or potential client shall include, where relevant, information on the length of time for which the client wishes to hold the investment, his preferences regarding risk



taking, his risk profile, and the purposes of the investment.

5. If Client will not provide information as defined in sub-clause 3 of this Section or TMS Europe shall determine that the product does not suit Client's needs, goals, experience or knowledge TMS Europe reserves the right to refuse to conclude the Framework Agreement.

6. With respect to Professional Clients and Eligible Counterparties, TMS Europe shall be entitled to assume that the Professional Client possesses the requisite knowledge and experience to understand the risk involved in relation to the investment services to be provided in respect of Financial Instruments in terms of the Framework Agreement.

7. By signing the Framework Agreement, the Client represents that:

- The Client provides correct, complete, up-to-date information to TMS Europe and when such information changes, the Client will be informing TMS Europe with such a change immediately.

- The Client is responsible for the completed documents and is advised that incomplete and/or inaccurate information may prejudice the Client's rights.

- The Client has the capacity and authority to enter into the Framework Agreement.

- The Client is the beneficial owner of any cash subject to the Framework Agreement and will indemnify TMS Europe against any third-party claims in relation thereto.

- The Client will be complying with all laws applicable in Malta including the Maltese tax and exchange control laws and regulations.

8. TMS Europe shall be entitled at its own discretion to refuse to enter into the Framework Agreement with any particular Client. TMS Europe shall notify the Client in writing of its decision together with a justification without undue delay.

9. Before Client begins to trade with TMS Europe, TMS Europe will take all reasonable steps to provide to Client with a clear explanation of all commission, spreads, fees, other charges for which Client will be liable. These charges will affect Client's trading net profits (if any) or increase Client losses.

10. Before Client begins to trade with TMS Europe, he will be required to provide TMS Europe with written text or voice recording with a notice that the Client is aware that the product he is about to purchase is especially complex and that the Client is aware that national supervisory bodies believe it is not appropriate for retail investors.

## **§ 17. Prevention of Money Laundering – Client identification and source of funds and wealth**

1. TMS Europe is subject to the Prevention of Money Laundering Laws and regulations in force in Malta and is bound to undertake all the anti-money laundering checks on clients in accordance with such laws and regulations. The Client is required to produce satisfactory evidence of identity and of his/her source of wealth and source of funds, including during any time of our business relationship. Accordingly, the conclusion of the Framework Agreement shall be conditioned upon submitting by the Client documentation enabling his identification and verification. TMS Europe shall retain this information after the Client closes the account with TMS Europe as required by law and regulation.

2. The Client represents and warrants that any monies transferred and transactions ordered to TMS Europe are not in any way originating or related from activities or transactions which are a criminal offence in terms of the Prevention of Money Laundering and local rules and regulations.

3. When concluding the Framework Agreement, the Client is required to provide the documentation set out in Appendix 1.



4. In particular, natural persons are obliged to provide TMS Europe with:
  - a. copies of an identification document, as seen and verified by the certifier, confirming that the photo is a true likeness of the Client or the beneficial owner as the case may be;
  - b. additional documentation containing identification details of the client. This may take the form of a Bank Reference;
  - c. utility bill or a bank reference containing the residential address of the Client;
  - d. such other documentation as may be required by applicable law and notified to the Client prior to the conclusion of the framework Agreement;
  - e. signature specimen.
5. When concluding the Framework Agreement, legal persons which are not regulated in a recognized jurisdiction are required to submit:
  - A corporate resolution in original;
  - A certified true copy of the certificate of incorporation;
  - A certified true copy of the Memorandum and Articles of Association;
  - Certificate of legal person good standing in original issued by the registrar of companies of the country of origin or from a lawyer/solicitor, if applicable by law;
  - A summary and explanation of ownership structure and Organizational chart including ownership structure, to the extent that would determine who the beneficial owner is;
  - A duly filled-in and signed Corporate application form including all details in relation to Directors, UBOs, FATCA status, CRS status and Emir declaration and LEI code amongst others;
  - A duly filled-in and signed Framework Agreement;
  - Means of identification and verification of all Ultimate Beneficial Owners and Authorized individuals;
  - other documentation as may be required in terms of applicable law in Europe.
6. The documentation listed above is not exhaustive but purely indicative of the main documentation required. Each and every client should refer to Appendix 1 in order to verify and provide the due diligence documentation required from it before concluding the Framework Agreement.
7. In the case of non-face to face business, TMS Europe shall provide the Client with the Framework Agreement, necessary information and a list of the documentation required as set out in Appendix 1.
5. In case the documentation specified in this Section and Appendix 1 has not been completed or has been completed improperly or actions supporting such documentation have not been performed or have been performed improperly or the full documentation has not been provided, TMS Europe shall refuse to execute the Framework Agreement.
6. The conclusion of the Framework Agreement by a proxy shall be subject to the valid power of attorney, prepared by notarial deed or prepared in writing with signatures of the principal and the proxy authenticated by a notary or an employee of TMS Europe.
7. In particular cases TMS Europe shall be entitled to request additional documentation than those set out in Appendix 1. The execution of the Framework Agreement by TMS Europe shall be conditional on the receipt by TMS Europe of



such additional documentation and shall remain at the discretion of TMS Europe.

8. In particular, TMS Europe may also request that the Client, in order to verify him, credits the account through the Client's account in credit institution, based in a Member State of the European Union or equivalent.

#### **§ 18. Client's Data Change**

1. The Client shall be obliged to notify TMS Europe, without undue delay and in a proper way, of any change in the information or documentation received by TMS Europe from the Client in relation to the conclusion and performance of the Framework Agreement.

2. TMS Europe shall not be liable for any damages resulting from the Client's failure to perform the obligation specified in sub-clause 1 of this Section.

3. TMS Europe may allow the Client to introduce changes specified in sub-clause 1 of this Section hereinabove in the Client Zone.

4. The scope of possible changes specified in sub-clause 3 of this Section above sub- shall be indicated in the Client Zone.

5. Instructions to change the Client's data may require an authorization by means of the Authorization Code.

#### **§ 19. Entry into Force of the Framework Agreement and the Opening of the Cash Account**

1. The Framework Agreement enters into force on the date set out in the Framework Agreement provided that the Framework Agreement has been executed by the Client and TMS Europe.

2. The Framework Agreement entered into by a Client not being a natural person shall be signed by persons authorized to enter into such agreements on behalf of such Client in the terms of its constitutional documents or applicable law.

3. The Framework Agreement is being concluded under the condition precedent consisting in the positive verification of the identity of the customer by TMS Europe made in accordance with internal procedures of TMS Europe on the basis of data and documents relating to the Client, in particular in the assessment of risk of money laundering and terrorist financing. TMS Europe makes this check and inform the Client about whether this condition precedent be fulfilled no later than within 90 days from the date of their conclusion. Agreement comes into force from the moment the customer was informed by TMS Europe that this condition precedent be fulfilled. Until the entry into force of the Framework Agreement TMS Europe can enable the Client access to the trading platform for the practice purposes. TMS Europe's practice account is a core element of our educational effort. A practice account is intended to familiarize Client with the tools and features of TMS Europe's trading platforms and to facilitate the testing of trading strategies in a risk-free environment. Results achieved on the TMS Europe practice account are hypothetical and no representation is made that any account will or is likely to achieve actual profits or losses similar to those achieved in the practice account. Conditions in the practice account cannot always reasonably reflect all of the market conditions that may affect pricing and execution in a live trading environment.

4. The opening of the Client's Cash Account shall be conditional upon the conclusion of the Framework Agreement and:

- the first Cash Account shall be opened under a Framework Agreement – indicating type of service on the



Client's Data Card;

- in respect of any further Cash Account – the opening shall be conducted on the basis of the completion of the Instruction to Open the Account Form.

5. At the Client's request, TMS Europe may provide the Client with an individual bank account belonging to TMS Europe registered as a client's account for the purposes of executing cash deposits and withdrawals of the Client. In such case there should be an indication that additional charges due to running such account might be in place. The provision of such account shall take the form of an amendment to the Framework Agreement.

6. The opening of the Client's Cash Account shall occur within 3 Business Days from:

- The conclusion of the Framework Agreement – in the case of the first Cash Account
- the submission of the Instruction to Open the Account Form – in case of any further Cash Accounts.

7. TMS Europe allows opening of more than one Cash Account for the Client under the Framework Agreement concluded between the Client and TMS Europe. For this purpose, the Client shall submit to TMS Europe the Instruction to Open the Account Form.

8. Specimen to Open the Account shall be included in the Framework Agreement. Instructions may be placed in writing or by phone or by electronic means provided they are served in the manner allowing for the identification of the Client and they contain elements required for a proper written instruction.

9. Phone Instructions to Open the Account shall be placed during the phone call between the Client and an employee of TMS Europe under the number indicated in the "Information Card about TMS Europe". Electronic instructions shall be made through TMS Non-Stop service or via e-mail.

## § 20. Client's Specimen Signature

1. By making a specimen signature the Client or the Client's proxy obliges TMS Europe to accept written orders and instructions bearing only the Client's or proxy's signature which is compatible with this specimen.

2. TMS Europe shall also be entitled, and Client hereby authorizes TMS Europe, to rely upon any electronic communication or instruction received from Client through the Transaction System or from email instructions received from the account credentials used when Client first accessed the trading platform. Client agrees that:

a) once securely logged on to the trading platform following entry of the account credentials, Client authorizes TMS Europe to act upon instructions and to consider the instructions of like force and effect as written Orders made by Client.

b) Client shall hold TMS Europe harmless from all losses, costs, fees, damages, expenses, claims, suits, demands and liabilities whatsoever that TMS Europe may suffer or incur or that may be brought against it, in any way relating to or arising out of TMS Europe's acting upon any such instructions or information received from the client.

c) Client shall bear the risk of all instructions, whether authorized, unauthorized, improper or fraudulent, even if it transpires such instructions were provided without the Client's authority. Client shall indemnify TMS Europe against any liabilities that TMS Europe may incur or that may arise as the result of legal or other actions brought against TMS Europe, arising out of our acting upon, delay in acting upon or refusal to act upon any such instructions or information.

## § 21. Client's Exposure Limit

1. In the Framework Agreement, TMS Europe may specify the Client's exposure limit, understood as a value of a



Global Position Exposed to Risk and determined accordingly to the applicable provisions of law.

2. Exposure limit may be also defined on a specific Financial Instrument Level or on groups of Financial Instruments (e.g. all Financial Instruments issued on commodities).
3. Exposure limit may sum all positions coming from all accounts which belong to Client.
4. In certain circumstances TMS Europe may aggregate exposure of two or more clients if TMS Europe has reasons to believe, that these clients are cooperating with each other while executing trades.
5. Where the specified Client's exposure limit is exceeded, TMS Europe shall be entitled to diminish Client's existing positions. Irrespective of the foregoing, Client is obliged to monitor current limits, which may change over time as decided by TMS Europe, as well as is obliged to monitor his exposure and refrain himself from opening positions that would exceed exposure limits.
6. The reduction of Client's exposure shall be executed by TMS Europe by closing the position which has the highest notional amount; if two positions will have same notional amount, the position which has been opened earlier shall be closed.
7. TMS Europe shall inform the Client immediately about the closure of Client's positions.

## § 22. Power of Attorney

1. The Client that concluded the Framework Agreement with TMS Europe may appoint a proxy or proxies. The proxy may place orders and make instructions relating to Financial Instruments and also other instructions regarding accounts operated by TMS Europe for the Client's benefit.
2. A proxy for the purpose of sub-clause 1 of this Section shall be appointed by a power of attorney prepared by notarial deed or prepared in writing with signatures of the principal and the proxy authenticated by a notary or an employee of TMS Europe.
3. These Terms of Business and the Framework Agreement applicable to the Client shall be accordingly applicable to the proxy.
4. The Client undertakes to inform the proxy on the rules upon which TMS Europe is acting and offering its services and to notify the proxy immediately of any changes thereto.
5. TMS Europe shall not be liable towards the Client for any damages or losses suffered or arising from the actions or omissions of proxies appointed by the Client, and the Client shall bear strict liability for the actions or omissions of appointed proxies.
6. TMS Europe will operate within the limitations set out in the power of attorney.
7. When TMS Europe deals with a person who is acting for the Client under a power of attorney, the following documentation needs to be provided to TMS Europe:
  - a Certified copy of the power of attorney,
  - information to ensure TMS Europe that the power of attorney allows the person to act on the Client's behalf,



### § 23. Further Powers of Attorney

1. Proxy shall not be entitled to delegate its authority and may not grant further powers of attorney.
2. Notifications about proxies, including details of the appointment, change, revocation and expiration of a power of attorney shall become effective towards TMS Europe immediately, but not later than on the Business Day following the receipt by TMS Europe of a proper written instruction to this effect from the Client.

### § 24. Operating the Cash Account and Keeping Registers

1. Under the Framework Agreement, TMS Europe shall create and operate a Cash Account, Operational Register and Register of Financial Instruments for each Client.
2. Actions related to the settlement of concluded transactions and other operations connected with such transactions shall be conducted by TMS Europe in accordance with these Terms of Business.
3. Data regarding the balance on the Cash Account, balance on the Operational Register and entries in the Register of Financial Instruments in relation to a particular client shall be made available to the Client in the accounting and settlement section of the Transaction System in electronic form in real time.
4. At each request of the Client TMS Europe shall prepare a summary of data indicated in sub-clause 3 of this Section in the form of the following documents:
  - Cash Account history for a given period;
  - entry history in the Register of Financial Instruments for a given period.
5. Any and all notices and statements relating to the Cash Account, Operational Register and Register of Financial Instruments, as specified in sub-clauses 3 and 4 of this Section, shall be delivered by TMS Europe in a manner specified by the Client in the Framework Agreement to the indicated address or made available at the registered office of TMS Europe against signed receipt.
6. The cost of preparing and delivering documents referred to in sub-clauses 3 and 4 of this Section shall be borne by the Client in accordance with the rules specified in the Table of Fees and Commissions.
7. Any observed irregularities in data regarding the Cash Account, Operational Register and Register of Financial Instruments that were made available in the accounting and settlement section of the Transaction System in electronic form in real time as well as data included in notices and statements specified in sub-clause 4 of this Section, should be submitted by the Client in the manner specified in clause § 71 (“Placement and Examination of a Complaint”) of these Terms of Business.
8. TMS Europe shall be entitled to correct an erroneous entry on the Cash Account, Operational Register and Register of Financial Instruments at its own discretion, without the need to inform the Client of such change in advance. The correction shall be disclosed in the accounting and settlement section of the Transaction System in real time. The correction shall be understood as a modification of an existing entry or adding a new entry. provisions of Terms of Business shall be applicable accordingly. TMS Europe shall notify the Client primarily by phone, and after the third attempt, via e-mail or in writing of any corrections that TMS Europe has made. TMS Europe shall make a decision regarding the form of the notification of the correction and the mode of notification shall be as specified earlier in this paragraph.
9. The correction specified in sub-clause 8 of this Section shall also be understood as resulting in the removal of an existing entry, but such operation shall be reflected in the notice about the correction provided to the Client.



## § 25. Cash Account

1. In order to proceed with wire transfers, TMS Europe shall open bank account with a credit institution for the safekeeping of assets as specified in clause 8 “Clients’ Assets and Money” above, in the name of TMS Europe. This account shall be used in particular to hold the Client’s money and execute transactions and operations as set out herein.
2. Client Money transferred by a Client to TMS Europe will be held separate and distinct from any money belonging to TMS Europe and shall be kept segregated and shall be subject to client money protection rules in terms of applicable law.
3. Having transferred money on that Bank account, TMS Europe shall fund Client’s individual Cash Account held in the Trading System.
4. Cash Account shall be operated in the Account Deposit Currency and shall be used for the sole purpose of keeping the Client’s cash.
5. Cash deposited on the Client’s Cash Account is non-interest bearing. Interest obtained on the cash deposited on the Client’s Cash Account shall constitute the remuneration of TMS Europe for the operation of the Client’s Cash Account and shall be intended for covering the cost of technology development linked with enhancement of the quality of trading services.
6. At the Client’s request TMS Europe may introduce, for the benefit of the Client, interest on available cash deposited on the Cash Account, after the fulfillment by the Client of requirements specified by TMS Europe, in particular relating to the Cash Account balance. In order to commence the process of accrual of interests on Client’s Cash Account, Client needs to issue an inquiry to TMS Europe. TMS Europe may agree to accrue interest subject to the fulfillment of additional conditions from Client’s side (e.g. maintaining balance in amount not less than agreed value).
7. The following operations are recorded on the Cash Account:
  - cash deposits and withdrawals made by the Client;
  - charges or crediting related to financial results on closed positions following settlement;
  - charges related to the commissions and fees due to TMS Europe under the Framework Agreement on account of concluding a transaction booked at the day of its settlement;
  - charges related to other commissions and fees due to TMS Europe under the Framework Agreement;
  - other operations resulting from the Framework Agreement or the Terms of Business;
  - corrections of the cash balance due to resolving complaints or due to a correction of the result on transactions concluded as a result of Wrong Quoting.
8. On the cash account, cash intended as margin for the performance of obligations resulting from financial instruments, shall be recorded separately.

## § 26. Depositing Funds on the Cash Account

1. Funds transferred to the Client’s Cash Account shall be conducted to the account of TMS Europe operated by the



Bank or to the account of TMS Europe specified in clause 8 of the Terms of Business.

2. TMS Europe shall credit the Client's Cash Account within 3 Business Days of obtaining a confirmation about the inflow of cash to the respective account of TMS Europe in the Bank, but no later than on the 5<sup>th</sup> Business Day.

3. When transferring money to the account of TMS Europe in the Bank, the following information shall be provided by the Client:

- payment title / description;
- number of Cash Account to which the payment is made, provided the Client was granted such number;
- name and surname (business name) of the Cash Account holder;
- name and surname of the person making the payment.

4. Depositing funds to the Client's Cash Account may be also processed through accounts maintained with the following Payment Service Providers:

- Skrill Ltd, a regulated e-money institution by the UK Financial Conduct Authority (FCA).
- SafeCharge Limited, payment institution regulated by Cypriot Securities and Exchange Commission (CYSEC).

In certain circumstances, certain payment methods may not be available to the Company. In such circumstances TMS Europe may operationally handle customer deposits using these payment methods, always in accordance with the relevant safeguarding and anti-money laundering requirements provided by the legislation binding the Company.

5. Payments of cash to the Client's Cash Account shall be booked as follows:

- a) to cover fees and commissions due to TMS Europe;
- b) to cover interest due to TMS Europe on account of negative balance on the Client's Cash Account;
- c) to cover negative balance on the Cash Account;
- d) to repay loans granted by way of leverage by TMS Europe;
- e) for use in order to open new positions.

6. In case of payments made by use of debit or credit card(s) the Client's personal data registered in TMS Europe must be an exact match of the name on the credit card(s) or other payment methods employed for depositing or withdrawing money to/from Client's Cash Account.

7. In case of payments made by use of debit or credit card(s) Client hereby acknowledges that it is required that TMS Europe passes his/her personal data to SafeCharge for the purpose of authentication of payment.

## **§ 27. Client's Instructions regarding the Cash Account**

1. TMS Europe shall execute the Client's instructions using cash deposited by the Client in the Cash Account solely for the purpose of:

- settlement of results of transaction on Financial Instruments;
- covering fees and commissions resulting from the execution of instructions and operation of the Cash Account as well as on account of any other agreements concluded between TMS Europe and the Clients;



- withdrawals of cash by the Client;
  - transfer of money to the Client's bank account or other Cash Account of the Client (internal transfers).
2. Withdrawals from the Cash Account shall be executed on the basis of an instruction of withdrawal submitted by the Client to TMS Europe by phone, in the Client Zone, in person or sent by mail or courier.
  3. Instruction of withdrawal from the Cash Account should be placed by the Client in the form of a document whose specimen shall be available from TMS Brokers directly or in the Client Zone. In the event that a client wishes to place phone instructions of withdrawal, the form shall be completed by employees of TMS Europe.
  4. Instruction of withdrawal shall be executed without undue delay after TMS Europe receives the instruction of withdrawal, but no later than within 5 Business Days.
  5. TMS Europe shall not execute the withdrawal instruction when:
    - cash funds were seized pursuant to an enforcement order – judicial or administrative – in accordance with applicable law;
    - instruction of withdrawal was incorrectly or defectively completed or does not contain all information required for the execution of the withdrawal or was not properly authorized by the Client;
    - there is no Cash Available (Free Margin) in the Operational Register of the Client in the amount indicated by the Client in the instruction of withdrawal;
    - cash on the Client's Cash Account was blocked pursuant to applicable provisions of the law on the basis of instructions of governmental bodies;
    - instruction of withdrawal relates to the Client's cash that has not yet been credited to the Cash Account;
    - instruction of withdrawal was submitted in the Client Zone and relates to the withdrawal of cash into another Cash Account of the Client Europe (internal transfer of funds to another account held by TMS Europe).
  6. Instruction of withdrawal from the Cash Account placed in the Client Zone does not require authorization by means of the Authorization Code.
  7. The Client may not challenge the authenticity of a properly authorized instruction of withdrawal.
  8. Instruction of withdrawal placed in the Client Zone that was properly authorized may not be cancelled by the Client. However, the Client will still be able to cancel such withdrawal via phone.
  9. Prior to registering an instruction of withdrawal, the Client should make sure that it is unequivocal and in accordance with its intention.
  10. Data necessary for the proper execution of the instruction of withdrawal should be provided according to the description of boxes in the form.
  11. TMS Europe shall confirm acceptance of instruction of withdrawal placed in the Client Zone for execution by means of a proper message, subject to sub-clause 5 of this Section above. The confirmation will be published on client's display device.
  12. Executing the instruction of withdrawal shall mean conveying a transfer order of cash by TMS Europe to the Bank according to the conditions and to the account specified in the instruction of withdrawal.
  13. If a client makes three (i.e. number 3) incorrect authorizations of instruction of withdrawal, this shall result in the form being blocked for a period of 5 hours from the moment of making the last wrong authorization.



14. TMS Europe shall execute a phone instruction of withdrawal provided the person placing such instruction correctly provides the following data:

- a) number of the Client's Cash Account;
- b) name and surname of the Cash Account owner;
- c) name and surname of the person placing the instruction;
- d) password set in the Client's Data Card;
- e) withdrawal amount;

and provided the phone instruction is placed to the number of TMS Europe indicated in the Information Card about TMS Europe or to any other number belonging to TMS Europe should there be the technical capacity to register the content of such phone instructions.

15. TMS Europe is not obliged to identify the currency of Client's bank account or payment account designated by the Client for withdrawals from Cash Account. TMS Europe is not obliged to verify and disclose the exchange rate charges linked with exchange rate conversion charged by other banks for transactions into different currencies.

16. Client declares that the withdrawals made out of his Cash Account shall be made onto bank accounts or payment accounts of which he is a beneficiary.

17. Please note that return of funds to cards used to fund the account may be allowed only up to the amount of deposit, however any amount over above the card deposit amount will need to be transferred to a bank account in a reputable jurisdiction after due verification is made.

## **§ 28. Balance on the Cash Account**

1. If there is a negative balance on the Client's Cash Account, the Client shall be obliged to deposit cash in an amount no lower than the sum of the negative balance, plus any outstanding fees and commissions, as specified in the Table of Fees and Commissions.

2. Client will be informed about negative balance on his Cash Account in the manner appropriate for the purpose of contacts selected by the Client.

3. The deposit referred to in sub-clause 1 of this Section shall be made 14 calendar days following the notification issued by TMS Europe with respect to the negative balance.

4. If the Cash Account is not funded within the time specified in sub-clause 3 of this Section, TMS Europe may, in order to cover the negative balance on the Cash Account, transfer cash in the amount specified in sub-clause 3 of this Section from another Cash Account opened in respect of the Client kept in TMS Europe or from a subaccount operated for this Cash Account in another Account Deposit Currency. TMS Europe may also at its discretion terminate the Framework Agreement in the manner specified in 0of these Terms of Business.

5. TMS Europe may in its sole discretion offer the Client negative balance protection policy under the terms and conditions specified on TMS Europe website.

## **§ 29. Operational Register**

1. An Operational Register of an auxiliary nature shall be maintained in relation to the Client's Cash Account in the



accounting and settlement section of the Transaction System.

2. The Operational Register shall be operated in the Account Deposit Currency. All positions in the Operational Register shall be approximately converted into the Account Deposit Currency in real time on the basis of the current Conversion Rate.
3. All positions recorded in the Operational Register are for information purposes only and may be used by the Client only as a temporary aid in the management of positions.
4. The actual balance on the Operational Register shall correspond to the sum of cash on the Cash Account reduced by unrealized losses or increased with unrealized profits from open positions taking into account the cost of Position Rollover and other fees and commissions.
5. The actual amount of the Required Margin shall be determined on the basis of rates of Margin specified in the Financial Instruments Specification. Detailed rules of determination of the actual amount of the Required Margin shall be governed by the Financial Instruments Specification.
6. Upon the conclusion of a transaction, the actual amount of the Required Margin shall be automatically changed and the amount of available cash constituting the balance of the Operational Register (Equity) modified by the amount of the Required Margin, as determined in accordance with sub-clause 5 of this Section, shall also be changed accordingly. The changes specified in the preceding sentence shall be undertaken by TMS Europe and do not require Client instructions.

### § 30. Register of Financial Instruments

1. The purpose of the Register of Financial Instruments is to record transactions concluded by the Clients in Financial Instruments.
2. A transaction on Financial Instruments shall be recorded in the Register of Financial Instruments after the conclusion of the transaction on account of the Client.
3. The Register of Financial Instruments comprises of a summary of open positions on Financial Instruments and includes the following transaction parameters:
  - order number on the basis of which the transaction was concluded;
  - direction of the transaction (buy/sell);
  - name of the underlying instrument constituting the basis of a Financial Instrument being the object of transaction;
  - nominal value of the transaction expressed in Lots;
  - execution rate of a Financial Instrument at the time of taking a position;
  - date and time of position opening;
  - commission, insofar as provided for in the Table of Fees and Commissions;
  - accrued Swap Points;
  - other detailed transaction parameters characteristic of a given Financial Instrument.



4. Specific positions recorded in the Register of Financial Instruments shall be subject to an ongoing price estimation based on the Pricing Rate. An estimated financial result on specific positions thus determined shall be converted in real time into the Account Deposit Currency based on the applicable Conversion Rate.
5. The total result on all positions recorded in the Register of Financial Instruments determined in the Account Deposit Currency shall be exhibited in the Operational Register.
6. Specific positions recorded in the Register of Financial Instruments shall be deleted from such Register no later than on the closing day of specific positions.
7. TMS Europe shall not accept and shall not execute the Client's instructions regarding transfer of Financial Instruments recorded in the Register of Financial Instruments of the Client into another account or into another register maintained by TMS Europe or other entity.
8. TMS Europe only holds Clients' monies.
9. All Financial Instruments are registered by TMS Europe in the name of the Client on a separate account.

### **§ 31. Collateral for Receivables on Account of Transactions Entered into on the Basis of the Framework Agreement**

1. Under the Framework Agreement, the Client shall provide the Margin for TMS Europe. Margin transferred to TMS Europe is transferred to TMS Europe and shall be subject to the client money protection rules as applicable to TMS Europe in terms of the Investment Services Act (Control of Assets) Regulations [Chapter 370.05 of the Laws of Malta] and the Investment Services Rules for Investment Service Providers published by the MFSA and applicable to TMS Europe.
2. The Collateral shall be provided in order to secure the future cash receivables of TMS Europe towards the Client resulting from the settlement of a transaction and the closing of a position.
3. The Collateral shall be the sum of the amount of the Required Margin and the amount of Unrealized Position Value, if the amount of Unrealized Position Values is negative.
4. The Collateral shall remain in force until the settlement of all transactions concluded under the Framework Agreement.
5. TMS Europe, for the purposes of providing the Collateral, not less than once in a Business Day shall calculate:
  - a. the value of Required Collateral;
  - b. the value of Received Collateral;
  - c. the value of Required Margin;
  - d. the value of Unrealized Position Value.
6. The Collateral shall be provided in cash expressed in the Account Base Currency of the Cash Account. The value of the Required Collateral and the value of the Received Collateral shall be the amount expressed in the Account Base Currency of the Cash Account. The value of the Required Margin \ and the value of Unrealized Position Value, unless expressed in a currency other than the Account Base Currency, shall be converted into the amount expressed in the Account Base Currency at the Conversion Rate.



7. TMS Europe shall be entitled to a right of retention over the Collateral for against any amount due by the Client for the settlement of a transaction in the event that the Client does not have sufficient funds in the Cash Account. TMS Europe shall notify the Client of the expiration of the claim to return the Margin by providing information in the Operational Register that the unexecuted position value is 0.

8. In addition to the rights conferred to TMS Europe in the sub-clause 7 of this Section above, TMS Europe shall be entitled, in terms of the provisions of the Set-Off and Netting on Insolvency Act, 2003 (as amended), to set-off against monies due to it under these Terms of Business or any other agreement with the Client all or any monies from time to time standing to the credit of the Client with TMS Europe, whether on current or any other account, including those subject to a term whatsoever and any sums standing in a suspense or impersonal account. For such purposes, TMS Europe:

(i) shall be entitled (as well before as after demand) to combine or consolidate all monies now or hereafter standing to the credit of any Client on any account with TMS Europe and in any currency;

(ii) if the obligations are in different currencies, TMS Europe may convert either obligation at a market rate of exchange in its usual course of business for the purposes of the set-off; and

(iii) if either obligation is unliquidated or unascertained, TMS Europe may set-off in an amount estimated by it in good faith to be the amount of that obligation.

9. The compensation specified in sub-clause 8 shall occur by charging the Client's Cash Account.

10. By conducting the compensation specified in sub-clause 8 of this Section (the "Compensatory Clause"):

a. the net amount resulting from calculating the mutual receivables of TMS Europe and the Client shall be payable to a party whose receivables or sum of receivables constitute a higher amount;

b. a claim for payment of the amount specified in paragraph a) above shall be due and payable also in the event that the receivables being the object of compensation have not been due and payable.

11. TMS Europe may compensate the mutual receivables under the Compensatory Clause without the need to notify the Client of the intention to conduct it and without the Client's instruction.

12. TMS Europe may compensate the mutual receivables under the Compensatory Clause especially in the case of settling a transaction and closing a position.

### § 32. Safeguarding of Client's money

1. TMS Brokers is responsible for safeguarding of Client's money and through such internal controls and arrangements aims to minimize the risk of the loss or diminution of assets belonging to the client, or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence.

2. TMS Brokers shall hold the assets solely for and on behalf of and in the interest of the client.

3. TMS Brokers entrusted with the control of assets belonging to clients shall, to every extent reasonably possible, segregate in a proper manner the assets of every client from the money belonging to the Company and from the money of other clients.

4. These accounts are specially created and entitled "*Client Money Account*" for clients' money, on trust for the client.

5. Without prejudice to the above, it is understood that a client whose assets are held under the control of the Company enjoys a right of ownership in such assets notwithstanding that they may be registered in the name and title of or are otherwise vested in the Company.



### § 33. Quotations of Financial Instruments

1. Prices of Financial Instruments are created as prescribed in Best Execution Policy.
2. TMS Europe shall quote the price of a given Financial Instrument by providing simultaneously its buy price and corresponding sell price. The difference between the purchase price and the sale price constitutes the Spread.
3. In the event when the price at which the TMS Europe received order from Client differs from the current market prices of other market data source of a Financial Instrument, the Client may receive a requote or order rejection. TMS Europe does not guarantee the execution of trades but strives to do its best to execute the trades for the best interest of the Client. Best execution policy describes how TMS Europe act while executing the trades. The final price at which a Transaction on any instrument is concluded will be provided back to the Client via the Transaction System. The order execution prices may differ from the price determined by the Client in the order.
4. Spread offered by TMS Europe regarding particular Financial Instruments with fixed spreads shall be determined according to the rules set forth in the Financial Instruments Specification, for the Instruments quoted with floating spread client receives the prices that are coming directly from Liquidity Providers or from Data Providers that might include additional mark-up added by TMS specified in the table of Fees and Commissions.
5. Spreads for Instruments mentioned in sub-clause 4 of this Section may be increased:
  - outside working hours of the local market for a given Financial Instrument;
  - when above average exchange rate fluctuations are occurring;
  - when there is restricted or limited liquidity in respect of Financial Instruments;
  - due to important economic and political events that affect the market situation;
  - on holidays of the local market for a given Financial Instrument;
  - when any of the events defined as Extraordinary Change of Conditions occur.
6. Increase of Transaction Spreads under the rules specified in sub-clause 4 and 5 of this Section shall not require the prior notification to the Client.
7. At the Client's request TMS Europe may ensure different conditions regarding transaction conclusion to the Client, in particular Transaction Spreads different than set forth in the Financial Instruments Specification, after the Client will fulfill requirements specified by TMS Europe, in particular relating to the volume of trading performed by the Client in a set time frame.

### § 34. Entering into Transactions on Financial Instruments

1. Transactions concluded under the Framework Agreement and under the rules specified herein qualify as derivatives and do not impose onto any of the parties the obligation to deliver the underlying instrument constituting the basis of the Financial Instrument.
2. Transactions relating to Financial Instruments shall be executed by TMS Europe concluding a transaction directly



with the Client.

### **§ 35. Trading in the Transaction System**

Trading in the Transaction System shall be performed within the hours determined by TMS Europe, as specified in the Financial Instruments Specification. For any transactions and instructions, the Client is to submit a request for the execution of an order via written communications (paper and electronic communication), by phone or via the Transaction System.

### **§ 36. Refusal to Enter into Transaction, Place an Order or Instruction**

TMS Europe shall reject, or refuse to conclude a transaction, place, modify or cancel an order, in the following situations:

- 1) if the transaction nominal value exceeds the maximum value of a single transaction, as specified in the Financial Instruments Specification;
- 2) in the event that TMS Europe, for the reason of lack of information from the market, is incapable of quoting a Financial Instrument being the object of the transaction;
- 3) when any of the events defined as Extraordinary Change of Conditions occur;
- 4) in other events provided for in the provisions of the law or specified in these Terms of Business;
- 5) when there are insufficient funds on the Cash Account to cover the Margin Deposit;
- 6) when on the market there is a restricted share offer available for short selling with such shares constituting the basis for quoting Equity CFD contract prices;
- 7) If there is a justified suspicion that the price of the Financial Instrument might not be accurate (difference between quotes from 2 independent data sources or data agencies).

### **§ 37. Procedure and Conditions Relating to the Placement of Written Orders**

1. The Client may place written orders to purchase or sell Financial Instruments as well as instructions regarding modification or cancellation of previously placed orders.
2. A written order of the Client should contain, in particular, the following parameters:
  - Client's name and surname (or business name);
  - name and surname of the person placing an order if such order is placed by a person acting on behalf of the Client, such as a Proxy;
  - Client's Cash Account number;



- date and time of placing an order;
  - direction of the transaction (buy/sell);
  - order type;
  - name of the Financial Instrument being the object of the order;
  - nominal value of the transaction being the object of the order;
  - order execution price;
  - designation of order's validity period;
  - specific designation facilitating the differentiation of the order from other orders;
  - signature of the Client or of the person acting on behalf of the Client;
  - other elements if required by the provisions of the law;
  - other elements if required due to the specificity of the Financial Instrument being the object of the order.
3. If the Client places several orders it shall be obliged to specify the order in which they are to be transferred for execution, otherwise they shall be concluded in the order they were placed.
4. A specimen of a written order is available in CSP of TMS Europe as well as on the website.
5. TMS Europe shall be entitled to refuse to accept for execution of an order or any other instruction of the Client if:
- such order or instruction was placed in violation of the applicable provisions of the law, Market Rules, Framework Agreement or the Terms of Business, or
  - Financial Instruments not provided for in the Financial Instruments Specification are the object of such order or instruction.
6. Written orders of the Client shall be accepted in CSP of TMS Europe during the working hours of CSP.
7. An authorized employee of TMS Europe shall confirm the acceptance of a written order for the execution by signing on the document with the order or orders.
8. In the event that the order does not include all data specified in sub-clause 2 of this Section, or otherwise the order may not be accepted by TMS Europe for execution for other reasons, TMS Europe shall without undue delay notify the Client of this fact in a manner agreed in the concluded Framework Agreement.
9. Information about working hours of CSP of TMS Europe and working hours of TMS Europe is provided on the website of TMS Europe at [www.tmseurope.com](http://www.tmseurope.com).
10. The Client may place written orders to cancel or modify its orders until the moment it is possible (or allowed) by TMS Europe to take actions directed at cancelling or modifying the transaction order.



### § 38. Phone Instructions for placing of Orders

1. The Client may issue phone instructions to place orders as well as instructions regarding modification or cancellation of previously issued orders.
2. Phone instructions regarding the issuance of orders may be placed by the Client within the working hours of TMS Europe solely to the phone numbers indicated by TMS Europe.
3. By signing the Framework Agreement, the Client grants a power of attorney to TMS Europe to issue and sign on its behalf instructions placed by phone.

### § 39. Procedure and Conditions Relating to the Placement of Phone Instructions

1. In order to place phone instructions, the Client shall specify a phone password.
2. It is in the interest of the Client to keep the phone password confidential so as not to allow the disclosure of such password to unauthorized parties. In case the Client suspects that the phone password came into possession of unauthorized third parties, the Client should without undue delay notify TMS Europe of this fact in order to set a new password.
3. TMS Europe shall accept execution orders issued on the basis of phone instructions only if the Client had selected this option in the Framework Agreement.
4. Accepting an order issued on the basis of phone instructions of the Client for the execution shall be confirmed by an authorized employee of TMS Europe over the phone.
5. For purposes of evidence TMS Europe shall record the Client's phone instructions. TMS Europe may record phone calls with the Client also in other cases.
6. Phone instructions shall be recorded by TMS Europe on magnetic or optical media. Such media shall be stored for such period as may be allowed by applicable law.
7. TMS Europe shall not be liable for executing an order according to phone instruction of the Client or the Client's Agent or a third party, other than a properly authorized Client's Agent, as specified herein, if the conditions for accepting the instruction in accordance with these Terms of Business have been fulfilled, in particular, when in the instruction, such person provided a correct name and surname or business name of the Client, Cash Account number and correct phone password, unless the Client informed TMS Europe in advance about a possible access by unauthorized parties to the aforementioned security measures.
8. TMS Europe shall send a contract note or display a system confirmation in respect of each trade affected on behalf of the Client, the client in turn is responsible to notify TMS Europe of any errors, omissions or objections within fifteen (15) days from the date of contract note or system confirmation. In the absence of any actions, such contract note or system confirmation shall be treated as final, conclusive and binding.



#### § 40. Orders Placed Directly in the Transaction System

1. Under the Framework Agreement and these Terms of Business, TMS Europe shall allow the Client to conclude transactions in the Transaction System.
2. TMS Europe shall execute orders placed on the basis of instructions conveyed to TMS Europe via electronic media if the Client had selected this option in the Framework Agreement.

#### § 41. Procedure and Conditions Relating to the Placement of Orders Directly in the Transaction System

1. In order to conclude transactions by the Client directly in the Transaction System, TMS Europe shall grant the following identification data allowing access to the System:

i. login,

ii. password.

2. The delivery of identification data to the Client shall occur after the opening of the Client's Cash Account by phone, against receipt and/or registered letter with receipt confirmation.
3. It is in the interest of the Client to keep the credentials confidential so as not to allow the disclosure of such data to unauthorized parties. In the case the Client suspects that the identification data allowing access to the Transaction System came into possession of unauthorized third parties, the Client should at its own initiative change the password or contact TMS Europe as soon as possible. TMS Europe shall not be liable for any losses or damages that results from the execution of orders or instructions placed before the Client notifies TMS Europe of the possible unauthorized use of identification data.
4. Where the Client generates a significant number of inquiries substantially burdening the Transaction System, TMS Europe reserves the right to temporarily block access to the Client's Account, which shall be preceded by a notification to the Client by e-mail or by phone.
5. The Board of Directors of TMS Europe TMS Europe may specify a limit of issued inquiries regarding prices of a Financial Instrument and/or orders to modify them or cancel those placed by the Client directly in the Transaction System as well as a procedure of blocking the Client's account. These shall be notified to the Client in advance.

#### § 42. Orders Placed by the Client

1. In the Transaction System the Client may place the following types of orders:
  - a). Market – immediate orders executed at a market price; price of execution may vary from the price that was presented in the Trading System when client placed that order – as a consequence the filled price may be either better or worse.
  - b). Limit – order activated when the quoted price in Trading System reaches the price indicated in the order (trigger of the order), subject to sub-clause 3 of this Section.



- c). Stop – order activated when the quoted price in Trading System reaches the level specified in the order and executed accordingly at a market price of Bid or Ask, subject to sub-clause 3 of this Section.
  - d). Stop Loss – order to close an open position in order to limit losses; order activated when the quoted price in Trading System reaches the level specified in the order.
  - e). Take Profit – order to realize gains from an open position; order activated when the quoted price in Trading System reaches the level specified in the order.
  - f). Request for Price – in case there is an emergency situation (for example technical problem either with Trading Platform, execution or Source of Prices) TMS Europe might use this type of execution. In such type client sees indicative pricing but when she/he wants to trade Client need to Request for price. Price is then quoted manually 2 ways (BID and ASK) and Client might agree to trade at that price. Such price has a limited lifetime. Client accepting the price might either get the confirmation of the execution or get the rejection of get new updated price.
2. Trailing Stop – Trailing Stop Loss order is activated when the defined profit expressed in price points has been reached. After achieving the activation rate Trailing Stop operates in such a manner that the realization rate of Trailing Stop Loss:
- a) in the case of a long position – is increased by the value of the price points by which the current market rate increased, subject to the constant difference between the current rate and the defined value of the profit expressed in price points, and the execution of Trailing Stop Loss shall occur when the rate decreases by the defined value of the profit expressed in price points, subject to sub-clause 3 of this Section.
  - b) in the case of a short position – is decreased by the value of the price points by which the current market rate decreased, subject to the constant difference between the current rate and the defined value of the profit expressed in price points, and the execution of Trailing Stop Loss shall occur when the rate increases by the defined value of the profit expressed in price points, subject to sub-clause 3 of this Section.
  - c) Trailing Stop Loss order is active on the condition of logging into the Transaction System. In case of logging out from the system and after prior activation of Trailing Stop Loss order, it is automatically converted into Stop Loss order at the last rate of the active Trailing Stop Loss order.
3. Stop Loss, Stop and Take Profit as well as Limit orders are transferred into market orders once the limit, stop, take profit prices are triggered and then are executed at the market price, and in case of a gap – at the first available market price/transaction price or price of the opening of a given market. That means that Clients order may be executed at better, worse or the same price that set as trigger price.
4. Stop and Limit, stop loss and Take Profit orders may be placed only within the trading hours of a given Financial Instrument.
5. Additional rules relating to the execution of orders may be found in Best Execution Policy of TMS Europe.
6. Trailing Stop Loss orders may not be placed modified or cancelled by means of a written or phone instruction. Such order shall be placed, modified or cancelled only via trading system.

### § 43. Executions of Transactions

1. While executing a trade TMS Europe acts on behalf of client and routes the order to trading Venue, which may be either TMS Brokers PL or a third-party venue as applicable. TMS Europe will publish the top execution venues in terms of trading volumes where it has executed client orders in the preceding year and information on the quality of the execution obtained.



#### § 44. Executing an Order which results in Opening a Position

1. Opening a position entails the creation of rights and obligations related to the purchase or sale of the Financial Instrument.
2. Due to the spread, valuation of Client's position, if the price on the market has not changed, has a negative value (cost for client).
3. Opening a position involves the need to provide the margin securing the execution of the transactions under the rules specified herein.
4. Opening a position occurs as a result of placing in the transaction section of the Transaction System an order featuring all the parameters required by the Transaction System for such type of Financial Instrument.
5. In particular, when placing an order opening a position, it is imperative to define the Financial Instrument, transaction nominal value, transaction direction (buy/sell), order type, execution rate and other parameters specific for a given order type.
6. The execution of an order opening a position is conditional upon the availability of enough cash in the Client's Cash Account to fill the order, which means the availability in the Operational Register of cash in an amount not lower than the amount of the Required Margin necessary to secure such position.
7. In the event that the amount of the Required Margin necessary for the execution of an order opening a position exceeds the amount of available cash registered in the Operational Register, the order at the market price shall not be accepted by the Transaction System and will be cancelled.
8. Orders other than executed at market price may be placed by means of and accepted by the Transaction System. The coverage of the order shall be verified at the moment of fulfillment of specific conditions indicated in the order. In the event that the amount of the Required Margin required for the execution of this order exceeds the amount of available cash recorded on the Operational Register, such order shall not be executed and shall then be cancelled and automatically deleted by the Transaction System.
9. The execution of a market order for any Financial Instruments shall occur only when the price on the TMS Europe server has not changed in the course of placing an order by the Client. Should the price on the server change, TMS Europe shall re-quote the price. The Client shall be obliged to accept the new price in order to conclude the transaction.
10. The remuneration of TMS Europe for execution of orders has been indicated in Table of Commission and Fees.

#### § 45. Rollover of Open Positions based on currency pairs

1. Open positions where the underlying instrument are currency pairs shall be subject to the automatic rollover to each following trading day for a given Financial Instrument provided till the end of the day in which the open position transaction was concluded, such position was not closed.
2. There may be deviations from standard rules of Rollover that are caused by e.g. holidays in effect at the market to which the transaction relates. Detailed conditions of Rollover and applicable settlement terms can be found on the websites.
3. Rollover specified in sub-clause 1 of this Section involves the calculation of nominal values of Swap Points, calculated as follows:



$$long\ swap = -(spot_{BID} \times \frac{(1 + (\text{deposit rate of quoted currency}_{ASK} + \text{markup}) \times \frac{1}{T})}{(1 + (\text{deposit rate of base currency}_{BID} - \text{markup}) \times \frac{1}{T})} - spot_{BID}) \times multiplier$$

$$short\ swap = (spot_{ASK} \times \frac{(1 + (\text{deposit rate of quoted currency}_{BID} - \text{markup}) \times \frac{1}{T})}{(1 + (\text{deposit rate of base currency}_{ASK} + \text{markup}) \times \frac{1}{T})} - spot_{ASK}) \times multiplier$$

Where:

long swap - the value of swap points calculated for long position;

short swap – the value of swap points calculated for a short position;

spot<sub>BID, ASK</sub> – exchange rate of a given currency pair in the moment of calculating BID or ASK swap points;

markup – the amount of commission that TMS EUROPE imposes on the interest rate;

T - means the number of days according to the convention adopted for a given currency (e.g. for USD, the year has 360 days);

multiplier - the coefficient resulting from the minimum step of quotations, e.g. for EURUSD, the minimum step of quotations is 0.00001, therefore the multiplier for the calculation of swap points will be 100 000;

deposit rate of base/quoted currency<sub>BID, ASK</sub> - for calculating swap points, TMS EUROPE accepts quotes from the interbank market with the instruments as specified in the document Table of Swap Points found on <https://www.tmseurope.com/documents>

4. Cost of or revenue from the maintenance of an open position is calculated by referring the amount of Swap Points to nominal value of open position. Calculation basis for Swap Points is provided by current interest rate of the cash market. TMS Europe reserves the right to apply additional mark up on interest rates that is used for calculation of Swap points. Mark up cannot be higher than 500 basis points.
5. Rollover of the position shall be repeated each day for a given Financial Instrument until the day preceding the closing of the position.
6. Result calculated on account of Position Rollover shall be indicated in the Operational Register as accrued value (but not settled) until the closing of the position. At the time of closing of the position, swap points are settled with the result.
7. Swap points for Financial Instruments based on currencies are being accrued at midnight each Working Day.
8. The value of Swap Points shall be published in the table of Swap Points.



#### § 46. Rollover of Instruments Based on the Futures Contracts

1. Position opened on Financial Instruments based on futures contracts shall be corrected by TMS Europe on the basis of special rates of Swap Points at the moment of changing the base contract series. TMS Europe shall notify the date of changing the series on its website in the Rollover Table. The term indicated in the preceding sentence may be subject to change in case of the reduction of liquidity of the earlier series of contracts so that the trading on the later series substantially exceeds the trading executed on the earlier series.
2. The operation of calculating Swap Points, as specified in sub-clause 1 of this Section, shall consist in calculating points constituting a product of positions opened by the Client and a special rate of Swap Points for a given Financial Instrument.
3. The exact value of swap points shall be obtained by calculating the difference in price between close price of expiring futures series and the next series.
4. The calculated value of points shall be disclosed in the Register of Financial Instruments and in the Operational Register until the position closing.
5. Rollover dates for particular Financial Instruments shall be disclosed in the CSP of TMS Europe and on the website of TMS Europe in the Rollover Table.
6. Expected rollover rates on instruments based on futures contracts imply additional cost to the Client that is published on the TMS Europe website.
7. Special rates for swap points, as specified in sub-clause 1 of this Section, shall be made available to the Clients by means of the Transaction System.
8. The provisions of sub-clauses 1-3 of this Section shall be applicable as appropriate to open opposite positions.

#### § 47. Rollover of Financial Instrument based on shares and Exchange Traded Fund (ETFs)

1. Open positions in Financial Instruments which of the underlying instruments are shares or ETFs - not closed until midnight of each Working Day are subject to an automatic rollover process for the next Working Day for a given Financial Instrument.
2. Rollover involves swap points calculation. These calculations are presented in the Register of Entries in the "swap" column.
3. Swap points for Financial Instruments based on, shares and ETFs are calculated based on the formula applicable to swap points for currency pair instruments, bearing in mind however that the interest rate is determined only for one currency in which the underlying instrument is quoted.
4. The amount of swap points for individual Financial Instruments is calculated separately for long and short positions at least once a week on Friday and then published on the TMS Brokers website in the swap points table.
5. The Rolling of positions operation is repeated on each Trading Day for a given Financial Instrument until the closing date of the position.



#### **§ 48. Equivalent of Dividend**

1. Positions opened on Equity CFDs based on Underlying Instruments for which dividends are paid and which will not be closed by the end of the trading day being the last dividend right date, shall be subject to a correction with additional Swap Points. The provisions of the first sentence shall be applicable as appropriate to opposite open positions.
2. The basis for the determination of the amount of Swap Point rates by TMS Europe, as specified in sub-clause 1 of this Section above, shall be the decrease of theoretical value of Financial Instruments.
3. The operation of calculating Swap Points, as specified above, shall consist in calculating the product of positions opened by the Client and the Swap Point rate for a given Equity CFD.
4. The calculated amount of points shall be disclosed in the Register of Financial Instruments and in the Operational Register until the position is closed.
5. Swap Point rates, as specified in sub-clause 1 of this Section above, shall be made available to Clients on the website of TMS Europe.
6. Client should be aware that the value of the equivalent of the Dividend will be decreased by the value of equivalent of tax applied on special market that is revealed in table of fees and commissions.

#### **§ 49. Equivalent of Other Corporate Events**

1. TMS Europe reserves the right to conduct other operations on Financial Instruments that are the consequence of operations conducted on Underlying Instruments such as splits, reverse splits, determination of acquisition day etc.
2. Information about corporate events shall be disclosed on the website of TMS Europe.
3. A Client holding a CFD contract where the Underlying Instruments are shares in a company shall no voting rights, voting dividend right or participation rights over the company whose shares are the Underlying Instruments.
4. The Client shall not be allowed to participate in the general meeting of shareholders of the company if such Client has an open position in the CFD contract.
5. The Client having a position in the CFD contract, shall have no right to assets resulting from the liquidation of a company.
6. In the case of a reverse split operation, TMS Europe reserves the right to conduct rounding of the Client's position on account of fractions of units of the Underlying Instrument, as may be created after conducting the reverse split operation.
7. Swap Point rates specified in sub-clause 1 of this Section shall be made available to the Clients on the website of TMS Europe.

#### **§ 50. Opposite Transactions**

1. The conclusion of an opposite transaction consists in:



- in the case of an opposite transaction to the open long (buy) position of a Financial Instrument – the conclusion of a sell transaction of this Financial Instrument;
  - in the case of an opposite transaction to the open short (sell) position of a Financial Instrument – the conclusion of a buy transaction of this Financial Instrument.
2. The conclusion of an opposite transaction occurs as a result of placing an order compliant as to the Financial Instrument and with the opposite transaction direction (transaction opposite to long position shall be the sell transactions, to short position – buy transaction) in relation to the open position of the Client in the Register of Financial Instruments.
  3. In case the Client maintains unsettled opposite transactions in the period longer than 60 days, TMS Europe in its sole discretion shall be entitled to cancel pending orders related to such transactions and close positions in opposite transactions or increase the rate of the Margin Deposit.
  4. Client should be aware that swap points will be calculated for both long and short positions thus even though Client position is squared she/he will bear the cost of maintain the positions
  5. Opposite transactions allow to reduce the market risk. Such trades however still generate translation risk, resulting from the conversion of the result on transaction into the account currency.

## **§ 51. Closing a Position**

1. Closing a position results in the cessation of rights and obligations related to the purchase or sale of a Financial Instrument.
2. Closing a position causes the change of Global Position Exposed to Risk of the Client and a corresponding change of value of the Required Margin.
3. A Client can close a position by identifying an open position recorded in the Register of Financial Instruments and the subsequent placement of an order that closes a selected position by using the “Close” option.
4. The result of position closure is the settlement of the result of that transaction on Cash Account.
5. TMS Europe shall enable the Client to close open positions on the Client’s Account by using “Close by” and “multiple close by” option in the Transaction System. “Close by” option is not available in the web and mobile version (without the need to install on the Client’s computer).
6. The settlement of the result on account of closing a position shall result on the Cash Account without undue delay.
7. If the financial result on account of closing a position is expressed in a currency other than Account Deposit Currency, then the result shall be converted in the Account Deposit Current at the Conversion Rate applicable as of the settlement of the result.
8. TMS Europe shall be entitled to close Client’s positions that were opened more than 365 days previously. Detailed rules of action in the cases set forth in the preceding sentence shall be specified by a resolution of the Board of Directors of TMS Europe.
9. TMS Europe allows partial close of the position. If Client will partially close his position, entire position shall be closed and a new position will arise on lower notional.



## § 52. Settlement on Account of Concluded Transactions

1. TMS Europe shall make a settlement on account of concluded transactions according to the applicable provisions of the law and the Market Rules.
2. Settlement of transactions shall occur according to principles specified for each transaction.

## § 53. Margin for Transaction Execution

1. TMS Europe may make the execution of an order submitted by the Client conditional upon the provision of Margin for transaction execution.
2. Margin for transaction execution may only be in the form of Margin in cash.

## § 54. Rules Regarding the Calculation of and Supplementing the Margin Deposit

1. The Client shall be obliged to undertake ongoing and constant monitoring of the cash levels recorded on the Cash Account, the current balance on the Operational Register (Equity), Required Margin and the indicator for the Margin Level. Should the Client not engage in the monitoring of the aforementioned values, such Client shall bear all consequences resulting from this fact.
2. The Client should bear in mind dates and events that could influence the value of the Required Margin, indicator for the Margin Level and in particular:
  - increased rate levels of Margin Deposits in force during periods indicated in the Financial Instruments Specification;
  - trading hours of Financial Instruments specified by TMS Europe in the Financial Instruments Specification.
3. The Client shall be obliged to keep such amount of cash in the Cash Account so that the balance on the Operational Register (Equity) specified in accordance to Market rules as defined in clause 1 “Definitions” of these Terms of Business, does not fall below the level of the Required Margin or below zero.
4. On an ongoing basis TMS Europe shall provide the Client in the Transaction System with information regarding inter alia the balance on the Cash Account, the current balance on the Operational Register (Equity), Required Margin and the indicator for the Margin Level. Each time there is need to enhance the amount of the Margin Deposit by the Client, TMS Europe shall notify the Client of this fact by means of an appropriate message in the Transaction System.
5. TMS Europe informs the Client about the need of transferring additional money to his Cash Account (margin call) marking the lower bar of the window with the desktop version of the Trading System on red color. Margin call shall be initiated if Operational Register falls below the level of the Required Margin (that is, where the indicator for the Margin Level shows a value below 100 %).
6. Each time the balance on the Operational Register falls below the level of the Required Margin (that is, where the indicator for the Margin Level shows a value below 100 %) the Client shall be obliged to close open positions or deposit cash on the Cash Account without undue delay in such an amount that shall result in the increase of the balance on the



Operational Register (Equity) at least up to the level of Required Margin. Subject to sub-clause 7 of this Section below, the provision of information about the indicator for the Margin Level, as specified above, to the Client shall be equivalent to sending a message to the Client, as specified in sub-clause 4 of this Section above.

7. Should the Client fail to fulfill the obligations specified in sub-clauses 3 and 6 of this Section above, and the balance on the Operational Register (Equity) falls to 50% or below of the Required Margin (i.e. the indicator for Margin Level represents the value of 50% or lower), or the balance on the Operational Register (Equity) falls to or below zero, TMS Europe may, without the need to obtain the prior consent of the Client and without the prior notification to the Client of the intention to close the position, close a part of or all open positions of the Client.

8. TMS Europe may take the actions specified in sub-clause 7 of this Section also in such a case when on the basis of credible evidence, it determines that there is a high probability of the decrease of the indicator for the Margin Level to the level of 50 % or below or the balance on the Operational Register falls to or below zero.

9. TMS Europe may take actions specified in sub-clause 7 of this Section in case the balance on the Cash Account or the balance of Available Cash is negative and also in case of Extraordinary Change of Conditions.

10. By executing its right specified in sub-clause 7 of this Section TMS Europe shall close a position commencing from the position generating the highest loss. A position shall be closed at the first market price available.

11. Should the balance on the Cash Account be negative, TMS Europe may charge late fees in the amount specified in the Table of Fees and Commissions for each day of deficit.

12. The Client grants its consent for charging the Client's Cash Account by TMS Europe with the amount of accrued late fees specified in sub-clause 11 of this Section (Table of Fees and Commissions), provided that same will not exceed such amounts as may be prescribed by applicable law.

13. If, as a result of actions specified in sub-clause 7 of this Section, the Cash Account shows a negative balance, the Client shall be obliged without undue delay to deposit an appropriate amount to the Cash Account and TMS Europe may charge late fees at the rate specified in the Table of Fees and Commissions for each day of deficit, i.e. by the day of booking the deposit to the Client's Cash Account. The booking specified in the preceding sentence shall be executed in the working hours of TMS Europe without undue delay.

## **§ 55. Increase of the Margin Deposit**

TMS Europe shall be entitled to increase the rate of the Margin Deposit in relation to open positions of the Client if it deems the risk corresponding to the maintenance of such position, to be substantially increased from the time of opening, of which TMS Europe shall without undue delay notify the Client in the manner set forth in the Framework Agreement. In particular, TMS Europe shall take the actions specified above in case of Extraordinary Change of Conditions.

## **§ 56. General Market Outlook**

1. TMS Europe may, free of charge or against payment, distribute general market outlook for Financial Instruments TMS Europe may obtain such investment information from Dom Maklerski TMS Brokers S.A. or any other party, as deemed appropriate by TMS Europe, and distributed accordingly.

2. The outlook specified in sub-clause 1 of this Section above may be distributed orally by employees of TMS Europe



or in the information section of the Transaction System as well as by electronic means of communication.

3. Market Outlook may not be based on the analysis of orders of other Clients and does not guarantee or suggest protection against financial loss or achieving profit.
4. TMS Europe shall not be liable for the results of investment decisions made on the basis of the Market Outlook distributed by TMS Europe, provided that, when issuing such investment information, exercised due care, and did not act with gross negligence, willful default or fraud.
5. Issuing a general market outlook in terms of this Section by TMS Europe and shall not constitute investment advice in the meaning of the Act since it is not based on the Client's individual circumstances and does not take into account investment goals of such Client. It is the obligation of the Client to verify whether the investment information provided is appropriate for the Client.

### **§ 57. Information Section of the Transaction System**

1. The Client may make use of the comments and analyses found in the information section of the Transaction System or the analytical tools available after installation of the trading platform if they have been:
  - a) prepared and published by TMS Europe,
  - b) prepared by other entities and published by TMS Europe.
2. TMS Europe undertakes to exercise due care when preparing its own comments and analyses to be included in the information section of the Transaction System.
3. TMS Europe undertakes to exercise due care when selecting entities whose comments and analyses are to be included in the information section of the Transaction System.
4. TMS Europe shall not be liable for effects of investment decisions made based on comments and analyses specified in sub-clause 1 item a), provided TMS Europe, when preparing them, exercised due care did not act with gross negligence, willful default or fraud. TMS Europe shall not be liable for losses or damages incurred by the Client as a result of executing investment decisions based on comments and analyses specified in sub-clause 1 of this Section for reasons attributable to third parties for whose activities TMS Europe shall not be liable.

### **§ 58. Quoting Errors**

1. TMS Europe shall publish in the Transaction System own quotations based indirectly or directly on prices of applicable Financial Instruments taken from Execution Venues. In certain circumstances own quotations of TMS Europe may contain errors and substantially diverge from sources based on which TMS Europe performs its own quotations. The price of transaction is treated as wrong price (hereinafter "Wrong Price" or "Wrong Quotation") if it differs from quotations of two independent Reputable Information Agencies by the difference set in the Financial Instruments Specification.
2. In case a Reputable Information Agency or any organized market on which an Underlying Instrument at the moment of the execution of the Client's order is quoted does not publish rates, the first rates published by a Reputable Information Agency or an organized market on which an Underlying Instrument is quoted directly after the execution of the Client's order shall be rates used for the purposes of recognizing the transaction conclusion price as a Wrong



Price. Additionally, TMS Europe shall consider as transactions executed based on a Wrong Quotation the following cases:

- organized market on which the Underlying Instrument being the basis for the quotation of the Financial Instrument cancels transactions being the basis for the quotation of the Financial Instrument and the Client then concluded a transaction on a given Financial Instrument with TMS Europe;

- the Underlying Instrument quoted on the organized market being the basis for the quotation of the Financial Instrument was suspended and the Client concluded a transaction on a given Financial Instrument with TMS Europe after its suspension.

3. In the case of the occurrence of events specified in sub-clauses 1 or 2 of this Section, both TMS Europe and the Client shall be entitled to:

a) withdraw from the concluded transaction or

b) change the transaction price (price of the Financial Instrument) at which the transaction was concluded.

4. In the case of the occurrence of events specified in sub-clauses 1 or 2 of this Section, the notifying party shall without undue delay, but no later than within 2 Business Days of the transaction conclusion, notify the other party of this fact, informing it about the type of event that occurred, the transactions in relation to which the party shall have the right specified in sub-clause 3 of this Section as well as the chosen solution.

5. Withdrawal from the concluded transaction, as specified in sub-clause 3 item a) of this Section, shall result in the transaction being deemed void. At the same time, in case of withdrawal from the concluded transaction, the parties shall have the right to cancel pending orders connected with the transaction from which the party withdrew.

6. A change of transaction price (price of Financial Instrument) at which the transaction was concluded, as specified in sub-clause 3 item b) of this Section, shall result in the transaction being deemed concluded between the parties at the modified price. The change of transaction price may occur both by changing the execution price of the transaction and by a booking made on the Cash Account that would reflect such change.

7. The Client by concluding the Framework Agreement grants its consent for TMS Europe to take the actions specified in sub-clause 3 of this Section. The Client's consent shall be deemed repeated with the placing of purchase or sale orders of Financial Instruments.

8. The notice specified in sub-clause 4 of this Section shall be provided in at least one of the following ways:

a) by phone according to the same procedure as when making phone instructions, or

b) by sending a letter by courier, or

c) by using an application available in the Transaction System that allows the delivery of information and obtaining confirmation of receipt of such information by the Client, or

d) by electronic means to the e-mail address provided by the Party; in case of TMS Europe the applicable address is [contact@tmseurope.com](mailto:contact@tmseurope.com).

9. TMS Europe shall be liable towards the Client for losses or damages incurred as a result of concluding a transaction based on a wrong quotation if caused by the gross negligence, willful default or fraud of TMS Europe.

10. In case of the occurrence of justified circumstances indicating that the Client concludes transactions in bad faith in order to exploit errors in the Transaction System, wrong quotations or delays in their updates (sniping), TMS Europe reserves the right specified in sub-clause 3 of this Section. The provisions of sub-clauses 4 – 6 of this Section shall apply accordingly. At the Client's request TMS Broker shall provide the Client with the most comprehensive explanations possible regarding the cancellation of transactions specified in the preceding sentence.



11. Where TMS Europe establishes that the Client has for a number of times concluded a transaction based on non-market prices, TMS Europe reserves the right of a detailed control of each Client's order and reserves the right specified in sub-clause 3 of this Section as well as reserves the right to terminate the Framework Agreement with immediate effect. That means that client orders will be manually checked by the dealers. In case if the trades of a Clients are done on the Wrong Prices to use inaccurate pricing or delays in prices that are not due the TMS, TMS reserves the right to terminate the agreement immediately.
12. Moreover, TMS Europe reserves the right to a detailed control of orders with a significant nominal value.
13. Orders subject to detailed control may be especially executed by TMS Europe in the mode of request for quotation.
14. In case the Client generates several inquiries specified in sub-clause 12 of this Section, TMS Europe reserves the right to temporarily block the Client's account, about which fact TMS Europe shall inform the Client via e-mail, to the address indicated by the Client, or in the manner specified in sub-clause 8 item a) of this Section.
15. Detailed rules regarding the identification of a wrong price and rules of conduct of the Parties in case of concluding a transaction based on a wrong price have been specified by of the Board of Directors of TMS Europe.

## § 59. Algorithmic Mechanisms

1. TMS Europe may provide the Client with the possibility to place orders in the Transaction System by using the Algorithmic Mechanism, provided that placing orders and their execution shall be conducted through the use of financial instruments characteristics such as price and time and with the use of the TMS Trader transaction system defined solely by TMS Europe. This Algorithmic Mechanism Facility will be provided to the Client, if requested.
2. Algorithms created by the Client, as specified in sub-clause 1 of this Section, may lead to the conclusion of transactions without the Client's participation after the fulfillment of conditions specified in the algorithm.
3. The Client shall make use of the mechanism specified in sub-clauses 1 and 2 of this Section hereinabove at its own risk and responsibility.
4. TMS Europe shall not be liable for losses and lost profits of the Client related to the execution of orders by means of the Algorithmic Mechanism. TMS Europe shall not be liable for delayed generation or non-generation or the improper generation of orders by means of the Algorithmic Mechanism. In particular, TMS Europe shall not be liable for the aforementioned events if they result from errors in the Algorithmic Mechanism software or interruptions in the internet connection.
5. Moreover, TMS Europe does not guarantee achieving a specific financial result on transactions concluded with the use of Algorithmic Mechanisms.
6. Transactions executed by means of Algorithmic Mechanisms shall be treated by TMS Europe as transactions concluded by the Client.
7. TMS Europe shall not be liable for errors related to the operation of Algorithmic Mechanism and execution of orders generated by means of Algorithmic Mechanisms.
8. When concluding transaction based on Algorithmic Mechanisms, the Client may not:
  - a) use external data sources, in particular, quotations, prices, data related to the quotation time, quotation provider and other price parameters;
  - b) change the value of price, time, quotation, limit and any other parameters of financial instruments quoted by



TMS Europe;

c) change the settings, parameters and other features of the transaction system and financial instruments, in particular, values related to the quotation of an open position, value of the Account Balance, Balance on the Operational Register (Equity), Register of Financial Instruments, Operational Register, value of swap points, trading hours, rollover time;

d) in any other way affect the transaction system and features and parameters of financial instruments for a purpose other than placing orders based solely on transaction parameters and transaction system defined by TMS Europe.

9. Placing, deleting and modifying orders by the Client with the use of Algorithmic Mechanisms disclosed in the Transaction System shall be treated as orders placed by the Client.

10. The Client may not place, modify or cancel orders specified in sub-clause 1 of this Section by making an instruction in writing or by phone, but may only place orders in the manner set out in sub-clause 1 of this Section.

11. Algorithms that are written and used by Clients run only when desktop platform is on and when the Client is logged in.

12. In the web and mobile version, it is not possible to run automatic strategies.

13. The Client shall make use of the mechanism specified in sub-clauses 1 and 2 of this Section hereinabove only after obtaining the TMS Europe's consent. To receive such consent, the Client must send a request by electronic means to the e-mail address: [contact@tmseurope.com](mailto:contact@tmseurope.com). TMS Europe shall inform the Client about its consent to make use of the Algorithmic Mechanisms or refusal of its consent within 14 days from the date of the receipt of request. TMS Europe may withdraw its consent with 7 days' notice in case the Client breaches the provisions of this paragraph. The notice shall be provided by the electronic means.

14. TMS Europe at any time after information sent to Client might disallow for algorithmic trading. Additionally, when there is a suspicion that the trades were done on Wrong Prices, resulting from activity described under sub-clause 8 of this Section item a), TMS Europe might have the right to cancel these trades without Clients prior permission or eventually terminate the agreement.

## § 60. Correspondence with the Client

1. TMS Europe may send all correspondence to the Client to the address indicated by the Client. The Client may choose its preferred form of communication from the methods available in the sub-clause 2 of this Section below. The Table of Fees and Commissions may impose charges for sending correspondence in a form of hardcopy.

2. Unless otherwise stated in these Terms of Business, correspondence sent to the Client shall be delivered in accordance with the Client's instruction, in the manner specified in the Framework Agreement, viz.:

a) by mail or courier to the correspondence address indicated by the Client, or

b) by e-mail to the indicated e-mail address, or

c) personally, in CSP, or

d) in any other manner agreed with the Client,

with such a reservation that TMS Europe, irrespective of the Client's instruction, shall be in each case entitled to send correspondence in the manner specified in sub-clause 1 of this Section above – in such case correspondence shall be sent without any fees.



3. Making available or sending information via the Transaction System shall also be deemed as sending correspondence.
4. TMS Europe shall not be liable for missing sent correspondence nor for any delays in delivery of the said correspondence.
5. Correspondence sent by TMS Europe by registered mail shall be deemed delivered after the lapse of 14 calendar days of sending if sent by registered mail with receipt confirmation and TMS Europe received information about the receipt or an attempt at delivery of the letter to the place indicated by the Client as the correspondence address of the Client.
6. Correspondence sent by TMS Europe by courier shall be deemed delivered after the lapse of 3 Business Days of the day of sending if sent with receipt confirmation and TMS Europe received information about the delivery or two attempts at delivery of the letter, made within 5 Business Days, to the place indicated by the Client as the correspondence address of the Client.
7. Correspondence sent by TMS Europe by e-mail shall be deemed delivered after the lapse of 3 calendar days of the day of sending if sent to the most recently indicated e-mail address of the Client.

#### **§ 61. Communication via the Transaction System**

1. Accepting an order for the execution by the Transaction System, concluding a transaction, rejecting or cancelling an order for reasons specified in these Terms of Business, in particular due to insufficient cover in cash, shall be immediately confirmed by an appropriate message to the Client generated by the Transaction System.
2. Messages specified in sub-clause 1 above of this Section shall be displayed in real time on the working station screen of the Client. Notifications contained therein shall be archived for evidential purposes.

#### **§ 62. Reports from brokerage services**

1. At the end of each day in which Client executed activities on his account (including execution of trade) TMS Europe shall send to the Client a report containing a summary of trades closed in a given day, a summary of open positions and a summary of pending orders along with a summary of cash held on the Cash Account of the Client. If the Client does not specify an e-mail address in the Client's Data Card, the Client shall be able to print the report in the CSP.
2. Reports described in sub-clause 1 above of this Section contain the Confirmation of transaction conclusion and shall, in particular, include the following information:
  - a) TMS Europe as the entity which sends the report;
  - b) Account number of the Client;
  - c) date and time of transaction;
  - d) order type;
  - e) buy/sell identification or the nature of the order in case of orders other than buy/sell;



- f) designation of the Financial Instrument;
- g) number of Financial Instruments being the object of the order;
- h) price at which the order was executed;
- i) total value of transactions;
- j) commission settled against Cash Account.

6. At least after the lapse of each quarter, TMS Europe shall send to the Client Reports containing a summary of Financial Instruments held and registered in the Client's name, cash held in the Client's Cash Account, comprising, in particular, an indication of type, name and number or amount of assets according to the levels as of the year end for which a report is prepared.

7. The report on assets shall contain following information:

- a) details of all the Financial Instruments or funds held by TMS Europe for the Client at the end of the period covered by the statement;
- b) the extent to which any Client Financial Instruments or Client funds have been the subject of securities financing transactions;
- c) the extent of any benefit that has accrued to the client by virtue of participation in any securities financing transactions, and the basis on which that benefit has accrued;
- d) a clear indication of the assets or funds which are subject to the rules of Directive 2014/65/EU and its implementing measures and those that are not, such as those that are subject to Title Transfer Collateral Agreement;
- e) a clear indication of which assets are affected by some peculiarities in their ownership status, for instance due to a security interest;
- f) the market or estimated value, when the market value is not available, of the Financial Instruments included in the statement with a clear indication of the fact that the absence of a market price is likely to be indicative of a lack of liquidity. The evaluation of the estimated value shall be performed by the firm on a best effort basis.

8. If the Client does not specify an e-mail address in the Client's Data Card, the Client shall be able to print the report in the CSP.

9. At the Client's request TMS Europe shall deliver information about the current state of an order execution (relates to pending orders).

10. TMS Europe at the Client's request may prepare other reports or confirmations regarding operations executed on the Client's Cash Account. The cost of preparation of the aforementioned documents shall be specified in the Table of Fees and Commissions.

11. Reports or confirmations referred to in sub-clause 10 above of this Section shall be delivered in the manner specified by the Client. The mail costs shall be charged in accordance with applicable price lists of entities intermediating in their delivery and borne by the Client.



### § 63. Correspondence Verification by the Client

1. The Client shall be obliged to familiarize itself with the correspondence received from TMS Europe.
2. The Client shall be entitled to submit written complaints regarding the contents of such correspondence according to the procedure specified in the Terms of Business.

### § 64. Correspondence Addresses

1. Any correspondence and notices as well as contacts by phone or fax between the Client and TMS Europe regarding matters covered by the Framework Agreement or these Terms of Business shall be directed to the correspondence address, e-mail address, phone number or, if applicable, e-mail.
2. The Client undertakes to notify TMS Europe of each change of data specified in sub-clause 1 above of this Section.
3. In the event the Client fails to fulfill its obligation specified in sub-clause 2 above of this Section, correspondence sent to the last correspondence address, e-mail address, phone number or, as applicable, e-mail indicated in the Framework Agreement shall be deemed served.
4. TMS Europe shall not be liable for non-delivery of correspondence due to the failure of the Client to provide contact details, such contact details being outdated or other reasons independent of TMS Europe.
5. TMS Europe shall not be liable in case unauthorized persons obtain access to the correspondence if such correspondence was provided in the manner specified in the Framework Agreement.

### § 65. Basic Rules of Conduct in the Case of Conflict of Interests

1. TMS Europe maintains and implements a conflict of interest policy which sets out the effective organizational and administrative arrangements that have been put in place to identify, prevent or manage and monitor conflicts of interest that might cause detriment to the Client.
2. TMS Europe has specific arrangements and internal procedures enabling it to identify, classify and evaluate all the types of fees, commissions and non-monetary benefits prior to the provision of any service to its clients. Conflict of Interests shall be understood as circumstances known to TMS Europe that may lead to a conflict between the interests of TMS Europe or any person related to it and the obligation of TMS Europe to act in a fair manner in accordance with the best interest of the Client. The following would constitute a conflict of interest for TMS Europe:
  - it is likely to make a financial gain or avoid a financial loss at the expense of the client;
  - has an interest or other incentive to favor the interest of another client or group of clients over the interests of the client;
  - it carries on the same business as that of the client;
  - it will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monetary or non-monetary benefits.



3. In the event that the organizational measures to prevent conflict of interest from adversely affecting the interest of the client, this conflict of interest will be disclosed to the Client by TMS Europe through disclosure of the nature of the conflict of interest and the steps taken to mitigate those risks before carrying out the transaction on behalf of its client. Accordingly, in the event TMS Europe ascertained the existence of the Conflict of Interests related to the performance of services for the benefit of the Client being the subject-matter of the Framework Agreement and the Terms of Business:

a) As a last resort, prior to the conclusion of the Framework Agreement, TMS Europe shall notify the Client in writing or via electronic means of communication of the existence of the nature of a Conflict of Interests, the risks involved to the client and the steps taken to avoid such conflicts before providing the service. The Client shall confirm receipt of such information from TMS Europe,

b) TMS Europe shall make executing the Framework Agreement with the Client conditional upon the Client's confirmation – by a separate statement or directly by means of executing the Framework Agreement – of its will to conclude the Framework Agreement by the Client despite the existence of Conflict of Interests.

4. Rules of conduct of TMS Europe in accordance with TMS Broker's Conflicts of Interest Policy in case of existence of Conflict of Interests shall be applicable subject to the requirement to disclose Conflict of Interests on a constant basis, i.e. both prior to the conclusion of the Framework Agreement and after its conclusion unless, in the assessment of TMS Europe, organization and internal regulations of TMS Europe ensure that the Client's interests shall not be violated.

5. In the event the Conflict of Interests related to the performance, for the benefit of the Client, of services being the subject-matter of the Framework Agreement and the Terms of Business occurs after the conclusion of the Framework Agreement:

a) TMS Europe shall notify the Client of the existence of the Conflict of Interests in the manner specified in sub-clause 3 item a) above of this Section, and the Client shall confirm receiving information about the existence of the Conflict of Interests from TMS Europe,

b) TMS Europe shall proceed with performing the services for the Client provided the Client together with the confirmation of receipt of the information about the existence of the Conflict of Interests does not serve a termination notice of the Framework Agreement in the mode specified in the Terms of Business on TMS Europe.

## § 66. Reservation and Pledge

1. The Client may not reserve, pledge or otherwise encumber funds recorded on the Client's Cash Account operated by TMS Europe.

2. The Client may not reserve, set pledge or otherwise encumber Financial Instruments recorded in the Register of Financial Instruments of the Client operated by TMS Europe.

3. TMS Europe shall refuse to execute an instruction placed by the Client to reserve, pledge or encumber cash on the Cash Account, Operational Register or Financial Instruments listed in the Register of Financial Instruments.

## § 67. Fees and Commissions

1. For services performed under the Framework Agreement and the Terms of Business and for activities related to the maintenance of the Cash Account, Operational Register or Register of Financial Instruments, TMS Europe charges



fees and commissions specified in the Table of Fees and Commissions.

2. The Table of Fees and Commissions shall be determined by the Board of Directors of TMS Europe.
3. In cases provided for in the Table of Fees and Commissions, commissions for concluded transactions shall be charged as at the transaction conclusion and drawn by TMS Europe from the Client's Cash Account no later than on the Settlement Day of such transaction.
4. Fees and commissions specified in the Table of Fees and Commissions shall be executed by TMS Europe from the Client's Cash Account and the execution of the Framework Agreement by the Client shall constitute consent for the purpose of the payment of such Fees and Commission being drawn from the Client's Cash Account. TMS Europe may allow the negotiation of fees and commissions specified in the Table of Fees and Commissions.
5. In connection with the execution of additional tasks ordered by the Client, the Client shall bear the following costs:
  - a) courier costs and other handling fees related to the delivery of documentation, reports and other correspondence provided at the Client's request;
  - b) costs of consultations and legal opinions and other studies provided the Client demands such consultations, opinions or legal studies in the scope of services provided by TMS Europe.
6. TMS Europe may unilaterally reduce the rates specified in the Table of Fees and Commissions or suspend charging them. Reduction or suspension of fees and commissions according to the procedure specified above or the change of other information contained within the Table of Fees and Commissions not related to the amount of fees and commissions shall not constitute change of terms and conditions of the Framework Agreement.
7. In the case of executing orders on Financial Instruments for which securities are the underlying instrument, the commission charged at the opening relates to the closing of the transaction as well.

## § 68. Liability and indemnity of the Parties to the Framework Agreement

1. TMS Europe shall act honestly, fairly, professionally in accordance with the best interests of the clients at all times.
2. TMS Europe will carry out its investment services activities to the Clients with utmost good faith, integrity, due skill, care and diligence.
3. TMS Europe will do its best to satisfy the needs and requirements of its clients and place the interests of its Clients before all other considerations.
4. Subject to the applicable laws and apart from situations where otherwise indicated in these Terms, the Company shall not be liable to the Client for any loss or damage incurred in connection with the subject matter of these Terms howsoever caused unless the Company's conduct constituted fraud, willful misconduct or gross negligence on its part or on the part of its agents, including the unjustifiable failure to perform in whole or in part its obligations.
5. When providing the service of reception and transmission of orders, the Client understands that TMS Europe will transfer the order from the client to a third party for execution. TMS Europe will execute the orders in line with the instructions received from the Client in compliance with all the applicable rules and regulations, including TMS Europe Best Execution Policy. TMS Europe does not assume any liability from the execution of orders from third parties as long as it is provided that TMS Europe did not act with gross negligence or willful default or fraud, in good faith and in the best interest of the clients.
6. TMS Europe shall not be liable for lost profits or losses incurred by the Client resulting from an error in the



operation of the Transaction System, interruptions or delays in data transmission, any other technical problems that may appear in the course of using the Transaction System and any other circumstances for which TMS Europe is not responsible. In particular, TMS Europe shall not be liable for losses resulting from technical problems related to the operation of the Transaction System, IT equipment or telecommunications connection, the Client was not able to make a transaction, place an order or obtain information regarding the balance on the Cash Account and related registers at the time of the Client's choosing.

7. The Client acknowledges that prices of Financial Instruments quoted in the Transaction System may contain errors and data irregularities. TMS Europe shall exercise due care so as to remove or significantly limit such errors and irregularities. TMS Europe shall be entitled to cancel a transaction concluded based on such errors and irregularities or correct the transaction price (price of Financial Instrument) at which the transaction was concluded provided the execution price manifestly diverged from the real market quotation determined according to the procedure provided for in sub-clause 8 of this Section, irrespective of the fact whether the Client was aware of the existence of such errors and irregularities at the moment of making the transaction.

8. TMS Europe shall not be liable for lost profits and losses incurred by the Client that are the result of quoting erroneous prices of Financial Instruments in the Transaction System in relation to real prices quoted at that moment in time on the respective market. It is agreed that quotations provided by a Renowned Information Agency or entity maintaining the respective regulated market shall constitute the reference point in order to consider market quotations as wrong. In such a case TMS Europe shall be entitled to introduce the necessary correction in the Register of Financial Instruments, Operational Register or in the Cash Account of the Client in relation to the transaction that was determined by TMS Europe to be wrong.

9. TMS Europe stipulates that TMS Europe shall not be liable for damage incurred by the Client as a result of suspending the execution of a transaction by TMS Europe himself or suspending a transaction or blocking the account by the Money Laundering Reporting Officer in terms of the Prevention of Money Laundering Act and subsidiary legislation.

10. The Client shall hold harmless and indemnify TMS Europe against all actions, proceedings, costs, demands, expenses and claims incurred by the Firm for actions brought against it by the Client for the non-performance of this Terms of Business unless such actions are due to the negligence or fraud on the part of TMS Europe.

## **§ 69. Exclusion of Liability of TMS Europe**

1. TMS Europe shall not be liable for any errors or delays in the performance of obligations resulting from the Framework Agreement or the Terms of Business due to circumstances attributable to third parties for whose activity TMS Europe is not liable or which are beyond the control of TMS Europe, characteristic of Extraordinary Change of Conditions, as specified in sub-clause 2 of this Section below.

2. The following situations may be recognized as Extraordinary Change of Conditions:

(a) a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments or underlyings of financial instruments traded on a trading segment within the trading venue in relation to which the obligation to sign a market making agreement applies;

(b) war, industrial action, civil unrest or cyber sabotage;

(c) disorderly trading conditions where the maintenance of fair, orderly and transparent execution of trades is compromised, and evidence of any of the following is provided:

(i) the performance of the trading venue's system being significantly affected by delays and interruptions;



- (ii) multiple erroneous orders or transactions;
  - (iii) the capacity of a trading venue to provide services becoming insufficient;
- (d) where the investment firm's ability to maintain prudent risk management practices is prevented by any of the following:
- (i) technological issues, including problems with a data feed or other system that is essential to carry out a market making strategy;
  - (ii) risk management issues in relation to regulatory capital, margining and access to clearing;
  - (iii) the inability to hedge a position due to a short selling ban or other reason;
- (e) for non-equity instruments, during the suspension period referred to in Article 9(4) of Regulation (EU) No 600/2014 of the European Parliament and of the Council.
3. In case of Extraordinary Change of Conditions, TMS Europe shall be entitled to change the requirements as to the rate of the Margin Deposit, close all or a part of the Client's positions so as not to allow the losses to escalate and in order to protect the interests of the Client or TMS Europe.
4. In case of Extraordinary Change of Conditions, TMS Europe shall take steps in order to allow Clients to make use of services of TMS Europe but making use of such services under this mode may be impossible to its full scope.
5. TMS Europe shall be entitled to limit or suspend the operation of the Transaction System in the scope of trading on Financial Instruments in case the Underlying Instrument quoted on the stock market, constituting the basis for the quotation of the financial instrument, was suspended or withdrawn from the market.

## **§ 70. Comments and Objections**

1. In case of any comments or objections on the part of the Client relating to services performed by TMS Europe, the Client should without undue delay notify TMS Europe of this fact.
2. Comments and objections specified in sub-clause 1 of this Section may be submitted in the working hours of TMS Europe orally, by phone, in writing or via electronic means of communication.
3. TMS Europe undertakes to provide explanations as to raised subjects in a complete and exact manner.
4. Provisions of the Terms of Business shall not be applicable to explanations of TMS Europe regarding received comments and objections.

## **§ 71. Placement and Examination of a Complaint**

Clients and potential clients (thereafter, the "Complainant") are enabled to submit complaints free of charge.

Details of the TMS Europe's complaints handling process can be found on <https://www.tmseurope.com/documents>.



TMS Europe is committed to immediately upon receipt, acknowledge receipt of complaints and to keep the complainant informed about further handling of the complaint.

By accepting the terms of this Terms of Business, the Client acknowledge that TMS Europe has informed the Client of our Complaints Handling procedures, with reference to the link provided above. Details in the Complaints procedures include information of when the complaint will be acknowledged, indication of handling times, reference to the Office of the Financial Arbiter established under the Arbitration for Financial Services Act and of any alternative dispute resolution mechanisms in case complaints remain unresolved.

The Procedure for Responding to Complaints is set out and outlined as below:

1. In writing, acknowledge receipt of any complaint upon receipt. Such complaints are to be submitted to the Risk Manager on [complaint@tmseurope.com](mailto:complaint@tmseurope.com) or via mail to “TMS Brokers Europe Ltd., 266, Level 1, Ta' Xbiex Seafront, 1020 Gzira, Malta”. In receipt of oral complaints received, TMS shall make a summary of the complaint and at the request of the complainant, to provide a summary of the complaint to the complainant;
2. TMS, following receipt and acknowledgment of the complaint, gather and investigate all relevant evidence and information regarding the complaint;
3. Provide a response, which is written in plain language, without unnecessary delay, or at least within 15 working days from the day of complaint registration. If the complaint is not replied to within the stated time-period, TMS is to inform the complainant about the causes of the delay and to provide an indication as to when the complaint investigation is to be finalized.
4. TMS is to provide an explanation of TMS' position on the complaint and that if the complainant is not satisfied with the way the complaint was resolved by the Company, the complainant may refer the complaint to the Office of the Arbitration for Financial Services established under the Arbitration for Financial Services Act, (Cap.555). Such decision shall be provided in writing.

## **§ 72. Correcting Transactions**

1. In the event the Client makes a complaint regarding an executed, or transaction/s on Financial Instruments which should have been executed, TMS Europe may at its own discretion and without a prior notice make a correcting transaction in relation to the transaction being the object of a complaint in order to limit the exposure to the exchange rate risk resulting from the transaction being the object of a complaint.
2. Concluding a correcting transaction specified in sub-clause 1 of this Section shall be on the Client's account and may be done before TMS Europe addresses in writing the complaint filed by the Client.
3. TMS Europe shall not be liable for the financial risk to which the Client may be exposed to in relation to the transaction being the object of a complaint.

## **§ 73. The Compensation Scheme**

1. TMS Europe participates in the Compensation Scheme whose aim is the protection of investors, as defined in the Investor Compensation Scheme Regulations (Subsidiary Legislation 370.09) by maintaining funds out of which



compensations and payments may be made to investors in accordance with the provisions of the Investor Compensation Scheme Regulations.

2. The Compensation Scheme provides for the payment of compensation in respect of claims arising out of TMS Broker's inability to:

- a) repay money owed to or belonging to the Client and held on its behalf in connection with the licensed business;
- b) return to the Client any instrument belonging to it and held or administered by TMS Europe, and where this is not possible, their monetary value.

3. The amount of compensation payable to a Client is calculated in terms of the Investor Compensations Scheme Regulations by taking into account any or all of the following factors:

- a) any legal and contractual conditions arising in terms of the Framework Agreement and these Terms of Business;
- b) counterclaims;
- c) market value;
- d) surrender value.

4. The total amount of compensation that may be paid to a Client is the lesser of 90% in respect of all claims which have been made by the Client provided that the upper limit of funds covered by the Compensation Scheme is EUR 20,000 per Client.

5. Detailed rules of operation of the Compensation Scheme and the payment of compensation may be found in the InvestorCompensationSchemeRegulations:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10412&l=1>.

6. Specific exclusions are found in the said regulation.

#### **§ 74. Entrusting a Third Party by TMS Europe with the Performance of Certain Activities in Respect of the Brokerage Activities**

1. TMS Europe may entrust another entity selected by it with the performance of activities within the scope of activities performed by TMS Europe, including brokerage activities, subject to applicable provisions of the law.

2. Entrusting another entity with the performance of activities shall occur on the basis of an agreement concluded by and between TMS Europe and such entity.

3. In case TMS Europe entrusts another entity with the performance of activities specified in sub-clause 1 of this Section above:

a) the liability of such entity entrusted by TMS Europe with the performance of activities for damage done to the Client as a result of non-performance or improper performance of an agreement concluded by and between TMS Europe and such entity may not be excluded nor limited;

b) the liability of TMS Europe for damage done to the Client as a result of non-performance or improper performance of an agreement concluded by and between TMS Europe and such entity may not be excluded nor limited.

4. TMS Europe shall notify the Clients of the intention to entrust a selected entity with the performance of activities within the scope of activities performed by TMS Europe, including brokerage activities, as specified in sub-clause 1 of this Section above, as follows:

a) via the Transaction System or

b) by e-mail to the indicated e-mail address or



in any other manner indicated in clause 60 “Correspondence with the Client”, sub-clause 2, of the Terms of Business. The provisions of clause § 60 of the Terms of Business shall apply as appropriate.

5. Unless within 14 days of receiving information specified in sub-clause 4 of this Section above TMS Europe receives a written notice of termination by the Client of the Framework Agreement in the mode specified in the Terms of Business, TMS Europe shall assume that the Client accepts the delegation to another entity by TMS Europe of the performance of activities within the scope of the Framework Agreement.

#### **§ 75. Termination of the Framework Agreement by the Client**

1. Each party of these arrangements is entitled to terminate the arrangements by giving to the other party 7 Business Days’ notice in written form.

2. The Client is thus entitled to terminate these arrangements by giving to TMS Europe 7 days written notice, as may TMS Europe by giving to the Client 7 Business Days written notice as well, unless due to events of default or force majeure.

3. No penalty will become due from either the Client or TMS Europe in respect of the termination of these arrangements.

4. If these arrangements are terminated, that will not affect any outstanding orders or transactions or any legal rights or obligations which may already have arisen.

5. On termination by either of TMS Europe or the Client, TMS Europe will:

(a) be entitled to receive from the Client all fees, costs, charges, expenses and liabilities accrued or incurred under this Agreement up to the date of termination including any additional expenses or losses reasonably and properly incurred in terminating this Agreement and any charges for transferring the Client’s investments to the Client or to another person specified by the Client;

(b) where appropriate, as soon as reasonably practicable after that, deliver or cause your investments to be delivered to the Client or to a person specified by the Client.

#### **§ 76. Termination of the Framework Agreement by TMS Europe**

1. TMS Europe may terminate the Framework Agreement at any time, in particular:

a) in the case of the Client’s violation of the terms and conditions of the Framework Agreement or these Terms of Business or any binding laws as well as in case in the course of 3 following months there are no new records regarding the Financial Instruments on the Register of Financial Instruments or in case a negative or nil balance persists on the Cash Account in the period of 3 months;

b) in the case of attachment of the Client’s claims in the manner of court or administrative execution;

c) in the case of the Client’s liquidation or bankruptcy;

d) in other cases, specified in these Terms of Business, including, in particular, the case indicated in sub-clause 4 herein;



- e) in the case when the Client continuously trades on the non-market prices;
  - f) in the case when Client uses technology solutions to gain privileged position vs TMS Europe or other market participants;
  - g) in the case if the Client uses algorithmic systems affecting the effective functioning of Transaction Systems;
  - h) in the case when Clients' transactions under investigation for potential breach of Market Abuse Regulation.
2. The Framework Agreement shall expire after 7 days of receiving by the Client a termination notice of the Framework Agreement. Provisions of clauses 8 – 10 of these Terms of Business shall be applicable as appropriate.
  3. Unless terminated earlier, the Framework Agreement shall be terminated at the time of death of the Client being a natural person.
  4. The Framework Agreement may be terminated immediately without notice period if Clients is found guilty of money laundering or in breach of any provisions within the Prevention of Money Laundering Directive.

#### **§ 77. Effects of termination of the Framework Agreement**

1. As of the termination day of the Framework Agreement the Register of Financial Instruments, Operational Register and Cash Account shall be closed.
2. As of the termination of the Framework Agreement TMS Europe shall close all open positions and cancel all orders.
3. As of the termination of the Framework Agreement all receivables of TMS Europe shall become immediately due.
4. The Framework Agreement expires in case TMS Europe receives a credible, written information of the Client's demise (in particular, TMS Europe is presented with the Client's death certificate). In such a case TMS Europe shall close all open positions of the Client and block cash funds. All instructions regarding cash shall be accepted by TMS Europe solely from authorized persons in terms of applicable law. If the provisions of the law (in particular, inheritance law) impose additional conditions regarding the execution of instructions TMS Europe shall execute instructions after the fulfillment of such conditions by heirs.

#### **§ 78. Termination of the Framework Agreement by TMS Europe without the Notice Period**

1. If in the assessment of TMS Europe, the Client does not warrant the performance of the obligations resulting from the Framework Agreement, TMS Europe may terminate the Framework Agreement with immediate effect. In the assessment of TMS Europe, the Client does not warrant the performance of the obligations resulting from the Framework Agreement, in particular, if it breaches the provisions of the Framework Agreement or the Terms of Business or makes false statements (in particular, presents untrue data or information based on which TMS Europe identifies the Client).
2. The Framework Agreement may be terminated by TMS Europe in the mode specified in sub-clause 1 of this Section above in the event of the change of applicable law that prevents or substantially hinders the performance by TMS Europe of activity in the scope covered by the Framework Agreement and these Terms of Business including, in



particular, in case of occurrence of circumstances indicated in clause 17 “Prevention of Money Laundering – Client identification and source of funds and wealth” of the Terms of Business.

#### **§ 79. Disposition of Assets by the Client following the Termination of the Framework Agreement**

1. If at the moment of termination of the Framework Agreement by TMS Europe there are open positions recorded in the Register of Financial Instruments or there is cash on the Cash Account, TMS Europe shall enclose to the termination notice of the Framework Agreement a call to close the positions and cancel orders in the notice period and/or transfer the cash to the Client’s indicated account.
2. If following the lapse of the notice period of the Framework Agreement:
  - a) there are still cash funds on the Client’s Cash Account, TMS Europe shall leave them on a separate non-interest-bearing account;
  - b) there are still open positions in the Register of Financial Instruments, TMS Europe may close them, at the time of its choosing, under the conditions specified solely by TMS Europe and may transfer cash obtained from the sale to a separate non-interest-bearing account but taking or transferring cash by the Client to another account may occur after TMS Europe receives appropriate instructions;
  - c) If there are pending orders, TMS Europe shall cancel these orders.
3. Prior to the withdrawal or transfer of cash, as specified in sub-clauses 1 and 2 of this Section above, TMS Europe may satisfy its claims towards the Client from such cash.
4. Claims of TMS Europe towards the Client, resulting from the Framework Agreement or other agreements on the provision of brokerage services, may be satisfied by TMS Europe in a manner of its own choosing from any assets of the Client found at TMS Europe, recorded on the Cash Account or the Register of Financial Instruments. In particular, in order to satisfy its claims TMS Europe may close on behalf of the Client selected positions recorded in the Client’s Register of Financial Instruments and withdraw cash from the Cash Account.
5. If at the moment of termination of the Framework Agreement by the Client there are open positions recorded in the Register of Financial Instruments or there is cash on the Client’s Cash Account, the Client shall be obliged in the termination period to close all positions and/or transfer cash to the Client’s indicated account. If by the day of the expiration of the Framework Agreement the Client shall not perform the said actions, provisions of sub-clauses 2, 3 and 4 of this Section shall be applicable as appropriate.

#### **§ 80. Settlement of Disputes**

Services performed by TMS Europe under the Framework Agreement and these Terms of Business shall be construed in accordance with Maltese Law.



## § 81. Competent Courts

The parties shall seek to settle amicably by negotiations between all disputes relating to the Framework Agreement. After all such possibilities have been exhausted, the parties may refer the matter to a court of law vested with jurisdiction over such matters. The parties submit to the non-exclusive jurisdiction of the Maltese Courts for the resolution of all disputes between them as to any matter arising out of or in connection with the Framework Agreement and these Terms of Business, including any question regarding its existence, validity or termination.

## § 82. Amendments to these Terms of Business, Financial Instruments Specification, Information Card about TMS Europe, Characteristics of Financial Instruments and Risk Specification

1. TMS Europe reserves the right to introduce amendments to these Terms of Business for important reasons. The following are deemed important reasons:

- a) introduction of new or a change of generally applicable provisions of the law relating to services performed by TMS Europe hereunder;
- b) a change in or the development of new interpretations of generally applicable provisions of the law that affect services performed by TMS Europe hereunder;
- c) adjusting products and services performed by TMS Europe hereunder to market conditions;
- d) adjusting products and services to changes introduced in the IT system operating at TMS Europe that affects the services performed by TMS Europe hereunder;
- e) expansion or change of functionalities of services performed by TMS Europe hereunder.

2. Information about introducing amendments to these Terms of Business shall be provided by TMS Europe in one of the modes specified in clause sub-clause 2 of clause 60 “Correspondence with the Client”. Sub-clause 4 – 7 of clause 60 of these Terms of Business shall apply accordingly.

3. Representations of TMS Europe regarding the amendment to the Terms of Business may be provided by electronic means, to the e-mail address provided by the Client. The Client’s provision of the e-mail address shall be deemed as granting consent to receive the aforementioned representation via e-mail. In case of informing the Client of amendments introduced in these Terms of Business via e-mail TMS Europe shall not be obliged to provide the said information in any other manner than indicated in sub-clause 2 of this Section above. The contents of the new wording of the Terms of Business shall be made available on websites of TMS Europe and in CSP of TMS Europe no later than on a day of providing information in the mode specified in the preceding sub-clause.

4. Amendments to the Terms of Business shall be binding towards the Client provided within 14 days of receiving information about such amendments in the manner specified in sub-clauses 2 or 3 of this Section above, provided that TMS Europe shall not have received from the Client a written notice of termination of the Framework Agreement in the mode specified in the clause 75 “Termination of the Framework Agreement by the Client” above of the Terms of Business. No receipt of termination of the Framework Agreement in the term specified in the preceding sentence shall mean that the Client accepts the provisions of these Terms of Business in the new wording.

5. Provisions regarding amendments to the Terms of Business, as specified above, shall apply accordingly to amendment to the Table of Fees and Commissions in cases other than specified in sub-clause 6 of this Section below



of the Terms of Business, in particular, in case of increasing the amount of fees and commissions by TMS Europe.

6. TMS Europe shall have the right to introduce changes to documents such as Financial Instruments Specification, Information Card about TMS Europe, Characteristics of Financial Instruments and Risk Specification. The up-to-date version of the said documents shall be disclosed in CSP of TMS Europe and on the website at [www.tmseurope.com](http://www.tmseurope.com). TMS Europe shall notify the Client of the introduced changes via electronic means of communication including, in particular, via the transaction system

### **§ 83. Compliance**

Notwithstanding any provisions of the Framework Agreement or the Terms of Business, TMS Europe may take necessary actions to ensure that no provisions of the law, decisions of regulatory bodies, Market Rules and rules specified by entities running respective regulated markets are violated, of which actions TMS Europe shall notify the Client.

### **§ 84. Applicable Law**

The Framework Agreement and these Terms of Business shall be governed and construed in accordance with the laws of Malta.

### **§ 85. Language Versions**

The Framework Agreement, these Terms of Business, TMS Europe's website and any supplementary documents mentioned herein are in English, unless otherwise agreed by the Client and TMS Europe. TMS Europe may provide the Client with a translation of the Framework Agreement and the Terms of Business into another language, but in case of doubts or conflicts regarding the interpretation of the Framework Agreement and the provisions hereof, the English language version shall prevail.

### **§ 86. Mitigation of Operational Risk**

1. In the Transaction System, TMS Europe shall provide the Counterparty with reports about concluded Transactions, their Key Conditions and value of the margin (collateral). It shall be the Counterparty's obligation to monitor the concluded Transactions and confirm Key Conditions of a concluded Transaction as well as the value of the margin (collateral) within the next Business Day following the date of Transaction conclusion. In case of Transactions concluded after 4 p.m. of the local time this term shall be extended by another Business Day.
2. In case the Counterparty does not file any discrepancies regarding Key Conditions of Transaction or the value of the margin (collateral) in the portfolio within the term specified in sub-clause 1 of this Section, this shall mean that the Counterparty expressly confirms Key Conditions of Transaction and the value of the margin (collateral) in the portfolio.
3. All Transactions confirmed by the Client are deemed agreed in accordance with the EMIR Regulations.



4. TMS Europe no less than once every six months shall conduct an analysis regarding the possibility of a Portfolio Compression. Analysis regarding the possibility of a Portfolio Compression shall be conducted provided the Counterparty has at least 500 positions open at TMS Europe.
5. Portfolio Compression shall consist in combining open positions of the Counterparty. In particular, Portfolio Compression shall consist in closing several open positions in the Derivative based on the same Underlying Instrument and then opening one Transaction in the net nominal value of a position as prior to the Portfolio Compression. For executing the Portfolio Compression TMS Europe shall charge fees indicated in the Table of Fees and Commissions.
6. Before undertaking a Portfolio Compression, TMS Europe shall contact the Counterparty. TMS Europe shall be entitled to execute the Portfolio Compression without the consent of the Counterparty.
7. In the case of a significant Irregularity regarding Key Conditions of concluded Transactions, their quotation or value of the margin (collateral), the Counterparty should voice its reservations to the TMS Europe's registered office address within the deadline specified in sub-clause 1 of this Section above.
8. For the purposes of definition of Irregularity, it is agreed that the amount of Irregularities must exceed 5000 EUR in order to be examined in the mode specified herein.
9. Voicing a reservation regarding Irregularities should, in particular, include:
  - a) information that the reservation is filed in accordance with the mode of "EMIR Irregularities"
  - b) date on which the Counterparty identified the Irregularity,
  - c) indication of Transaction and Key Conditions of such Transaction or value of the margin (collateral) of the portfolio in relation to which the Counterparty identified the Irregularity;
  - d) estimation by the Counterparty of the value of Key Condition of Transaction or value of the margin (collateral) of the portfolio that in the opinion of the Counterparty should be found in reports provided by TMS Europe in the Transaction System of TMS Europe.
10. Information about Irregularities that do not comply with conditions set forth in this Section shall be identified and considered as a complaint in accordance with the provisions hereof.
11. TMS Europe undertakes to verify the reservations of the Counterparty, as specified in sub-clause 8 of this Section, within 5 Business Days of the Date of Irregularities.
12. In case Irregularities shall not be solved within the term specified above both the Counterparty and TMS Europe undertake to notify their respective board of directors of the object of Irregularities and of the fact that Irregularities failed to be solved. The respective boards of directors shall endeavor, acting in good faith, to solve the Irregularity within the next 10 Business Days.
13. If the Irregularity has not been solved in the aforementioned term, TMS Europe shall close the Transaction of the Counterparty to which the Irregularity relates. The Counterparty hereby grants its consent for the above.

## § 87. Promotions

1. From time to time TMS Europe may offer money bonuses by way of promotion. Client acknowledge that the Client have read and understood the details of the terms and conditions associated with all such money bonuses listed on the "limited time promotions" page at [www.tmseurope.com/promotions](http://www.tmseurope.com/promotions). Additionally, Client shall be aware that such money bonuses may vary from time to time, as applicable.
2. The instructions to receive a bonus are listed on the "limited time promotions" page at [www.tmseurope.com/promotions](http://www.tmseurope.com/promotions). In relation to the First Deposit Bonus indicated therein, Client consent to the terms and conditions associated with this bonus by entering the relevant bonus code in the deposit field.



3. Client agree to abide by the restrictions and limitations in force in respect of these bonuses (as described in this Section) should Client qualify for one. At any time during our business relationship any breach of these restrictions and limitations identified by our internal reporting systems will invalidate or render void any bonuses and associated trading gains that Client may qualify for. All bonuses on the Client's account are subject to these restrictions and may lapse if not utilized. Advertised bonuses are restricted to one account per Household ("a Client which is related to other Client by one, all, or any combination of the following: name, phone number, mailing address, e-mail address, IP address, name on credit/charge card, credit/charge card number, machine ID and any other form of identification information provided").

#### **§ 88. Validity of the Terms of Business**

6. Providing brokerage activities under agreements concluded prior to the coming into force of the Terms of Business shall be conducted on the terms and conditions specified in these Terms of Business, provided the provisions of such agreements so allow.
7. Correction of evident errors shall not constitute an amendment hereto.
8. The Regulations shall come into force on the 20<sup>th</sup> July 2018.



## Appendix 1

### Terms of Business

1. When concluding the Framework Agreement, the Client is required to provide the documentation specified below:

a. Copies or scans of any one of the following documents:

- i.a valid unexpired passport,
- ii.a valid unexpired national or other government-issued identity card,
- iii.a valid unexpired residence card or an equivalent document issued by a foreign government, recognised as a legal means of identification by the Maltese Authorities,
- iv.a valid unexpired driving license

AND

b. Copies of any one of the following documents:

- i.a recent statement or reference letter issued in the Client's name by a recognized credit institution authorized in EU member state or a reputable jurisdiction (issued not earlier than 6 months from current date)
- ii.a recent utility bill, issued in the Client's name in relation to services linked to Client's residential property (issued not earlier than 6 months from current date)
- iii.any government-issued document, where a clear indication of residential address is provided
- iv.an official conduct certificate
- v.correspondence from a central or local government authority, department or agency, extract from population register (in the case of the Republic of Latvia).

2. Verification of Client's identity and data may also be done using electronic means. Verification by electronic means may be conducted through recognised commercial electronic data providers, set up specifically for that purpose, for the countries for which such data providers are applicable. The standard level of such confirmation should at least comprise the following:

- i. one match on an individual's full name and current permanent residential address; and
- ii. a second match on an individual's full name and either his current permanent residential address or his date of birth.

3. Verification of client's identity and data may also be done in person via TMS representatives. As long the TMS representative is reputable and is confirmed by the board of directors as representatives of the Company.

TMS representatives in the TMS' representative offices may make reference to any of the documents listed under 1 (a) pts i-iv above in order to verify identity; and documents listed under (b) pts i – v above to verify residential address. They need to be attentive to make sure documents viewed are not forged or have been tampered with.

It should be remembered that the documents they are reviewing need to be in original and that they are able to make a true copy of the original that will be kept on file and that will need to be sent to Malta Head office. These copies need to be signed and dated by the TMS representatives.



4. The Client shall also ensure that the first payment or transaction into the account is carried out through an account held by the applicant for business in his name with a credit institution authorised under the Banking Act or otherwise authorised in another Member State of the Community or in a reputable jurisdiction. It is to be noted that the first payment or transaction into the account held by the applicant for business may be an electronic card payment only where the electronic card used to affect the payment is linked to an account held by the payer with a credit institution. For the avoidance of any doubt, rather than comparing – or relying on – the information provided by the customer in the ‘description of the transaction’ field, it will rather be the data contained in the transfer as indicated by the entity providing financial services.

5. TMS Europe is also entitled to apply an additional measure of verification of residential address provided by the Client. TMS Europe may send in hard copy to the Client, an individual one-time PIN code. TMS Europe shall send in hard copy to the Client, an individual one-time PIN code generated from the Back-Office system, to verify residential address of the applicant. This code shall be sent via registered mail or courier to the residential address provided by the Client. The proof of sending the code shall be attached to the Client’s documentation held on file. The Client will be requested and shall be obliged to fill in the code into his or her Client Zone and to sign advice of the delivery. The filling and signed advice of the delivery will be considered as proof of receipt of the unique PIN;

6. In particular cases TMS Europe shall be entitled to request additional documentation than those set out in point 1. The activation of the Client’s account by TMS Europe shall be conditional on the receipt by TMS Europe of such additional documentation and shall remain at the discretion of TMS Europe.