

# Terms and Conditions of producing Recommendations of a general nature by OANDA TMS Brokers S.A.

## Article 1

### Preliminary provisions

1. These Terms and Conditions set out the principles of producing Recommendations by TMS Brokers and the principles of disseminating those Recommendations issued as:
  - a) general Recommendations.,
  - b) general Recommendations - Live Trading.
2. The brokerage activities conducted by TMS Brokers, including the brokerage activities performed on the basis of these Terms and Conditions defined in Article 69 clause 4 item 6) of the Act on Trading in Financial Instruments (Journals of Laws of 2017 item 771) are supervised by the Polish Financial Supervision Authority.
3. Under no circumstances the content referred to in these Terms and Conditions constitutes investment advice of an individual nature because it is not issued based on the individual situation of the Client and it does not take into account its investment objectives. It shall be the responsibility of the Client to verify whether the recommendations contained in the materials are appropriate for the Client.

## Article 2

### Definitions

Whenever these Terms and Conditions refer to:

- 1) **Investment Research** — it means research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several Financial Instruments or the issuers of Financial Instruments, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public, and in relation to which the following conditions are met:
  - a) such research or information is labelled or described as Investment Research or in similar terms, or is otherwise presented as an objective or independent explanation of the matters contained in the recommendation;
  - b) if the Recommendation in question were made by TMS Broker to a Client, it would not constitute the provision of investment advice for the purposes of MIFID II;
- 2) **MIFID II** — it means Directive 2014/65/UE of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU;
- 3) **Business Day** — it means days other than Saturdays and Sundays as well as days other than public holidays within the meaning of the Act on Non-Working Days of 18 January 1951 (consolidated text: Journal of Laws of 2015, item 90, as amended);

- 4) **Recommending Information** — it means information recommending or suggesting an investment strategy which:
  - a) was produced by an independent analyst, an investment firm, a credit institution, any other person whose main activity consists in preparing investment recommendations, or a natural person working for them on the basis of a contract of employment or other basis, expressing directly or indirectly specific investment proposals with respect to a financial instrument or issuer; or
  - b) was produced by persons other than those referred to in item (a) and which explicitly proposes specific investment decisions in relation to the financial instrument;
- 5) **Financial Instruments** — it means financial instruments defined in Article 2 clause 1 of the Act on Trading in Financial Instruments of 29 July 2005 (consolidated text: Journal of Laws of 2017, item 1768);
- 6) **Client** — it means any natural person, any legal person or organisational unit without legal personality who has registered on the nonstop.tms.pl website and has accepted the provisions of the Terms and Conditions;
- 7) **Conflict of interest** - circumstances known to TMS Brokers that may lead to a conflict between the interests of TMS Brokers, the Person involved and the obligation of TMS Brokers to act fairly, taking into account the best interests of the Client, as well as the circumstances known to TMS Brokers that may lead to a conflict the interests of several TMS Brokers customers;
- 8) **Live Trading** — it means a cyclical webinar (online training) or in-house trainings/meetings at which the Department of Analysis and Education analyses the market on its Model Account on an ongoing basis;
- 9) **Trading Platform** — it means a trading system offered to TMS Brokers clients whose purpose is to conduct brokerage activities consisting in the execution of orders,
- 10) **Marketing Communication** — it means Recommending Information or Investment Recommendation that does not meet the conditions of the Investment Research;
- 11) **Model Account** — it means a transaction account in the service variant TMS Connect, TMS Direct or TMS Stocks reproducing standard conditions applicable to clients of TMS Brokers,
- 12) **Recommendation** — it means Investment Research or Marketing Communication;
- 13) **Investment Recommendation** — it means information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public,
- 14) **TMS NonStop Website** — www.nonstop.tms.pl websites,
- 15) **TMS Brokers** — it means OANDA TMS Brokers S.A. with its registered office in Warsaw, entered in the register of entrepreneurs kept by the District Court for the Capital City of Warsaw in Warsaw, 12<sup>th</sup> Commercial Division of the National Court Register, under number KRS 0000204776, Tax Identification Number (NIP): 526- 27-59-131

### Article 3

#### General principles

1. Recommendations shall be issued by employees of the Department of Analysis and Education of TMS.
2. Recommendations shall be addressed to Clients who concluded an agreement with TMS Brokers for the execution of orders.
3. In addition, addressees may include persons other than those specified in clause 2, provided that they registered their profile on the TMS NonStop Website or registered in the TMS Brokers mobile application.
4. The subject of the Recommendation may be any Financial Instrument which is quoted in the TMS Connect, TMS Direct or TMS Stocks transaction system.
5. Recommendations shall be issued in an electronic or oral form (issued during Live Trading).
6. The Recommendations issued are aimed at:
  - a) promotion of the quality of services provided by TMS Brokers in the service variant TMS Connect, TMS Direct and TMS Stocks,
  - b) education in the area of asset classes offered by TMS Brokers in the service variant TMS Connect, TMS Direct and TMS Stocks,
  - c) promotion of technologies offered in the service variant TMS Connect, TMS Direct and TMS Stocks.

#### **Article 4**

##### **Elements of the Recommendation**

1. Each Recommendation shall include the following:
  - a) forename and surname of the person producing the Recommendation and the job title held by that person;
  - b) clear separation of facts from interpretations, estimates, opinions and other types of nonfactual information;
  - c) clear and prominent indication of all substantially material sources of information;
  - d) the reliability of all sources of information or, if where there is any doubt as to whether a source is reliable, a clear indication of such fact;
  - e) clear and prominent indication of all projections, forecasts and price targets, and indication of the material assumptions made in producing or using them;
  - f) clear and prominent indication of the date and time when the production of the Recommendation was completed.
  - g) the identification of the Financial Instrument,
  - h) the direction of the recommendation,
  - i) a reference to the planned frequency of updates to the Recommendation,
  - j) an indication of the relevant date and time for any price of Financial Instruments mentioned in the Recommendation;
2. Other elements required by the law can be found in the *Disclaimer* section on <https://www.tms.pl/disclaimer>. In particular, the *Disclaimer* section contains the following information:
  - a) a summary of any basis of valuation or methodology and the underlying assumptions used to either evaluate a Financial Instrument or an issuer, or to set a price target for a Financial

- Instrument, as well as an indication and a summary of any changes in the valuation, methodology or underlying assumptions;
- b) an indication of the place where detailed information about the valuation or methodology and the underlying assumptions is directly and easily accessible, in the event that the person who produces the Recommendation has not used proprietary models;
  - c) an indication of the place where material information about the proprietary models used is directly and easily accessible, in the event that the person who produces the Recommendation has used proprietary models;
  - d) the meaning of any Recommendation made, such as the recommendations to “buy”, “sell”, “hold”, “buy stop”, “sell stop”, “sell limit”, “buy limit” and the length of time of the investment to which the Recommendation relates are adequately explained and any appropriate risk warning, which includes a sensitivity analysis of the assumptions, is indicated;
3. The Department of Analysis and Education operates the information and marketing section on the NonStop website where all results of each Recommendation and the results of the Model Accounts are presented. The website also presents the methodology of calculating the risk, transaction size, leverage and the result of the transaction, a commentary to the results of the Model Account together with the justification of the strategy, the diversification of asset classes.

## **Article 5**

### **Principles of issuing Recommendations**

1. Recommendations shall be issued on Business Days.
2. Recommendations to open a position may relate to taking the entire position, a double position of a half of the position. During the day, Recommendations may be issued to open additional positions or close positions already held.
3. TMS Brokers reserves the right to change or cancel a Recommendation issued.
4. A Recommendation shall be changed or cancelled by updating it.
5. In the case of an update TMS Brokers shall clearly specify to which Recommendation (stating the date of the earlier Recommendation) the modification or cancellation applies, by indicating in particular the original release date of the Recommendation, the identification of the Financial Instrument or the issuer and the information about the changes made.

## **General Recommendations**

### **Article 6**

#### **Principles of publication through Recommendation distribution channels**

1. After producing a Recommendation an employee of the Department of Analysis and Education shall execute a transaction in the Model Account.
2. Prices of orders that were submitted or executed in the Model Account are the same as the prices indicated in the Recommendation.

3. Next, the employee of the Department of Analysis and Education shall immediately publish the content of the Recommendation on the TMS NonStop website. Publication of a recommendation on the TMS NonStop website shall constitute the original publication of the Recommendation.

## **Article 7**

### **Methodology for calculating results of the Recommendation**

1. Each issued Recommendation shall be entered in the Model Account. Based on the account register, the total result on the Model Account shall be calculated.
2. Detailed information on the Model Account, including the balance of the operational register and the history of executed transactions, shall be published on the TMS Brokers website.
3. The Model Account shall be a demonstration account, thus the transactions executed in this account shall have no legal effects.
4. When calculating the result of the Recommendation, the level of risk for a single 1 position equal to 1.5% of the account value was adopted for all instruments in accordance with the methodology adopted in these Terms and Conditions.
5. The result on the Recommendation for the Financial Instrument being the subject of the transaction shall be calculated on the basis of transaction opening and closing prices for the calculated transaction size. The Client should note that the results achieved by the Client may differ from the results shown in the Model Account.
6. All transaction costs such as commissions, swap points, costs of financing open positions etc. shall be calculated on the basis of instruments in the service variant TMS Connect, TMS Direct or TMS Stocks platform.
7. The size of the transaction shall be calculated on the basis of the value of the Stop Loss order defined at the time of issuing the Recommendation.
8. The methodology based on a constant percentage risk specified in clause 4 was adopted for the calculation of the result for all instruments being the subject of the Recommendation. The leverage is the value resulting from the distance ratio of the Stop Loss order, which, if executed, will result in a 1.5% loss on the issued Recommendation, to the value of the Model Account as at the time of issuing the Recommendation.
9. The percentage result on individual transactions shall be calculated on the basis of the opening and closing transaction prices for the calculated size of the open position in relation to the valuation of the Model Account at the time of the opening. For open positions, the last transaction price for the service variant TMS Connect, TM Direct or TMS Stocks transaction platform as at the end of the day, week or calendar month shall be used to calculate the percentage result on the transaction. The result on transactions after the closing shall include costs of commissions and financing of positions.
10. The percentage result achieved on the Model Account for a given day, week, calendar month or year shall be calculated on the basis of the ratio of the value of the Model Account register as at the beginning and end of each of the mentioned periods.

## **Article 8**

### **Recommendations - principles of publication through Recommendation distribution channels - Live Trading**

1. After producing a Recommendation an employee of the Department of Analysis and Education shall execute a transaction in the Model Account.
2. Prices of orders that were submitted or executed in the Model Account are the same as the prices indicated in the Recommendation.
3. During webinars or Live meetings, the production of recommendations and conclusion of transactions shall be performed simultaneously, if possible, and immediately by two employees of TMS Brokers.
4. Not every recommendation issued by the Department of Analysis and Education will be transferred to the model account and become an order or transaction on that account. The Department of Analysis and Education reserves the right not to enter into transactions in the Model Account which result from recommendations issued as a consequence of a question of a participant of webinars or Live meetings.
5. Next, the employee of the Department of Analysis and Education shall immediately publish the content of the Recommendation on the NonStop website. Publication of a Recommendation on the NonStop website shall constitute the original publication of the Recommendation.
6. Recommendations may be issued during Live Trading, persons participating in Live Trading will have immediate access to the Recommendation. It will be available in real time before it appears on the NonStop website.

## **Article 9**

### **Methodology for calculating results of Recommendations - Live Trading**

1. The result of Live Trading for the instrument being the subject of the transaction shall be calculated on the basis of transaction opening and closing prices for the calculated transaction size.
2. All Recommendations of Live Trading shall be issued on the basis of instruments quoted in the service variant TMS Connect or TMS Stocks platform.
3. All transaction costs such as commissions, swap points, costs of financing open positions etc. shall be calculated on the basis of financial instruments offered in the service variant TMS Connect or TMS Stocks platform.
4. The transaction size shall be calculated based on the following parameters:
  - a) "1<sup>st</sup> position" - shall mean a transaction with 1.5% risk,
  - b) "1/2 of the position" - shall mean a transaction with 0.75% risk,
  - c) "2<sup>nd</sup> position" - shall mean the possibility of concluding another transaction on the same instrument, provided that the total risk in both open positions does not exceed the maximum permitted limit of 1.5% risk and the risk on the newly opened position also does not exceed 1.5% (this means that the Loss Stop order on the first position must be moved as a minimum to the entry level or it must be a Stop Profit order).
  - d) defined at the time of issuing by the Stop Loss order level.
5. The percentage result on individual transactions shall be calculated on the basis of the opening and closing transaction prices for the calculated size of the open position in relation to the valuation of the

Model Account at the time of the opening taking into account commissions collected as well as swap points and costs of financing.

6. For open positions, the last transaction price in the service variant TMS Connect and TMS Stocks transaction platform as at the end of the day, week or calendar month shall be used to calculate the percentage result on the transaction. The result on transactions after the closing shall include costs of commissions and financing of positions.
7. The percentage result achieved on the Model Accounts for a given day, week, calendar month or year shall be calculated on the basis of the ratio of the value of the Model Account operational register as at the beginning and end of each of the mentioned periods.

## **Article 10**

### **Secondary publication of the Recommendation**

1. TMS Brokers may each time publish secondarily the content of the Recommendation in the publication channels, in particular through the transaction systems offered by TMS Brokers, through the SMS channel and through social media channels.
2. Secondary publications shall contain a statement that the original publication is published on the TMS NonStop website.
3. The secondary publication shall state the date and time of the first dissemination of the Recommendation.
4. Secondary publications may be implemented by employees of organisational units of TMS Brokers other than the Department of Analysis and Education.

## **Article 11**

### **Complaints**

1. The Client may submit at any time a complaint about the act or omission of TMS Brokers regarding the provision of a brokerage service on the terms set out in these Terms and Conditions.
2. Client complaints may be submitted during TMS Brokers business hours in the following manner:
  - a) by sending an e-mail message to the address [skargi@tms.pl](mailto:skargi@tms.pl) Complaints sent to another email address shall not be considered,;
  - b) by sending a message via the complaint form available at [www.tms.pl](http://www.tms.pl) in the "Contact" tab;
  - c) in writing to the postal address of OANDA TMS Brokers S.A. Rondo Daszyńskiego 1, 00-843 Warsaw;
  - d) in person during business hours in OANDA TMS Brokers S.A. Rondo Daszyńskiego 1, 00-843 Warsaw, in writing or orally to be recorded in writing;
  - e) by phone during TMS Brokers business hours at the following numbers: 22.27.66.282, 22.27.66.266 to be recorded in writing.
3. When submitting a complaint, the Client shall provide the address to which he wishes to receive a reply to his complaint.

4. When submitting a complaint, the Client shall describe exhaustively the subject of the complaint, indicate the period complained about, present the circumstances justifying the complaint and specify his claim.
5. If the subject of the complaint cannot be determined from the content of the complaint, TMS Brokers shall request the Client to submit, within 30 days from a receipt of the request, a clarification or addition to the complaint, advising the Client that a failure to remove such defects shall mean that the complaint will not be considered.
6. When considering the complaint, TMS Brokers may request the Client to provide supplementary information and documents necessary to consider the complaint.
7. A complaint shall be submitted by the Client without undue delay after becoming aware of the occurrence of circumstances causing reservations, in order to allow a fair consideration of the complaint.
8. TMS Brokers shall confirm a receipt of the complaint or an appeal against a refusal to acknowledge the complaint only at the express request of the Client. In the request, the Client shall specify the address at which he wants to receive a confirmation of receipt of the complaint.
9. TMS Brokers shall respond to the submitted complaint within 30 days of its receipt. To comply with the time limit it shall be sufficient to send a reply before its expiry.
10. In particularly complicated cases, making it impossible to consider the complaint and reply within 30 days, in the information provided to the Client who submitted the complaint TMS Brokers shall:
  - a) explain the reason for a delay;
  - b) specify circumstances which must be established in order to examine the case;
  - c) specify the expected date of considering the complaint and providing a reply, not longer than 60 days from a receipt of the complaint.
11. The Client shall have the right to appeal against the reply of TMS Brokers to the Client's complaint. An appeal shall be subject to the same procedure and time limits as those applicable to the complaint. A Client's appeal shall be considered by a person other than the person who dealt with the complaint.
12. If the refusal is upheld as a result of the appeal lodged by the Client, TMS Brokers reserves that it will not consider further appeals of the Client, unless the Customer discloses new facts that will constitute the grounds for changing the current position by TMS Brokers.
13. TMS Brokers reserves the right to evaluate the correspondence sent by the Client. If TMS Brokers decides that the correspondence sent does not meet the requirements stipulated for the complaint, such correspondence shall be considered as an inquiry or comment and shall not be considered in the manner reserved for the complaint.
14. TMS Brokers permits a possibility of out-of-court settlement of a dispute with the Client, i.e. through mediation or arbitration., after the possibility of appeal is exhausted. Prior to taking any actions related to out-of-court settlement of the dispute, the Client shall consult the choice of the arbitration court or mediator with TMS Brokers.
15. If claims arising from the complaint are not accepted:
  - a) the Client shall be entitled to appeal, which the Client is entitled in the same procedure and deadlines apply as for complaint, additionally specifying the data identifying the complaint that the Client appealing against;
  - b) the Client shall have the right to request the Financial Ombudsman to consider the case (if the Client is an individual),



- c) the Client shall have the option to bring an action before a common court against TMS Brokers. The court competent to hear the case shall be Common court having jurisdiction over the seat of TMS Brokers or over the place of executing the agreement.
16. TMS Brokers reserves the right to leave the complaint without consideration, if a complaint concerns claims that are time-barred.

## **Article 12**

### **Final provisions**

1. TMS Brokers shall publish Recommendations on the NonStop website and an overall lists of these Recommendations. Such publication shall be deemed to constitute simultaneously a report on the performance of a brokerage service.
2. TMS Brokers shall have the right to amend these Terms and Conditions at any time. TMS Brokers shall inform Clients about the amendment of the Terms and Conditions by posting relevant information on the TMS Brokers website ([www.tms.pl](http://www.tms.pl)) in the News tab or in an electronic form to the e-mail address provided by the Clients.
3. TMS Brokers informs about the existence of Conflicts of Interest specified in the Information sheet about TMS Brokers, including the Conflict of Interest consisting in the fact that TMS Brokers publishes recommendations while concluding transactions on the trading portfolio of TMS Brokers.
4. The amended provisions of the Terms and Conditions shall enter into force 14 days after their announcement.
5. Changes of obvious typing mistakes shall not constitute an amendment to these Terms and Conditions.
6. These Terms and Conditions shall enter into force on 1st of May 2023.