

## **Terms and Conditions of the service of delegating transaction reporting to X-Trade Brokers DM S.A. by a Client who is a Financial Counterparty or a Non-Financial Counterparty "plus" dated 24.11.2020. ("Terms")**

Whereas:

- Client has entered into and/or intends to enter into derivative transactions with XTB and, pursuant to Article 9 of EMIR (as defined below), Client and XTB (or our affiliates) are each required to report the details of these transactions (and of any modification or termination) to a trade repository recognised under EMIR.
- The transaction reporting obligations will apply to Client and XTB under Article 9 of EMIR from 12 February 2014 (the "**Reporting Start Date**") in relation to all categories of derivative transactions. Under Article 9(1) of EMIR, one party which is subject to the transaction reporting obligation (the "**Reporting Obligation**") may delegate the submission of the entire transaction report.

Therefore, Client and XTB hereby agree as follows:

### **1. Appointment of Reporting Entity**

- 1.1 By accepting and submitting to XTB the Application Form Client hereby appoints XTB to provide the Reporting Services (as described in Clause 2 below) in accordance with this Terms, the Basic Information about XTB, the Table of XTB's fees and commissions and XTB hereby accepts such appointment.
- 1.2 XTB shall not be obliged to begin reporting any Relevant Transaction for Client until XTB has notified Client that Client meets all the necessary criteria.

### **2. The Reporting Services**

- 2.1 In respect of each Relevant Transaction, XTB will submit a transaction report to a Relevant Trade Repository (each a "**Transaction Report**").
- 2.2 XTB may decide not to submit a Transaction Report in respect of any Relevant Transaction if XTB reasonably considers that XTB does not have sufficient information to do so.
- 2.3 XTB will use reasonable endeavours to:
  - (A) notify Client if XTB decides not to make a Transaction Report in accordance with the Terms; and
  - (B) work with Client to obtain relevant information to make the Transaction Report as soon as reasonably practicable.
- 2.4 All reports will be made on a reasonable efforts basis and are conditional upon Client's delivery to XTB of the requisite Client Counterparty Data.
- 2.5 XTB may delegate any of the obligations under this Terms to an affiliate or other third party and Client authorises XTB to do so.

### **3. Reporting Deadline**

- With the reservation that the Client will deliver XTB the LEI Code and all necessary information including Client's Counterparty Data, the reporting deadline (the "Reporting Deadline") is as follows: in respect of Relevant Transactions that were entered into either (a) after 12 February 2014 and that remained outstanding on the Reporting Start Date or (b) on or after the Reporting Start Date, by the end of the working day following conclusion, modification or termination of the contract;
- 3.2. XTB can change the Reporting Deadline immediately by publishing the amended version of these Terms, in case EMIR FAQ are amended. In such a case, point 11.1 does not apply.

### **4. Client Counterparty Data**

- 4.1 Client agrees to deliver to XTB the Client Counterparty Data by providing XTB with all information that XTB requests to enable XTB to complete the relevant fields in Table 1 of the Reporting ITS. XTB may also obtain Client Counterparty Data from the transaction platform the Parties utilize in order to trade.
- 4.2 Should XTB be unable to access for any reason Client Counterparty Data in the transaction systems the Parties utilize to trade it is Client's responsibility to ensure that all relevant data is provided to XTB in a timely manner in order to enable reporting of Relevant Transactions to commence on the Reporting Start Date in accordance with the relevant Reporting Deadline.
- 4.3 It is the Client's obligation to immediately inform XTB of any change in the Client Counterparty Data.

### **5. Representations and warranties**

- 5.1 Each of XTB and Client represents and warrants to the other that it has the requisite power and authority to enter into this Terms and to perform the relevant obligations hereunder.

5.2 Client declares that it concludes this agreement in purposes directly related to his commercial activity and as such he will not be treated as a consumer.

## **6. Consent to submission**

6.1 By Client's execution and submission to XTB of an accepted Application Form, Client consents to XTB submitting the Client Counterparty Data associated with any Relevant Transaction to:

- (A) a legal or regulatory authority who are entitled to ask for such disclosure;
- (B) a registered or recognised trade repository selected by XTB; and
- (C) any agent or affiliate and their respective head offices and/or branches; and
- (D) any persons or entities who provide services to XTB, any agent or affiliate and their respective head offices and/or branches.

## **7. Liability and Indemnity**

7.1 XTB will report Transaction Reports on a reasonable efforts basis. XTB will not be liable for any loss, cost, charge, fee, expense, damage or liability, including, for the avoidance of doubt, any regulatory penalty or fine, loss of profit, revenue, business or goodwill (whether direct or indirect) resulting from any act or omission made in connection with this Terms, other than to the extent arising directly from gross negligence, wilful default or fraud.

7.2 XTB has no obligation in respect of, and accept no liability for, verifying the validity or accuracy of the data which Client provides to XTB and on the basis of which part of each Transaction Report will be formed.

7.3 XTB is not acting as fiduciary for, or an adviser to, Client in respect of this Terms.

7.4 In accordance with these Terms, XTB may be held liable only to the Client. Client will indemnify XTB against any loss, cost, expense or liability (including reasonable legal fees) incurred by or awarded against XTB in connection with provision of trade reporting services to Client under this Terms (including, without limitation, any action, claim, investigation or proceeding to preserve or enforce rights).

7.5 Client accepts that XTB's liability under this agreement is limited to the amount not exceeding PLN 5 000 (in words: five thousand Polish zlotys).

## **8. Disruption to reporting and Data Defects**

8.1 XTB will use reasonable endeavours promptly to notify Client of any rejection of Transaction Report by the Relevant Trade Repository ("**Data Defect**").

8.2 If XTB becomes aware of the occurrence of any disruption to XTB's ability to submit a Transaction Report (a "**Disruption Event**") XTB will use reasonable endeavours promptly to resolve such Disruption Event and XTB may cease to submit Transaction Reports under this Terms whilst such Disruption Event subsists.

## **9. Remuneration**

XTB does not charge Client any commissions and fees for the Reporting Services provided.

## **10. Other Provisions**

10.1 To the extent that there is any conflict or inconsistency between the terms set out in this Terms and the terms of any agreement or documentation between Client and XTB the terms set out in this Terms shall supersede and prevail over the relevant terms of such other documentation, unless XTB otherwise agrees with Client in writing.

10.2 XTB shall correspond with the Client by ordinary mail, electronic mail or by other means of electronic communication. Parties hereby agree that any declarations of will or statements related to activities performed by XTB may be submitted by the Parties in electronic form.

10.3 In the situations specified in the Terms as well as in other cases, when XTB deems it necessary, XTB shall correspond via the registered mail or courier services.

## **11. Termination and transfer of rights**

11.1 This Terms shall be amended as needed from time to time as and when required by changes in reporting requirements, systems or processes or for any other similar reason. XTB will notify Client 7 days in advance by email or otherwise of any such changes as may in our reasonable opinion be required. The Client who does not accept amendments to the Terms specified in this Clause shall have the right to terminate this agreement with immediate effect.

11.2 XTB may terminate this agreement at any time upon the giving of not less than 1 month prior written notice and Client may terminate this agreement, at any time on the giving of not less than 5 (five) business days' prior written notice.

11.3 In addition, XTB may terminate this agreement immediately: (i) on the occurrence of an Insolvency Event with respect to Client; (ii) if, in our opinion Client are in material breach of Client's obligations under this Terms, any other terms or agreement between Client and XTB or of any rules or regulations of any regulatory authority or applicable law material to Client's ability to perform Client's obligations under this Terms.

## 12. Jurisdiction and governing law

12.1 This Terms is governed by the Polish law and is subject to exclusive jurisdiction of Polish courts.

## 13. Definitions

- 13.1 **"Application Form"** means application form which is the part of "EMIR Statement", published on the XTB website, and which is filled and signed by the Client in order to delegate reporting services to XTB.
- 13.2 **"Client Counterparty Data"** means the information required in respect of Client in order to complete Table 1 (Counterparty Data).
- 13.3 **"Data Defect"** shall bear the meaning ascribed to it in Clause 8.
- 13.4 **"Disruption Event"** shall bear the meaning ascribed to it in Clause 8.
- 13.5 **"EMIR"** 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, published on 27 February 2012 in the Official Journal of the European Union, including existing applicable regulations, guidance, interpretations and market practice in respect of such Regulation (EU) No. 648/2012.
- 13.6 **"EMIR FAQs"** means the most current Questions and Answers regarding EMIR published by European Securities Markets Authority.
- 13.7 **"Financial Counterparty"** means an investment firm authorised in accordance with Directive 2014/65/EU, a credit institution authorised in accordance with Directive 2013/36/EU, an assurance undertaking authorised in accordance with Directive 2009/138/WE, an insurance undertaking authorised in accordance with Directive 2009/138/WE, a reinsurance undertaking authorised in accordance with Directive 2009/138/WE, a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article point 1 of Directive 2016/2341 of the European Parliament and of the Council and an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU.
- 13.8 **"Non-Financial Counterparty plus"** means an undertaking established in the European Union that is neither a Financial Counterparty nor a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer (CCP) if its aggregate month-end average position for the previous 12 months exceeds any of the following thresholds:

Asset class	Clearing threshold
OTC credit derivative contracts	€1 billion
OTC equity derivative contracts	€1 billion
OTC interest rate derivative contracts	€3 billion
OTC foreign exchange derivative contracts	€3 billion
OTC commodity derivative contracts and others	€3 billion

- 13.9 **"Insolvency Event"** means, in relation to Client any event related directly or indirectly to the Client's insolvency situation such as resolution for Client's winding-up, liquidation, dissolution, reorganisation or other situations having similar effect.
- 13.10 **"Relevant Trade Repository"** means an appropriate trade repository selected by XTB from time to time.
- 13.11 **"Relevant Transaction"** means historic and prospective transactions that are entered into between Client and XTB that are required to be reported to a trade repository in accordance with Article 9 of EMIR.
- 13.12 **"Reporting Deadline"** shall bear the meaning ascribed to it in Clause 0.
- 13.13 **"Reporting ITS"** means Commission Implementing Regulation (EU) No 1247/2012.
- 13.14 **"RTS"** means Regulatory Technical Standard (Commission Delegated Regulation (EU) No 148/2013).
- 13.15 **"Table 1"** means Table 1 of the Reporting ITS.
- 13.16 **"Table 2"** means Table 2 of the Reporting ITS.

13.17 **"Transaction Report"** shall bear the meaning ascribed to it in Clause 2.1.

13.18 **"XTB"** means X-Trade Brokers DM SA with its registered office in Warsaw, at Ogrodowa 58, 00-876 Warsaw, Poland, entered in the register of entrepreneurs of the National Court Register (Krajowy Rejestr Sądowy) conducted by District Court for the Capital City of Warsaw, XII Commercial Division of the National Court Register under KRS number 0000217580, REGON number 015803782 and Tax Identification Number (NIP) 527-24-43-955, with the fully paid up share capital in the amount of PLN 5.869.181,75 PLN.



**XTB Polska**  
ul. Ogrodowa 58  
00-876 Warszawa

 +48 222 019 570

 [biuro@xtb.pl](mailto:biuro@xtb.pl)

[www.xtb.pl](http://www.xtb.pl)