

ICAP Deutschland GmbH

Terms of Business for Professional Clients

1. COMMENCEMENT

1.1 These terms of business (the "**Terms**"), as amended from time to time, define the basis on which we will provide you with certain services.

1.2 These Terms shall apply every time you enter into a transaction with us and will form an integral part of any transaction. These Terms will take effect when you first undertake business with us after having received them and you will be deemed to accept these Terms, and to consent to our Execution Policy, every time you enter into a transaction with us.

1.3 For the purposes of these Terms, "**ICAP**", "**we**" and "**us**" refers to ICAP Deutschland GmbH, a subsidiary of ICAP Global Broking Holdings Limited, itself a subsidiary of TP ICAP plc, (or as the context requires, another ICAP Group Company). "**ICAP Group Company**" shall mean a subsidiary or subsidiary undertaking of ICAP Global Broking Holdings Limited.

1.4 These Terms incorporate any execution policy as we may agree with you from time to time. A risk warning notice pursuant to Sec. 31 para. 3 of the German Securities Trading Act (*Wertpapierhandelsgesetz*, "**WpHG**") supplements these Terms and shall form an integral part of it.

2. REGULATION

ICAP Deutschland GmbH is regulated by the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) pursuant to the German Banking Act (*Kreditwesengesetz*, *KWG*).

3. OUR SERVICES

3.1 We may provide investment and dealing services for financial instruments. We may also provide other services notified to you from time to time in writing.

3.2 We will not provide you with specific advice or personal recommendations (*Anlageberatung*). Any transaction will be solely entered on the basis of your own judgment.

3.3 We may act on your behalf as name passing or introducing broker. These Terms apply to all methods or mechanisms used to provide our services, including, where applicable, electronic mechanisms and systems.

3.4 We may, when you have instructed us to do so, deal for you in non-readily realisable investments. These are investments in which the market is limited or could become so; they can be difficult to deal in and it can be difficult to assess what would be a proper market price or value for them.

4. CLIENT CLASSIFICATION

We are required by the Markets in Financial Instruments Directive (MiFID) and Sec. 31a WpHG to classify you as one of the following:

- Retail client
- Professional client
- Eligible counterparty

Classification affects the level of protection you will be afforded. You are entitled to request a different classification from the one allocated. You may request classification as a Retail Client when we have classified you as an Eligible Counterparty or a Professional Client, but please note that we could not agree to such a request because we are not permitted to deal with Retail Clients.

Until we receive any such request, we shall deal with you on the basis of our original classification as set out in the Client Classification Notice.

You are responsible for keeping us informed of any changes in your circumstances that could affect your classification.

5. RISK DISCLOSURES AND SUITABILITY ASSESSMENT

In deciding to deal with us in such products generally, and in any particular case, we assume that you will have already assessed the risks involved in those products and in any related services and strategies which, in any particular case, may (as relevant) include, without limitation, any of, or a combination of any of, the following:

- credit risk
- market risk
- liquidity risk
- interest rate risk
- FX risk
- business, operational and insolvency risk
- the risks of OTC, as opposed to on-exchange, trading, in terms of issues like the clearing house “guarantee”, transparency of prices and ability to close out positions
- contingent liability risk
- regulatory and legal risk

We assume that:

- a) in relation to the relevant transactions provided, you have the necessary experience, knowledge and expertise in order to assess and understand the risks associated with those services or relevant transactions; and
- b) as a professional client, you are financially able to bear any related investment risks consistent with your investment objectives in relation to the proposed financial instruments, transactions and services. We will therefore, in accordance with the provisions of Sec. 31 para. 7 WpHG, not perform a suitability assessment (*Angemessenheitsprüfung*, as prescribed by Sec. 31 para. 5 WpHG) on your professional skills and trading experience.

6. INVESTMENT OBJECTIVES, RESTRICTIONS AND DECISIONS IN RESPECT OF OUR SERVICES

6.1 Unless otherwise advised in writing by you, we shall assume that your objectives are based upon either:

- (1) hedging current exposures;
- (2) maximising income; or
- (3) long term capital growth.

6.2 Unless otherwise indicated in writing by you, we shall assume that there are no restrictions to the type of transaction we may enter into with you or the markets upon which transactions may be effected.

7. AUTHORITY AND INSTRUCTIONS

We may act upon any transaction which we reasonably believe to have been given by an authorised representative of you. No liability shall attach to us if a transaction which we have accepted and acted upon bona fide is subsequently discovered to have been given forged, falsified or amended without your authority.

8. OUR CHARGES OR COMMISSION

8.1 Unless otherwise agreed, our charges will be levied in accordance with our rates in effect at the time the charges are incurred or as otherwise notified to you, verbally or in writing, prior to dealing. Any alteration to these charges will be notified to you at or before the time of the change.

8.2 We may share our charges or commission with or receive remuneration from intermediaries introducing business to us, associated companies or other third parties and will provide details in accordance with Sec. 31d WpHG to you.

8.3 All amounts (including, without limitation, all fees and charges) payable by you shall, so far as applicable law permits, be due on demand without set off, counterclaim or deduction.

8.4 Unless otherwise agreed in writing, you will be responsible for any applicable taxes applied to or levied in respect of any transactions.

9. REPORTING TO YOU AND INVOICING

9.1 You will be deemed to have received a trade confirmation or other notification from us at the time of the conversation in respect of a verbal notification or confirmation and in the case of notification or communication by facsimile or other electronic means, the same day, otherwise not more than three (or, in the case of overseas clients, seven) business days from the date of despatch.

9.2 You will notify us immediately upon receipt (but no later than 24 hours after receipt) if you are not in agreement with any trade confirmation or other notification from us. In the absence of such immediate notification by you, the trade confirmation or notification will (in the absence of manifest error) be binding on you.

9.3 Invoices for our services rendered in accordance with these Terms will be sent to you by post, unless agreed otherwise between you and us, and as permitted by the relevant laws and regulatory requirements.

10. VOICE RECORDING

All telephone conversations which we may have with you are recorded in line with market practice. By dealing with us, you consent to these recordings, and are aware that such recordings may be used as evidence in the event of a query or dispute.

11. CONFLICTS OF INTEREST

11.1 Your attention is drawn to the fact that when we arrange a transaction for you, an associated company or some other person connected with us may have an interest, relationship or arrangement that is material in relation to the transactions, investments or service concerned as stipulated in our conflicts of interest policy. Other than required by applicable law, we will not disclose any specific conflicts of interest arising from a specific transaction to you or to account to you for any profit. However, our employees are required to comply with a policy of independence and disregard any such interest when entering into a transaction for you.

11.2 When we arrange a transaction for you:

- (1) we or one of our associated companies could for example be matching your transaction with that of another client by acting on his behalf as well as yours; or
- (2) one of our associated companies could be dealing as principal for its own account by selling the investment concerned to you or buying it from you.

11.3 In the event that an associate issues research, it may undertake or have undertaken own account transactions in the investment which is the subject of the research, or any related investment.

12. RIGHTS OF SET-OFF AND RETENTION OF YOUR FUNDS

12.1 We shall be entitled at any time to retain or make deductions from or set off amounts or credit balances which we owe to you or you owe to us in order to meet any liabilities which you may have incurred to us or which we may have incurred on your behalf under these Terms including, for example, when appropriate;

- (1) settlement of our fees, commissions or charges;
- (2) sums to be paid in settlement of transactions;
- (3) any interest payable to us; and
- (4) payments to us pursuant to any indemnity.

12.2 Until you have paid or discharged in full all monies and liabilities owed to us, any monies from time to time outstanding to the credit of any of your accounts with us shall not be due and payable, although we may in our absolute discretion make payments to you from such accounts, or otherwise exercise our rights of set off and/or combination and/or consolidation.

13. DISCLOSURE

We will disclose such information relating to services provided to you pursuant to these Terms as may be requested by any relevant exchange, or any other regulatory body or authority and any of our associated companies or as we may otherwise be required by applicable law to disclose.

14. LIABILITY

14.1 We shall not be liable for any loss of opportunity whereby the value of your account may have been increased nor for any reduction in the value of your account as a result of market movements. We shall not be liable for the taxation consequences of any transaction nor shall we be liable for taxation charges arising for any reason.

14.2 Neither we nor any person connected with us nor any of our agents shall be under any liability whatsoever for any loss or damage sustained by you as a result of or in connection with the services to which these Terms apply and the provisions of these Terms except insofar as and then only to the extent that such loss or damage is caused by gross negligence or wilful default or fraud any failure to comply with all applicable rules of the relevant regulators of ICAP.

14.3 You will indemnify us and our agents on demand and keep us fully and effectively indemnified (whether before or after termination of any agreement governed by these Terms) against any claims, liabilities or expenses of any kind which may be incurred by us as a direct or indirect result of our acting under these Terms. However, this indemnity shall not apply to any loss or liability to the extent it arises or results from our negligence or wilful default or fraud or any contravention by us of the rules of the relevant regulators of ICAP.

15. ILLEGALITY

If any provision of these Terms or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from these Terms and shall be deemed to be deleted from these Terms provided always that, if any such deletion substantially affects or alters the commercial basis of these Terms, we reserve the right to amend and modify the provisions and terms of these Terms in such fashion as may be necessary or desirable in the circumstances.

16. COMPLAINTS

If you have a complaint about us you should raise it in the first instance with your contact at ICAP. We will endeavor to resolve it informally. You may also raise the matter with our Head of Compliance at ICAP who will investigate the matter internally.

17. ASSIGNMENT

We may assign our rights or obligations to any of our associated companies or to any person or entity who may acquire the whole or any part of our business or assets.

18. TIME OF THE ESSENCE

Time shall be of the essence with respect to any payment, delivery or other obligation you may have to us under these Terms.

19. FORCE MAJEURE

We shall not be in breach of our obligations under these Terms if there is any total or partial failure of performance of our duties and obligations occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, inability to communicate with market makers for whatever reason, failure of any computer dealing or settlement system, prevention from or hindrance in obtaining any energy or other supplies, labour disputes of whatever nature or late or mistaken delivery or payment by any bank or counterparty or any other reason (whether or not similar in kind to any of the above) beyond our control.

20. TERMINATION

19.1 You may terminate any agreement governed by these Terms at any time by written notice to us. We may terminate any agreement governed by these Terms at any time by written notice to you.

19.2 Termination shall not affect your obligation to settle transactions effected prior to the date of termination and shall not prejudice any right or obligation that may already have arisen. We shall also continue to have the right to disclose information where required to a German or other regulator as required by applicable law.

21. VARIATION

20.1 We may, from time to time, by written notice to you, make such modifications, amendments and additions to these Terms as we consider necessary or desirable to comply with any applicable law or the requirements of any governmental or other regulatory body or to comply with the rules of an exchange or clearing house.

20.2 All such modifications, amendments or additions shall be effective on a date specified in the notice which will not, unless it is impracticable in the circumstances, be less than six weeks after provision of the notice, save that amendments or additions required for regulatory purposes shall, if we so determine, have immediate effect. The modifications, amendments or additions shall be deemed to have been approved by you, unless you have indicated disapproval before their proposed date of entry into force. We shall expressly draw your attention to this consequent approval in its offer.

22. NOTICES

21.1 All notices shall be in writing and may be served personally or by facsimile, or by first class post to us at the below address or as we may provide in writing from time to time:

ICAP Deutschland GmbH
Stephanstraße 14-16
60313 Frankfurt am Main
Germany

Attention: The Management Board
Fax: +49 (0)69 2903 94

21.2 With the exception of dealing instructions to us (which must be communicated in accordance with clause 9) notices shall be deemed to have been served three (or, in the case of overseas clients, seven) business days after having been posted, or if sent by facsimile or other electronic means, one business day after transmission. A business day is any day when investment business is generally conducted in Frankfurt or such other financial centre as is notified to us by you prior to the relevant transaction.

23. EXCLUSIVE JURISDICTION

The courts of Frankfurt am Main, Germany are to have exclusive jurisdiction to settle any disputes, which may arise out of or in connection with these Terms or any agreement governed by these Terms. Nothing contained in this clause shall limit our right to take proceedings against you in any other court of competent jurisdiction.

24. GOVERNING LAW

The provisions of these Terms shall be governed by German law.