

Terms and Conditions

1 Definitions

1.1 The following definitions apply in these Terms and Conditions:

- (1) **Charges:** the charges payable by FDJ for the supply of the Services in accordance with clause 5.
- (2) **Commencement Date:** has the meaning given in clause 2.2.
- (3) **Contract:** the contract between FDJ and the Contractor for the supply of Services in accordance with these Terms and Conditions.
- (4) **Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
- (5) **Data Protection Laws:** means EU Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country.
- (6) **Deliverables:** all documents, products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Services in any form or media including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
- (7) **EU Data Protection Laws:** means Regulation EU 2016/679 (the "GDPR"), as amended, replaced or superseded from time to time, including laws implementing or supplementing the GDPR.
- (8) **Intellectual Property Rights:** patents, rights to inventions,

copyright and related rights, moral rights, trade marks and service marks, business names and domain names, right to get-up goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets, and all other intellectual property rights), in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- (9) **FDJ:** shall be the customer company set out in the Purchase Order.
- (10) **FDJ's Materials:** has the meaning set out in clause 3(9).
- (11) **Personal Data:** shall have the same meaning as given under the Regulation EU 2016/679.
- (12) **Purchase Order:** means FDJ's Purchase Order sent to the Contractor.
- (13) **Services:** means the Services which the parties have agreed that the Contractor shall provide.
- (14) **Contractor:** shall be the supplier to whom FDJ's Purchase Order was sent.

2 General

- 2.1 The Purchase Order shall be deemed to constitute an offer by FDJ to purchase the Services in

accordance with these Terms and Conditions.

2.2 The Purchase Order shall be deemed to be accepted when the Purchase Order has been issued in a form agreed by the Parties at which point and on which date the Contract shall come into existence.

2.3 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by custom, trade or dealing.

3 Contractor's obligations and warranties

3.1 The Contractor shall from the date set out in the Purchase Order and for the duration of the Contract provide the Services to FDJ in accordance with the Contract.

3.2 In providing the Services, the Contractor shall:

- (1) co-operate with FDJ in all matters relating to the Services, and comply with all instructions of FDJ;
- (2) perform the Services with the best care, skill and diligence in accordance with best practices in the Contractor's industry, profession or trade;
- (3) use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Contract;
- (4) ensure that the Services and Deliverables will conform with all specifications and descriptions set out in the Purchase Order, and Deliverables shall be fit for any

purpose that FDJ expressly or impliedly makes known to the Contractor;

- (5) provide all tools, equipment and vehicles and such other items as may be required to provide the Services;
- (6) obtain and at all times maintain all necessary licences and consents which may be required for the provision of the Services;
- (7) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services;
- (8) observe all health and safety rules and regulations and any other security requirements that apply at FDJ's premises;
- (9) hold all materials, equipment, drawings, specification and data supplied by FDJ to the Contractor (FDJ's Materials) in safe custody at its own risk, maintain FDJ's Materials in good condition until returned to FDJ, and not dispose or use FDJ's Material other than in accordance with FDJ's written instructions or authorisation;
- (10) not do or omit to do anything which may cause FDJ to lose any licence, authority, consent or permission on which it relies for the purpose of conducting its business, and the Contractor acknowledges that FDJ may rely or act on the Services and Deliverables.

4 FDJ's obligations

4.1 FDJ shall:

- (1) provide the Contractor with reasonable access at reasonable times to FDJ's premises for the purpose of providing the Services; and
- (2) provide all necessary information and access to information, materials or systems for the provision of the Services as the Contractor may reasonably request.

5 Charges and payment

- 5.1 The Charges for the Services shall be set out in the Purchase Order and shall be the full and exclusive remuneration of the Contractor for the provision of the Services. Unless otherwise agreed in writing by FDJ, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.
- 5.2 The Contractor shall invoice FDJ on completion or delivery and each invoice shall be submitted the email address shared by FDJ in writing and shall include such supporting information required by FDJ to verify the accuracy of the invoice, including the relevant purchase order number.
- 5.3 In consideration of the supply of the Services by the Contractor, FDJ shall pay invoices resulting from this Agreement. Payment is due by the end of the month following 30 days after the invoice date. FDJ shall not be obliged to pay any invoice that is not issued in compliance with this Agreement
- 5.4 All amounts payable by FDJ under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made to FDJ by the Contractor under the Contract, FDJ

shall pay, on receipt of a valid VAT invoice, such amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 5.5 If FDJ fails to make a payment due to the Contractor under the Contract by the due date, then FDJ shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.5 shall accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.
- 5.6 FDJ may at any time, without notice to the Contractor, set off any liability of the Contractor to FDJ against any liability of FDJ to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

6 Intellectual property rights

- 6.1 The Contractor grants to FDJ, or shall procure the direct grant to FDJ of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverable for the purpose of receiving and using the Services and the Deliverables.
- 6.2 All FDJ's Materials are the exclusive property of FDJ.
- 6.3 The Contractor is obliged immediately to bring to FDJ's attention any improper or wrongful use of FDJ's trademarks, emblems, designs or other similar industrial, intellectual or commercial property rights which comes to the attention of the Contractor during the provision of the Services.

- 6.4 The Contractor shall in the performance of the Services use reasonable endeavours to safeguard FDJ 's property rights and interests and shall on the written request by FDJ take all steps required by FDJ to defend such rights at FDJ 's costs.
- 6.5 Nothing in the Contract shall affect the Parties' pre-existing intellectual property rights held by Contractor prior to entering into this Contract.

7 Indemnity

- 7.1 The Contractor shall indemnify FDJ against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on an indemnity basis) and all other professional costs and expenses) suffered or incurred by FDJ arising out of or in connection with:
- (1) any claim brought against FDJ for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with the receipt, use of or supply of the Services (excluding FDJ 's Materials); and
 - (2) any claim against FDJ by a third party arising out of, or in connection with, the supply of Services.
 - (3) any breach of the Contract and Data Protection Laws in relation to the processing of FDJ Personal Data, which renders FDJ liable for any costs, fines, claims or expenses howsoever arising.

8 Insurance

- 8.1 During the term of the Contract, the Contractor shall maintain in force, with a reputable insurance company, professional indemnity and public insurance liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on FDJ 's request, produce the insurance certificates giving details of each cover.

9 Termination

- 9.1 Without limiting or affecting any other rights or remedy available, FDJ may terminate the Contract:
- (1) with immediate effect by giving written notice to the Supplier if:
 - (a) there is a change of control of the Contractor; or
 - (b) the Contractor's financial position deteriorates to such an extent that in FDJ's opinion the Contractor's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (c) the Contractor is in breach of clause 3.2(7),
 - (2) for convenience by giving the Contractor one month's written notice.
- 9.2 Without limiting or affecting any other rights or remedy available, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (1) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within thirty (30) days after being notified in writing to do so;

- (2) the other party takes any step or action in connection with it entering into administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by an order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
- (3) the other party suspends or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- (4) The Contractor may terminate this Contract by giving FDJ one (1) month's written notice.

10 Consequences of termination or expiry

- 10.1 On termination of the Contract for any reason, the Contractor shall immediately deliver to FDJ all Deliverables whether or not then complete, and return all FDJ 's Materials. If the Contractor fails to do so, then FDJ may enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safekeeping and will not use them for any purpose.
- 10.2 Termination (for whatever any reason) or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11 Audit

- 11.1 During the term of the Contract and for at least one (1) year thereafter, FDJ and/or its representatives may upon at least thirty (30) calendar days' written notice inspect the records (and any other materials in the possession or control of the Contractor) to ensure compliance by the Contractor with its obligations under the Contract. The costs of such an audit shall be borne by FDJ, unless the audit determines some discrepancies on the amounts due during the applicable period, in which case all audit costs shall be borne by the Contractor.

12 Data protection

- 12.1 The Contractor agrees and warrants not to process any Personal Data on behalf of FDJ without signing a Data Processing Addendum which constitutes a schedule to the Contract entered into by the Parties.

13 Confidentiality and publicity

- 13.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
 - (1) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the

Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's information comply with this clause 13;

- (2) as may be required by law, a court of competent jurisdiction or any other governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.4 Neither party shall be entitled to mention on their respective websites, advertising, publicity, promotional literature, brochures, sales aids or marketing tools that they are in a contractual relationship without the prior written consent of the other party.

14 Anti-Money Laundering and Counter-Terrorist Financing

14.1 Each party warrants that that they have complied with all applicable Anti-Money Laundering and Counter-Terrorist Financing Laws and have conducted the requisite due diligence and taken all necessary steps as required by law to combat money laundering and financing of terrorism.

15 Force Majeure

15.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure to result from events, circumstances or causes beyond its reasonable control, including but not limited to war, civil commotion, pandemic or epidemic, industrial dispute or DDOS-attacks and similar internet attacks. If the period of delay or

non-performance continues for at least thirty (30) days, the party not affected may terminate the Contract.

16 Assignment

16.1 FDJ may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

16.2 The Contractor shall not assign, transfer, mortgage, charge subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of FDJ.

17 Third Parties

17.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

18 Non-solicitation

18.1 During the term of the Contract and for six (6) months after the termination or expiry hereof, the Contractor shall not, without the prior written consent of FDJ, solicit or entice (either directly or indirectly) or attempt to solicit or entice any person who is employed by FDJ, and who was involved with the Contractor's performance of the Services to terminate their employment with FDJ. This clause shall not apply where the Contractor employs a FDJ employee through an open recruitment process.

19 Variation

19.1 Except as set out in these terms and Conditions, no variation of the Contract, including the introduction

of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

- 19.2 Notwithstanding clause 19(1), FDJ may amend this Contract at any time in its sole reasonable discretion. The modified Contract will be posted at [what needs to be inserted here?]. The changes to this Contract will not apply retroactively and will become effective 7 days after posting. However, changes made for legal reasons will be effective immediately upon notice.

20 Waiver

- 20.1 A waiver of any rights or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right to remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right to remedy.

21 Severance

- 21.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of any provision or part-provision under this clause shall not affect the

validity and enforceability of the rest of the Contract.

22 Notice

- 22.1 Any notice or other communication to be given under the Contract shall be in writing and delivered personally or sent by pre-paid recorded delivery post or email using the contact details for the parties as set out in the Purchase Order.

23 Governing law and jurisdiction

- 23.1 The Contract, and any disputes or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales
- 23.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any disputes or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 23.3 Notwithstanding clause 23.1 above, when the Contractor has its registered offices, as stated in the Purchase Order, in Malta, the Contract, any disputes or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Malta.
- 23.4 Notwithstanding clause 23.2 above, when the Contractor has its registered offices as stated in the Purchase Order in Malta, each party irrevocably agrees that the courts of Malta shall have exclusive jurisdiction to settle any disputes or claim (including non-contractual

disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

24 Entire agreement

24.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.