

# DDITERMS AND CONDITIONS

The Customer's attention is particularly drawn to the provisions of clause 9.

## 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
<b>Commencement Date</b>	Has the meaning given to it in clause 2.3.
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 12.9;
<b>Contract</b>	the contract between DDI and the Customer for the Services in accordance with these Conditions;
<b>Contract Price</b>	the price for the Services as set out in clause 5.1;
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:</b>	as defined in the Data Protection Legislation;
<b>Customer Data Protection Legislation</b>	the person or firm who purchases the Services from DDI; the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications);
<b>Deliverable</b>	the deliverable described in the Proposal and produced by DDI as an output of the Services;
<b>Force Majeure Event: Intellectual Property Rights</b>	has the meaning given to it in clause 11.1; patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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;
<b>DDI</b>	Data Driven Insights Ltd. Limited registered in England and Wales with company number 11553246; trading as DDI;
<b>Order</b>	the Customer's order for Services as set out in the Customer's written acceptance of the Proposal;
<b>Pre-existing Materials</b>	all documents, information and materials provided by DDI relating to the Services which either do not arise from the scope of the Services or information provided by the Customer, or which existed prior to the commencement of the Contract, including computer programs, data, reports, specifications, knowledge and methodologies;
<b>Proposal</b>	the description of or proposal for the Services provided in writing by DDI to the Customer.
<b>Services</b>	the services to be provided to the Customer as described in the Proposal;
<b>UK Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

## 1.2 Construction

In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

- 2.1 Following any preliminary discussion between DDI and the Customer over the Services to be provided to the Customer, DDI will send the Customer a Proposal setting out the Services to be provided, together with a letter of engagement.
- 2.2 The Order constitutes an offer by the Customer to purchase Services in accordance with these conditions.
- 2.3 The Order shall only be deemed to be accepted when DDI issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 Any samples, drawings, descriptive matter or advertising issued by DDI and any illustrations or descriptions of the Deliverables contained in DDI's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Deliverables described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any Proposal given by DDI shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

## 3. SUPPLY OF SERVICES

- 3.1 DDI shall provide the Services to the Customer in accordance with the Proposal in all material respects.
- 3.2 DDI shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 DDI shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and DDI shall notify the Customer in any such event.
- 3.4 DDI warrants to the Customer that the Services will be provided using reasonable care and skill.

## 4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
  - 4.1.1 ensure that the terms of the Order and the Proposal are complete and accurate;
  - 4.1.2 co-operate with DDI in all matters relating to its supply of the Services;
  - 4.1.3 provide DDI, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by DDI to provide the Services;

- 4.1.4 provide DDI with such information and materials as DDI may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
- 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- 4.1.6 perform all obligations of the Customer set out in the Proposal.
- 4.2 If DDI's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**");
- 4.2.1 DDI shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays DDI's performance of any of its obligations;
- 4.2.2 DDI shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from DDI's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Customer shall reimburse DDI on written demand for any costs or losses sustained or incurred by DDI arising directly or indirectly from the Customer Default.

## 5. CHARGES AND PAYMENT

- 5.1 The Contract Price for the Services shall be the price set out in or calculated in accordance with provisions set out in the Proposal which may only be varied with the written agreement of DDI and the Customer.
- 5.2 DDI shall invoice the Customer in accordance with the payment terms set out in the Proposal.
- 5.3 DDI shall invoice the Customer for 50% of the Contract Price when the Order is accepted and for the remaining 50% of the Contract price on completion of the Services.
- 5.4 Where DDI accepts an Order for ongoing Services, DDI reserve the right to invoice the Customer month in arrears at its discretion.
- 5.5 The Customer shall pay each invoice for Services submitted by DDI:
  - 5.5.1 within 14 days of the date of the invoice; and
  - 5.5.2 in full and in cleared funds to a bank account nominated in writing by DDI, and time for payment shall be of the essence of the Contract.
- 5.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by DDI to the Customer, the Customer shall, on receipt of a valid VAT invoice from DDI, pay to DDI such additional 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.
- 5.7 If the Customer fails to make any payment due to DDI under the Contract by the due date for payment, then without prejudice to any other rights or remedies available to it, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. DDI may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by DDI to the Customer.

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights arising out of or in connection with the Services (other than Intellectual Property Rights in any material provided by the Customer) shall be owned by DDI.
- 6.2 Subject to clause 6.6, DDI grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Customer shall not sub-licence, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 All Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by DDI.
- 6.5 The Customer grants to DDI a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 6.6 The Customer shall procure that any copies or reproductions of the whole or any part of a Deliverable made by it, shall be marked with a notice in the following terms:  
© Copyright Data Driven Insights Ltd. Limited 2020

## 7. DATA PROTECTION

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and DDI is the Processor.
- 7.3 Without prejudice to the generality of clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to DDI for the duration and purposes of this Contract.
- 7.4 Without prejudice to the generality of clause 7.1, DDI shall, in relation to any Personal Data processed in connection with the performance of DDI of its obligations under this Contract:
  - 7.4.1 process that Personal Data only on the documented written instructions of the Customer unless DDI is required by law to otherwise process that personal data;
  - 7.4.2 Ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction or damage to Personal Data;
  - 7.4.3 Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal data confidential;
  - 7.4.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained;
  - 7.4.5 notify the Customer without undue delay on becoming aware of a personal data breach;
  - 7.4.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
  - 7.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- 7.5 The Customer consents to DDI appointing our approved consultants as a third-party processor of Personal Data under this agreement. DDI confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and DDI, DDI shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.

## 8. CONFIDENTIALITY

- 8.1 A party ("**receiving party**") shall keep in strict confidence all information, data, technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing**

- party”), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party’s business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party’s obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party’s confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 8 shall survive termination of the Contract.
9. **LIMITATION OF LIABILITY: THE CUSTOMER’S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1 Nothing in these Conditions shall limit or exclude DDI’s liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2 Subject to clause 9.1:
- 9.2.1 DDI shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 9.2.2 DDI’s total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Contract Price.
- 9.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4 This clause 9 shall survive termination of the Contract.
10. **TERMINATION**
- 10.1 Without limiting its other rights or remedies, DDI may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing to do so;
- 10.1.2 the Customer takes any step or action in connection with its entering 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 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, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.1.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the Customer’s financial position deteriorates to such an extent that in DDI’s opinion the Customer’s capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, DDI may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, DDI may suspend the supply of Services under the Contract or any other contract between the Customer and DDI if the Customer fails to pay any amount due under this Contract on the due date for payment, or if any of the events listed in clause 10.1 occur, or DDI reasonably believes that any such event is imminent. Any timescales for delivery of the Services shall be adjusted to reflect the consequences of such suspension.
- 10.4 The Customer shall have the right at any time and for any reason to serve written notice on DDI notifying DDI of its intention to terminate the Contract. The Contract shall terminate on the expiry of a 30-day period beginning the date DDI receives such notice from the Customer.
- 10.5 On termination of the Contract for any reason:
- 10.5.1 the Customer shall immediately pay to DDI all of DDI’s outstanding unpaid invoices and interest and, in respect of Services supplied but not yet invoiced, DDI shall be entitled to invoice the Customer, for immediate payment, for all Services for which it is at that date entitled to invoice the Customer for in accordance with the Proposal, and in respect of all other Services provided, DDI’s costs and expenses on a time and materials basis in respect of such Services;
- 10.5.2 the accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- 10.5.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
11. **FORCE MAJEURE**
- 11.1 For the purposes of this Contract, “Force Majeure Event” means an event beyond the reasonable control of DDI including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of DDI or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, illness or disease, or default of suppliers or subcontractors.
- 11.2 DDI shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event, and all dates for delivery or performance shall be extended by a period equal to the period of the Force Majeure Event.
- 11.3 If the Force Majeure Event prevents DDI from providing the Services for more than 10 weeks, DDI shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
12. **GENERAL**
- 12.1 **Assignment and other dealings**
- 12.1.1 DDI may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 12.1.2 The Customer shall not, without the prior written consent of DDI, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.2 **Notices**
- 12.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.
- 12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier’s delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- 12.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action
- 12.3 **Severance**
- 12.3.1 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 a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.4 **Waiver**
- A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.5 **No partnership or agency**
- Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.6 **Entire Agreement**
- 12.7 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of DDI which is not set out in the Contract.
- 12.8 **Third parties**
- A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 12.9 **Variation**
- Except as set out in these 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 DDI.
- 12.10 **Governing law**
- The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 12.11 **Jurisdiction**
- Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).