



TERMS OF BUSINESS

I. APPLICABILITY

These Terms of Business set out the general terms that will apply to all legal relationships between **DM Europe Ltd** and its Clients, except when excluded or restricted by law, or written agreement and/or amendment to these Terms of Business. In case of conflict between these Terms of Business and the Letter of Engagement, the Letter of Engagement shall prevail.

II. DEFINITIONS

Appointee(s) means a person authorised by DM Europe to act in the provision of the Service(s).

Authorised Agent means a person who is authorized to act for the Client through employment, by contract or apparent authority.

Beneficial Owner means the ultimate owner of the assets subject to the Services Contract.

Client(s) means the addressee(s) of the Letter of Engagement.

Confidential Information means information relating to the disclosing party which is designated by the disclosing party as being confidential or is by its very nature confidential and that may or may not be Personal Data.

Controller - means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;

Personal Data - means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

DM Europe means DM Europe Ltd, a limited liability company incorporated and existing under the laws of the Republic of Malta with company registration number C20806. and/or any other DM Related Party.

DM Related Party means any parent, subsidiary, associate entity of DM Europe or any other entity having common ownership.

DM Persons means DM Europe, its members, directors, employees and Appointees, as well as any other body or entity controlled by DM Europe or associated with DM Europe and each and all of its members, directors, employees and agents.

Processor - means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

Processing - means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

Service(s) means the services to be delivered by us under the Letter of Engagement.

Services Contract means the contract formed by these Terms of Business, the Letter of Engagement.

III. INSTRUCTIONS

- a. Subject to the terms of any other agreement which may be in force between the Parties, DM Europe shall follow the instructions of the Client when acting under these Terms of Business.
- b. Where the Client and the Beneficial Owner are not the same person, the Client also authorises DM Europe to give any notice to and to act on the instructions of the Beneficial Owner.
- c. The Client undertakes to give DM Europe only such instructions as are in conformity with the laws, regulations and rules in force in Malta at the respective time, and in any other country which has a connection to the Services being provided. DM Europe shall not be bound to follow instructions when such instructions are illegal, against company policy or result in the breach of any contract including any memorandum and articles of any company.
- d. While DM Europe is authorised to receive instructions from any Authorised Agent of the Client, DM Europe is not bound by, and shall not be liable for refusing to follow such instructions if it is not satisfied of the circumstances under which such instructions are given, or on the continuing authority of the Authorised Agent or if the instructions of the Authorised Agent contradict other instructions received from the Client.
- e. While DM Europe may act on verbal instructions and shall not be liable in any manner for doing so, on carrying out satisfactory verification of the source of the instructions, DM Europe shall not be bound to act until instructions are given in writing and they are authenticated in a manner satisfactory to DM Europe.
- f. While undertaking to comply with all instructions, DM Europe reserves the right, in its absolute discretion, to request further confirmations before acting upon them whenever instructions, wholly or in part, as received, are unclear or prejudicial to the Client's interests. Furthermore, DM Europe shall also have the right to ignore any instructions which are in breach of these Terms of Business or if there already exists a breach thereof. In every case, DM Europe shall not be liable for any delay or refusal to act in the aforementioned circumstances, and where permitted by law, shall notify the Client of such request or refusal as soon as possible.

IV. RESPONSIBILITIES OF THE CLIENT

- a. The Client is responsible to ensure that the scope of the Services is appropriate for its needs. It shall also be the Client's responsibility to manage its own affairs, to decide on the use of the Services and to implement any advice received from DM Europe.
- b. The Client shall not, directly and/or indirectly solicit the employment of any members, directors, employees and Agents of DM Europe involved in the provision of the Services during the performance of the Services or for a period of one (1) year following the provision of the Services.
- c. The Client shall cooperate with DM Europe in the performance of the Services by providing information in a timely, accurate, lawful and complete manner. The Client shall be responsible for the provision of such information and DM Europe shall be entitled to use the information and data provided by the Client and to rely on its accuracy, completeness and lawfulness, without carrying out any further verification. DM Europe's performance shall depend upon the timely decisions and approvals of the Client in connection with the Services.
- d. The Client hereby undertakes to indemnify and keep harmless DM Europe, its officers, employees and any Appointee, from and against all actions, proceedings, claims, demands, costs and liabilities which may arise or occur, be taken or commenced against DM Europe, its employees or the Appointees arising from any activity which is ancillary or connected with the Services provided to the Client, save for those which are caused through the wilful fraud or gross negligence of DM Europe, its employees or its Appointees.
- e. The Client undertakes, declares and confirms that it shall not be involved in and that a request for Services shall not be for the purpose of, directly or indirectly, any one or more of the following:-
 - i. money laundering and terrorist financing activities;
 - ii. receiving the proceeds of drug trafficking;
 - iii. receiving the proceeds of any criminal activities;
 - iv. activities related to the trading in arms, munitions or other weapons;
 - v. activities related to trade in violation of any embargo or sanctions imposed by the institutions of the European Union and the Security Council of the United Nations or any other authority;
 - vi. any activity illegal under Maltese Law or any other relevant jurisdiction;
 - vii. any activity which is likely to adversely affect DM Europe's reputation or the reputation of Malta or any other relevant jurisdiction as a financial services centre.
- f. The Client understands that, in accordance with the Prevention of Money Laundering and Funding of Terrorism Regulations, 2017¹, should the Client make a false declaration or a false representation or produce false documentation for the purposes of the fulfilment of the obligations imposed on DM Europe under that Prevention of Money Laundering and Funding

¹ Subsidiary Legislation 373.01, of the Laws of Malta

of Terrorism Regulations, 2017, the Client shall be guilty of an offense and shall be liable, on conviction to a fine (multa) not exceeding fifty thousand euros (€50,000) or to imprisonment for a term not exceeding two years or both such fine and imprisonment, as may be amended from time to time.

- g. To the extent that the Services being provided by DM Europe are involved, the Client shall not without the necessary authorisation, be involved in any licensable activity without attaining the necessary authorisation from the relevant authority.

V. RESPONSIBILITIES OF DM EUROPE

- a. DM Europe declares and confirms that it will comply with such laws, regulations and guidelines of any regulatory authority as applicable to it.
- b. DM Europe warrants that it shall perform the Services in good faith and with due professional care.

VI. PAYMENT OF INVOICES

- a. The Client shall provide adequate funds to enable DM Europe and its Appointees to cover their costs and fees in respect of any acts before execution is carried out, unless DM Europe has agreed with the Client beforehand for special arrangements regarding the payment of such costs and fees.
- b. Saving any special arrangement agreed to in writing, DM Europe and/or its Appointees may require the payment of all fees due to them for Services in advance on an annual basis.
- c. DM Europe reserves the right to charge fees for services and ancillary acts covered by these Terms of Business and provided by any of its Appointees.
- d. DM Europe shall be entitled to require that the Client provides (supplementary) security in a form to be determined by DM Europe. If the Client fails to provide the required security, DM Europe shall be entitled, without prejudice to its other rights, to suspend further provision of the Services with immediate effect, and everything the Client owes to DM Europe for whatever reason shall be forthwith due and payable.

VII. CONFIDENTIALITY AND DATA PROTECTION

- a. The DM Related Party collects and processes Personal Data for the below identified purposes, as fall applicable:
 - i. Provision of the Service requested by the Client;
 - ii. Compliance with prevailing rules and regulations on the Prevention of Money Laundering and Combating of Financial Terrorism;

- iii. Compliance with prevailing rules and regulations on the Common Reporting Standards on the Automatic Exchange of Information (CRS and FATCA).
- b. DM Europe shall be the Controller and the Processor of Personal Data, however in matters where another entity within DM Related Party is engaged for the provision of a service then such entity engaged shall act as the Controller and DM Europe shall act as the Processor of the Personal Data being processed.
- c. DM Europe confirms to the Processing of Personal Data in accordance with REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as implemented under national law and any other rules and regulations issued thereunder, as varied, amended, repealed and substituted from time to time.
- d. In accordance with the above provisions DM Europe and/or the Client shall maintain the confidentiality of all Confidential Information, whether such Confidential Information consists in Personal Data or otherwise, acquired through their relationship and shall not disclose such Confidential Information to any third party without the disclosing party's consent unless:-
 - i. Authorisation is provided in writing to divulge such Confidential Information; or
 - ii. Either party is required by law, a Court of law, tribunal or arbitration centre to divulge such Confidential Information.
- e. Furthermore the Client understands and accepts that DM Europe may disclose any information provided under the terms of this relationship to any national and foreign authority, court or other competent body, as may be requested or required of DM Europe in accordance with prevailing European Union and national rules and regulations.
- f. Without prejudice to the duty of confidentiality, DM Europe reserves the right to act for other clients.
- g. DM Europe hereby warrants:
 - i. that security policies and adequate technical measures aimed at protecting the Personal Data held by it from any unauthorised access and improper use have been put in place;
 - ii. that measures aimed at the unauthorised destruction or accidental loss of data have also been put in place.
- h. The Client shall not disclose to any third party the advise and/or opinions or other Services of DM Europe provided by DM Europe without the prior express written consent of DM Europe. All Services provided by DM Europe are intended solely for the benefit of the Client.

VIII. LIMITATION OF LIABILITY

- a. Any waiver, delay or failure to exercise any right under these Terms of Business whether single or multiple shall not constitute any waiver, addition to or amendment of these Terms of Business.

- b. The Client confirms that DM Europe at no time has provided or will provide any investment advice or legal advice and that such advice will be obtained from independent professional advisors. Any tax advice provided shall be specifically categorised by DM Europe as being tax advice, and any other advice not specifically categorised as being tax advice shall not be treated as such.
- c. DM Europe shall not be liable for any of the following losses or damage (whether or not such losses or damage were foreseen, direct, indirect foreseeable, known or otherwise):
 - i. loss of profits (whether actual or anticipated);
 - ii. loss of revenue;
 - iii. loss of anticipated savings;
 - iv. loss of business;
 - v. loss of opportunity;
 - vi. loss of goodwill; or
 - vii. any indirect, special or consequential loss or damage howsoever caused.

Some jurisdictions do not permit the exclusion or limitation of liability and, as such, some portion of the above limitation may not apply. In such cases, the party's liability is limited to the greatest extent permitted by law.

- d. DM Europe's total aggregate liability arising out of or in connection with the performance or contemplated performance of the Services Contract (whether for tort (including negligence), breach of contract, breach of statutory duty or otherwise) shall in no event exceed 120% of the price fees paid by the Client within the twelve (12) month period immediately before the date of the event giving rise to the Client's claim.

IX. TERM AND TERMINATION

- a. Either Party may terminate the Services Contract or suspend its operation by giving 30 days' prior written notice to the other Party at any time. Termination or suspension under this clause shall not affect any rights that may have accrued for either Party before termination or suspension and all sums due to DM Europe shall become payable in full when termination or suspension takes effect.
- b. DM Europe may terminate the Services Contract with immediate effect upon written notice to the Client if DM Europe determines that:-
 - i. A governmental, regulatory or professional entity or an entity having the force of law has introduced a new or modified an existing law or regulation which would render the provision of the Services by DM Europe illegal or otherwise unlawful;
 - ii. Any breach of these Terms of Business has been committed by the Client.
- c. In case of termination as contemplated herein DM Europe shall duly surrender all property in its possession or control subject only to any retention that would be necessary to cover unpaid fees and disbursements and any reasonably verifiable present or future liability, including any contingent liability.

- d. DM Europe and its Appointees shall have the right to retain annual fees until the end of the year on termination unless there is an alternative agreement with the Client or if DM Europe in its absolute discretion chooses to waive part of this right in any given circumstances.

X. ASSIGNMENT

- a. Neither DM Europe nor the Client shall have the right to assign the benefit or transfer the burden of the Services Contract to another party without the prior written consent of the other Party.
- b. DM Europe shall have the right to appoint Agents and/or sub-contractors to assist DM Europe in delivering the Services. This notwithstanding, where any such sub-contractors are not DM Persons, DM Europe shall consult the Client before doing so.

XI. APPLICABLE LAW AND VENUE

- a. These Terms of Business shall be governed and construed in accordance with the Laws of Malta.
- b. The Parties hereby agree to attempt in good faith to resolve any dispute or claim arising out of or in connection with the Services Contract promptly through negotiations, following which, should no agreement be reached, the Parties shall agree on the appointment of an arbitrator.
- c. If within thirty (30) days after receipt by a Party of a proposal for the appointment of an arbitrator the Parties have not reached agreement on the choice of the arbitrator, the 'Malta Arbitration Centre' of Palazzo Laparelli, 33, South Street, Valletta VLT 1100, Malta shall be deemed automatically authorised to appoint the arbitrator and such appointment shall be final and binding.
- d. The decision by the arbitrator, however appointed, shall be binding on both Parties. It is hereby being agreed that time shall be of the essence in the resolution of any such dispute.
- e. Nothing contained herein shall limit the right of DM Europe to institute proceedings in the courts of Malta or the courts of the domicile of the Client or wherever the Client carries on business or holds assets.

XII. AMENDMENTS

- a. The Services Contract sets out the entire agreement between DM Europe and the Client in connection with the Services.
- b. The Terms of Business may be amended from time to time by the notification of a revised version to the Client at the correspondence address and/or email address provided by the Client in the Engagement Letter or the correspondence address and/or email address last notified to

DM Europe or the correspondence address and/or email address which is habitually and regularly used by DM Europe to notify the Client.

XIII. POWER TO DELEGATE

- a. DM Europe is authorised and empowered to appoint Appointees to act for the Client or for his benefit in relation to the carrying out of functions ancillary or connected to the Services.
- b. DM Europe shall not be liable towards the Client for the normal duty of due care and diligence or for ongoing supervision or be in any way responsible for the acts or omissions, negligent conduct, wilful fraud, or breach of these Terms of Business of any delegate or Appointee specifically requested to be appointed by the Client. This exclusion of liability shall apply even if such delegate or Appointee is formally engaged or appointed or empowered by DM Europe or its Appointee pursuant to the instructions of the Client.

XIV. ACTIONS TO PROTECT

- a. DM Europe shall be deemed as authorised by the Client to take any necessary steps or incur any reasonable administrative expenses on the Client's behalf in order to ensure the maintenance and good order of any corporate structure, or to carry out any act which DM Europe considers to be appropriate and consistent with the general instructions of the Client and/or the terms hereof.
- b. In any event that DM Europe or its Appointees do not receive a reply to any request made to the Client, irrespective of whether there is a case for urgency or not, DM Europe or its Appointees may in their absolute discretion, after the lapse of thirty (30) days from when the request was made, proceed in any one or more of the following ways:
 - i. take no further action on that particular matter;
 - ii. suspend any further action in respect of all the Services;
 - iii. utilise any assets held by it in order to meet any liabilities that are due;
 - iv. take any other action which DM Europe deems appropriate to protect its reputation or which is otherwise required by law, including the disclosure of such beneficial interest to any competent authority, Court of law, tribunal or arbitration centre.
- c. DM Europe or its Appointees shall not be held liable for any act or omission under this clause unless it is shown that such act or omission was under the circumstances a grossly negligent or dishonest exercise of judgement.

XV. NOTICES

- a. Any notice or other document necessary to be forwarded by DM Europe shall be delivered by hand, courier, airmail, facsimile or electronically by email to the address provided by the Client indicated in the Engagement Letter or to the latest address provided by the Client, or the correspondence address and/or email address which is habitually and regularly used by DM Europe to notify the Client.
- b. DM Europe shall not be liable for any loss or liability incurred by the Client when notices or other communication are sent by email whether arising from viruses or otherwise. DM Europe shall not be responsible or held liable for any loss or damage caused by the transmission of an infected email.
- c. Any notice and/or other communication which is:
 - i. delivered personally or by courier shall be deemed delivered immediately upon such delivery;
 - ii. sent by airmail letter in Europe, shall be deemed delivered after seven (7) days of posting;
 - iii. sent by airmail outside Europe, shall be deemed delivered after fourteen (14) days of posting;
 - iv. sent by facsimile, shall be deemed delivered at time of dispatch;
 - v. sent by email, shall be deemed delivered at time of dispatch.

XVI. INTERPRETATION

- a. The headings of the clauses in these Terms of Business are for convenience of reference only and shall not define or limit any of the terms.
- b. Whenever the context so requires references to the male gender shall include references to the female gender and references to the single shall include the plural and vice versa.

XVII. REPRESENTATIONS AND WARRANTIES

- a. Where the Client and the Beneficial Owner are not one and the same person, the Client and the Beneficial Owner shall be jointly and severally liable for all obligations in respect of DM Europe.
- b. DM Europe is irrevocably authorised by the Client to withdraw funds from any money held on behalf of the Client and/or the Beneficial Owner, or any account managed on behalf of the Client and/or the Beneficial Owner, in order to discharge all and any fees and expenses that are due.
- c. The Client hereunder represents and warrants that if it loses contact with the Beneficial Owner or is or considers that the Beneficial Owner is not in a position to fulfil its obligations to DM Europe, then it must immediately inform DM Europe of the situation.

- d. The Client, if applicable, represents and warrants that to the extent necessary under applicable law it is licensed by the regulatory authorities in its place of business represent the Beneficial Owner in respect of the Services and it will at all times maintain in force its authority to receive notices and to give DM Europe instructions on behalf of the Beneficial Owner and to notify DM Europe immediately should this not be the case.
- e. The Client is responsible for ensuring that all necessary advice (tax and legal) in any relevant jurisdiction has been taken with regards to the services to be provided by DM Europe for ensuring that the activities or proposed activities of the Client will not breach the laws of any relevant jurisdiction.
- f. In order to allow DM Europe to meet its legal and regulatory obligations, the Client agrees to keep DM Europe fully and promptly informed on the Beneficial Owner.
- g. The Client undertakes to inform DM Europe of any matters that might affect DM Europe's willingness to provide or continue to provide any of the Services.

Contact details

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