



TRADING TERMS

1. Definitions

a. In these Trading Terms:

"**Australian Consumer Law**" means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*; ^[17]_[SEP]

"**CCA**" means the *Competition and Consumer Act 2010 (Cth)*; ^[17]_[SEP]

"**Company**" means Australian Diamond Trading Corporation Pty Ltd (ACN 157686578) (ABN79157686578);

^[17]_[SEP] "**Consumer**" means a person acquiring Goods:

- i) of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- ii) at a price not exceeding \$40,000; or
- iii) of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- iv) that consist of a vehicle or trailer acquired for use principally in the transport of goods on public roads, but excludes a person ^[17]_[SEP] acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:
- v) re-supply; or
- vi) using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land;

"**Consumer Goods**" means 'goods of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law or where applicable under the equivalent section of New Zealand's Consumer Laws;

^[17]_[SEP] "**Consumer Guarantee**" means a consumer guarantee applicable to this contract under the Australian Consumer Law or where applicable as defined under New Zealand's Consumer Laws, including any Express Warranty;

"**Consumer Services**" means 'services of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law or where applicable under the equivalent section of New Zealand's Consumer Laws;

"**Customer**" means the person described in a credit account application as the person in whose name an account is maintained by the Company and/or the person or entity that purchases Goods and services from the Company and/or is supplied Goods on a consignment basis by the Company;

"**Express Warranty**" has the same meaning as in section 2(1) of the Australian Consumer Law or where

applicable under the equivalent section of New Zealand's Consumer Laws;

"**Fair or Reasonable**" means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law or where applicable under the equivalent section of New Zealand's Consumer Laws;

"**Force Majeure Event**" is defined in clause 17;

"**Financing Statement**" and "Financing change statement" means a "financing statement" and a "financing change statement" within the meaning of section 10 of the PPSA;

"**Goods**" means any goods supplied by the Company to the Customer under these Trading Terms;

"**GST**" means "GST" within the meaning of the applicable GST Act;

"**GST Act**" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended) or where applicable under New Zealand GST Act and the following expressions bear the same meaning as in the GST Act: "tax invoice", "taxable supply" and "value";

"**Insolvency Event**" means, in relation to a party, that one of the events specified in clause 16 has occurred in relation to that party;

"**Intellectual Property**" means any intellectual property including without limitation patents, trademarks, copyright, designs, layouts, circuit boards, knowhow, software, object codes, source codes, and confidential information;

"**PMSI**" means a purchase money security interest as defined in section 14 of the PPSA or as defined in the equivalent section of New Zealand's PPSA Act;

"**PPSA**" means the *Personal Property Securities Act 2009 (Cth)*. and New Zealand's *Personal Property Securities Act 1999*,

"**Proceeds**" means "proceeds" within the meaning of section 31 of the PPSA or where applicable as defined in the equivalent section of New Zealand's PPSA Act;

"**Register**" means the Personal Property Securities Register established under the PPSA or where applicable as defined in the New Zealand's PPSA Act;

"**Security Agreement**" means a "security agreement" within the meaning of section 10 of the PPSA or where applicable as defined in the equivalent section of New Zealand's PPSA Act;

"**Security Interest**" means a "security interest" within the meaning of section 12 of the PPSA or where applicable as defined in the equivalent section of New Zealand's PPSA Act;

"**Trading Terms**" means these Trading Terms and Conditions.

b) Terms and expression defined in or for the purposes of the CCA or where applicable the New Zealand's Consumer laws and the PPSA have the same meaning when used in these Trading Terms.

c) Words importing the singular shall include the plural (and vice versa).

2. General

a) These Trading Terms apply to:

i) The establishment, operation and use of the account of the Customer with the Company;

ii) All transactions effected by the Customer with the Company for the supply or consignment of goods or services on its account or on a cash basis unless ^[]~~SEP~~ otherwise expressly agreed in relation to any particular supply or consignment of goods;

iii) The exclusion of all others including any terms and conditions of the Customer.

b) These Trading Terms shall apply as if incorporated into each order placed by the Customer with the Company.

c) These Trading Terms may be varied only with the written agreement of the Company.

d) The Company may at any time and from time to time by written notice to the Customer, alter these Trading Terms.

3. Orders

a) The Customer may place and the Company may accept or reject orders in part or full for the supply of Goods upon these Trading Terms by:

i) A communication in writing (including by e-mail); or

ii) Any other means that the parties agree including by telephone and by internet ordering.

b) The Company reserves the right to specify a minimum order value which it will accept from time to time and to impose a surcharge should the Customer require delivery of goods having a value less than the minimum order value.

c) Orders accepted by the Company cannot be cancelled or altered in whole or in part without the Company's written consent.

4. Pricing & Delivery

- a) All prices quoted or agreed are on a tax exclusive basis. The applicable amount of GST or other taxes will be disclosed on invoices.
- b) Unless otherwise agreed in advance, the Company reserves the right to:
 - i) Charge the Customer for the cost of freight.
 - ii) Charge for re-scheduling and delivery for all variations to the original contract.
 - iii) Adjust prices if and when necessary prior to acceptance of any offer from the Customer.
- c) Whilst the Company shall use all reasonable endeavors to comply with the Customer's particular delivery requirements and order specifications, the Customer will not be entitled to claim compensation by reason of failure to comply with their delivery requirements or minor variations to the Goods.
- d) Delivery shall be deemed to have taken place when the Company or its agent delivers the Goods to or leaves the Goods at the address shown on the Tax Invoice for the delivery of such Goods.

5. Withholding Supply

The Company reserves the right, irrespective of whether or not an order has been accepted and without notice to the Customer, to withhold supply to the Customer and/or to cancel any obligation it may have to the Customer and the Company will not be liable for loss of damage resulting directly or indirectly from such action where:

- a) The Company has insufficient Goods to fulfill the order;
- b) The Goods ordered are no longer available for any reason;
- c) The Customer has failed to observe these Trading Terms or the Company's payment terms or
- d) The Company has determined, in its absolute discretion, that credit should no longer be extended to the Customer.

6. Payment Terms

- a) Unless otherwise agreed, the Company's terms of payment require payment to be made by no later than 30 days from the date that the statement for the goods is rendered by the Company to the Customer from the date that the tax invoice for the goods is rendered by the Company to the Customer.
- b) All payments shall be made free of any deductions, withholding or set-off unless otherwise agreed in writing with the Company
- b) If the Customer does not make payment as required by the Trading Terms, the Company may in its absolute discretion charge the Customer interest on any amount overdue calculated at the rate of one percent per month on a daily basis from the date that the unpaid amount became due until the date that it is paid in full.
- c) If the Customer fails to pay for any goods or services supplied by the Company when due, then by notice to the Customer the Company may declare any amounts actually or contingently owing by the Customer to the Company to be immediately due and payable.
- d) Where the Customer is overdue with any payment or the Company is in receipt of credit references that it regards as unsatisfactory, the Company reserves the right to change the Customer to Cash on Delivery (**COD**) account and all Goods on a COD account shall be paid for before they are supplied.
- e) The Company shall not be responsible and/or liable on removal of Goods and/or materials and/or services from the Customer's premises due to non-payment of moneys outstanding.
- f) Credit facilities may be suspended or withdrawn at the discretion of the Company at any time.
- g) Where payment is to be made by cash the amount owing is due and payable immediately.

7. Credit Card Payments

- a) If the Customer pays its outstanding account by a credit card, at the time the transaction is processed the Company reserves the right to charge the Customer a fee of 2% for AMEX cards and 1.5% on Visa and Mastercards or such other amount that the Company reasonably determines in its discretion to be equal to the merchant service fee or any similar fee payable by the Company to its transaction acquirer in connection with the transaction.
- b) The Company may add any amount payable by the Customer under paragraph 7(a) to the sale price of the

relevant goods or services supplied or to be supplied by the Company to the Customer.

8. GST

- a) To the extent that a party makes a taxable supply in connection with these Trading Terms, the consideration payable by a party under these Trading Terms represents the value of the taxable supply for which payment is to be made, unless otherwise expressly agreed.
- b) Subject to clause 8(c), if a party makes a taxable supply pursuant to these Trading Terms for a consideration which, under clause 8(a), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- c) A party's obligation to make payment under clause 8(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

9. Default Arrangements & Enforcement Expenses:

If the Customer fails to pay any amounts when due, then in addition to any other amount payable under these Trading Terms, the Customer must pay to the Company upon demand (in the Company's discretion) any costs incurred in connection with enforcement of any of the Company's rights in connection with the supply of goods on these Trading Terms including without limitation:

- a) Any legal costs (on a solicitor and own client basis) incurred by the Company;
- b) Any mercantile agents fees incurred by the Company in recovering or attempting to recover any amount payable by the Customer under these Trading Terms; and
- c) Any dishonour or bank fees incurred by the Company in connection with payments or remittances that are made or which should have been made by the Customer.

10. Exclusions of Warranties and Limitations of Liability:

- a) The Company acknowledges that the Australian Consumer Law and similar legislation provides:
 - i) Certain rights for Consumers that cannot be excluded; and
 - ii) In relation to the supply of Goods, that in some circumstances the Customer may be a Consumer.
- b) Subject to paragraph (c), the Company excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of Goods.
- c) The Consumer Guarantees apply to any supply of Goods where the Customer is a Consumer, and the liability of the Company in connection with the Consumer Guarantees is not limited except as stated in paragraph (d).
- d) If the Customer is a Consumer in relation to the supply of Goods, and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Company in connection with the Consumer Guarantees is limited to one of the following (as selected by the Company):
 - i) The replacement of the Goods or the supply of equivalent Goods or
 - ii) The payment of the cost of replacing the Goods or of acquiring Goods equivalent to the Goods.
- e) The Company:
 - i) Excludes any liability in contract, tort (including negligence) or otherwise, in connection with any supply of Goods, for any indirect damages or losses, or for any special, punitive or exemplary damages;
 - ii) Limits its liability in contract, tort (including negligence) or otherwise, in connection with any supply of Goods, to the price payable by the Customer for the ^[]~~SEP~~ Goods; and
 - iii) Excludes any liability for or in connection a claim that the Goods are not fit for a particular purpose or function, except where the Company has a liability as ^[]~~SEP~~ contemplated by paragraph (a) or (d).
- f) The Customer agrees to notify the Company in writing of any change in ownership or shareholding of the Customer within seven (7) days from the date such change or immediately if an Insolvency Event as specified in clause 15 hereof occurs and the Customer shall indemnify the Company against any loss or damage incurred by it as a result of its failure to notify the Company of such change or Insolvency Event.

11. Claims and Returns

- a) A Customer will be responsible for immediate examination of the goods upon arrival at their destination and will be taken to have accepted Goods received by it as being in accordance with its order unless it notifies the Company in writing of its claim, including invoicing shortages, within 2 working days from the date of receipt of the Goods.
- b) No return of Goods that are allegedly defective or faulty will be accepted by the Company unless either:
 - i) The Customer is a Consumer in relation to those Goods and is entitled to return them because a Consumer Guarantee applies; or
 - ii) The Company has given prior written authorization for the return of the Goods.
- c) All Goods for return must be inspected by a representative of the Company prior to the Company accepting any obligation for the return of the Goods.
- d) The Company may in its absolute discretion refuse to accept a return of the Goods if the Company determines that the Goods have been altered or damaged in any way.
- e) If the Company consents under paragraph (b)(ii) for the return of any Goods, the Customer must:
 - i) Provide to the Company a written statement setting out the reasons for return of the Goods;
 - ii) Give the Company details of the original invoice number and the date of delivery of the Goods; and
 - iii) Provide to the Company a copy of the receipt or delivery docket relating to the Goods;

12. Cancellations and Variations

- a) The Customer may not cancel or vary an order unless the Company in its absolute discretion consents in writing to the cancellation or variation.
- b) The Company may charge the Customer for any reasonable costs incurred in preparation of any order that has been varied or cancelled.
- c) The Company reserves the right to immediately cancel any contract for the supply of Goods or suspend any such supply without incurring any liability to the Customer in any of the following circumstances:
 - (i) The Customer is overdue with any payment due under these Trading terms or is otherwise in breach of these Trading Terms or
 - (ii) An Insolvency Event has occurred.
- d) Cancellation by the Company under this clause shall be without prejudice to the Company's right to recover payment from the Customer for Goods previously supplied.

13 Retention of Title Arrangements

- a) Property in and title to any Goods remains with the Company until the Customer has paid in full (and in cleared funds) all amounts owing by the Customer to the Company in connection with the Goods.
- b) Until such time as title to the Goods passes to the Customer, the Customer will hold them on trust and as bailee for the Company.
- c) Despite clause 13 a), risk in the Goods passes to the Customer upon delivery.
- d) Unless otherwise agreed by the Company, the Customer must identify and store the Goods in a manner that clearly shows that they are the property of the Company.
- e) Notwithstanding any of the matters set forth in this paragraph 13, the Customer may sell the Goods to a third party in the ordinary course of their business.
- f) The Customer must insure the Goods until sold to a third party.

14. Personal Property Securities Act arrangements

a) Acknowledgement of security agreement and security interest

The Customer acknowledges and agrees that:

- i) The Trading Terms are a security agreement for the purposes of the PPSA;
- ii) The Company has a security interest in the Goods and in any present or after acquired property that represents Proceeds of the Goods and/or in which the Goods have been attached or incorporated, including co-mingled goods; and
- iii) The security interest secures the due and punctual payment of all moneys payable by the Customer to the Company under these Trading Terms.

b) Acknowledgment of arrangements for financing statements

The Customer acknowledges and agrees as follows:

i) Financing statements and financing change statements

The Company may at any time register a financing statement (or, if relevant, a financing change statement) on the Register in relation to its security interest in the Goods that may include terms that:

- describe the Company as the "secured party" and the Customer as the "grantor";
- describe the Goods supplied by the Company to the Customer from time to time pursuant to these Trading Terms as collateral in the class of "other goods" (or in such other class as the Company may reasonably determine is applicable to the Goods);
- specifies that the security interest that the Company holds in the collateral is a PMSI in accordance with item 7 of the table in section 153(1) of the PPSA to the extent that it secures payment of the amounts owing in connection with that collateral; and
- specifies that the security interest affects Proceeds and, in particular, all present and after acquired property that represents Proceeds of the Goods.

ii) Period of registration

The Company may register a financing statement or financing change statement on the PPSA Register for any period that the Company determines (in its discretion).

iii) Payment of fees and costs

Upon request made by the Company, the Customer must pay to the Company all fees, charges and expenses that the Company may reasonably incur in:

- preparing, lodging or registering any financing statement or financing change statement in relation to any security interest that is granted to the Company under the Trading Terms;
- maintaining any such registration; or
- enforcing any security interest granted to the Company under the Trading Terms.

These fees, charges and expenses may be incurred by or with an agent that acts on behalf of the Company.

iv) When registration to be effected

The Company may register its security interest on the Register at any time so long as the Company believes on reasonable grounds that it will become a secured party in relation to the Goods including without limitation when the Customer signs or otherwise adopts or accepts the Trading Terms in a manner proposed by the Company.

v) Attachment

A security interest in Goods created according to the Trading Terms will attach to the Goods at the time that the Customer obtains possession of them and not at any later time.

vi) Do all things necessary

The Customer must do anything reasonably required by the Company to enable the Company to register the security interest as a PMSI and to maintain that registration.

vii) Separate financing statement may be registered if required.

If the Company considers that it has or may have a security interest that is not a PMSI in relation to any Goods, it may register a financing statement in respect of that security interest (and that financing statement may be in addition to a financing statement registered by the Company in relation to a PMSI in the same Goods).

c) Confidential Information

i) The Company and the Customer agree that neither party will disclose to an interested person or to any other person, any information of the kind described in section 275 (1) of the PPSA except that the Company may disclose that information to an interested person where section 275(7) of the PPSA applies.

ii) The Customer agrees that it will not authorize the disclosure of any information of the kind described in section 275 (1) of the PPSA.

d) Enforcement

If the Customer fails to pay an amount owing when due or if it fails to perform any of its obligations in connection with the supply of Goods, the Customer agrees that the Company shall be entitled to exercise its

enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including (without limitation) the rights contained in section 123 of the PPSA to seize the Goods by any method permitted by law. For these purposes, and without limiting any other rights of the Company under the PPSA as a secured party, the Customer further agrees:

- i) upon demand made by the Company, to immediately deliver up the Goods to the Company;
- ii) to irrevocably authorize the Company to enter any premises occupied by the Customer in order to search for, retrieve and remove those Goods to which ^[1]_{SEP} the Company has title and which are the subject of a security interest as provided for by these Trading Terms;
- iii) to do all things necessary to immediately facilitate the Company's access to the Customer's premises and to assist the Company to locate and ^[1]_{SEP} identify the Goods;
- iv) to authorize the Company to resell the Goods seized and apply the proceeds of sale in payment of any monies that the Customer owes it;
- v) that in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph (d), ^[1]_{SEP} the provisions of this paragraph (d) shall prevail.

e) Application of certain PPSA provisions

To the extent they apply, the following provisions of the PPSA confer rights on the Company: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134 (1) (retention of collateral). The Customer agrees that in addition to those rights, the Company shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that the Company may do so in any manner it sees fit including (in respect of dealing or disposing) by private or public sale, lease or licence.

f) Contracting out provisions

To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest under or in connection with these Trading Terms, the following provisions of the PPSA do not apply and for the purposes of section 115 of the PPSA and are "contracted out" of these Trading Terms in respect of all Goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Company to give a notice to the grantor); section 96 (retention of accession); section 125 (obligation to dispose of or retain collateral); section 121(4) (enforcement of liquid assets- notice of grantor); section 130 (notice of disposal to the extent it requires the Company to give notice to the Customer); section 129 (2) & (3) (d) (contents of statement of account after disposal); section 132 (4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

g) Notices

i) PPSA Notices ^[1]_{SEP}

The Customer agrees that the Company does not need to give the Customer any notice under the PPSA (including without limitation a notice of a ^[1]_{SEP} verification statement received from the Registrar) unless the notice is required by the PPSA and that requirement cannot be excluded.

ii) Where default

In the event of a default by the Customer in performing of any of its obligations in connection with a supply of Goods under the Trading Terms, the Customer agrees that (as between the parties to the Trading Terms) the Company is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Goods.

h) New Zealand PPSA provisions only

Where the Customer is a New Zealand resident, the Customer agrees sections 114(1) (a), 133 and 134 of New Zealand's Personal Property Securities Act 1999 shall not apply under these Trading Terms or any security interest created hereunder. The Customer further agrees that none of their rights as debtors under sections 116, 119, 120 (2), 121, 125, 126, 127, 129, 132, and 132 shall apply under these Trading Terms.

15. Approval and Consignment Arrangements

(a) For the purposes of these Trading Terms “*Approval Arrangement*” means any arrangement made between the Customer and the Company where the Company provides Goods to the Customer on a sale or return basis for up to 14 days and “*Consignment Arrangement*” means any arrangement made between the Customer and the Company whereby the Company consigns Goods to the Customer for a period in excess of 14 days on such terms as the Company may agree upon.

(b) Where Goods are delivered to a Customer by the Company under either an Approval Arrangement or a Consignment Arrangement the Customer shall within 24 hours of receipt provide to the Company written acknowledgement that the Goods have been received and confirmation that these Goods are in good condition. For the purposes of this clause, the notice that is provided to the Company by the Customer shall be in a form that complies with the Company’s standard delivery procedures.

(c) Where Goods are provided by the Company to the Customer under an Approval Arrangement prior to the delivery of the Goods to the Customer, the Company shall provide the Customer with an “Approval” docket that shall contain (inter alia) the following information:

- A reference number
- A description of the Goods;
- The quantity and/or the carats of the Goods;
- The minimum sale price (“**MSP**”) (exclusive of GST) of the Goods (being the minimum amount for which the Goods may be sold as set out on the relevant Invoice and/or the Approval docket);
- The date the Goods are to be returned to the Company (“**the Return Date**”);
- The total value of the Goods
- Any other special conditions.

(d) Where Goods are provided by the Company to the Customer under a Consignment Arrangement prior to the delivery of the Goods to the Customer, the Company shall provide the Customer with a “Consignment ” Note” that shall contain (inter alia) the following information:

- A reference number
- A description of the Goods;
- The quantity and/or the Carats of the Goods;
- The MSP (exclusive of GST) of the Goods (being the minimum amount for which the Goods may be sold as set out on the relevant Invoice and/or the Approval docket);
- The Return Date;
- The total value of the Goods
- The purposes of the consignment
- Any other special conditions.

(e) While the Goods are held by the Customer under either an Approval Arrangement or a Consignment arrangement, the Customer agrees:

- (i) at all times to keep the Goods in safe care and custody in its possession as bailee until such time as the Goods are returned to the Company or have been sold by the Customer on terms that have first been agreed to by the Company;
- (ii) to act professionally and diligently in respect to the care and storage of the Goods and in carrying out any of its services in relation to the Goods;
- (iii) to accept no less than the MSP as the minimum sale price for the Goods (or such other sum as the Company may have previously agreed upon in writing);
- (iv) to maintain adequate insurance for the theft and damage to the Goods whilst the Goods are in the

- Customer's possession;
- (v) In the event that the Customer dispatches the Goods to the Company by post, it shall first insure the Goods for the MSP and the Customer shall remain liable for the full value of the Goods until such time as the Company has provided the Customer written acknowledgement that it has received the Goods.
 - (vi) to return the Goods to the Company by a date being the earlier of:
 - the nominated Return date or
 - immediately on request by the Company.
 - Immediately on an Insolvency Event occurring.
 - (vii) to be responsible for any loss or damage whatsoever to the Goods (including any indirect or consequential loss or damage) whilst they are in the care and custody of the Customer or any of its employees, agents or customers.
 - (viii) That should a sale be effected of the Goods whilst the Goods are held on consignment, to immediately forward payment for the full sale price and
 - (ix) To arrange adequate insurance of the Goods.

16. Insolvency Events

If the Customer:

- a) becomes insolvent or bankrupt;
- b) is the subject of an application to wind up, or if a Liquidator, Provisional Liquidator, Receiver, a Receiver and Manager, or an Administrator is appointed with respect to ^{11 SEP}the Customer or any of the Customer's assets;
- c) makes an arrangement or composition with the creditors of the Customer or attempts to make such an arrangement or composition;
- d) is unable to pay their debts as they fall due;
- e) fails to comply with a statutory demand made under the Corporations Act 2001 (Cth) for payment of a debt;
- f) ceases business;
- g) has execution levied against any of their assets; or
- h) has a mortgagee Liquidator, Provisional Liquidator, Receiver, Receiver and manager or Administrator enter or seek to enter into possession of any of its assets, then any monies actually or contingently owing to the Company at that time under any contract formed on these Trading Terms (including any amounts which would not otherwise be payable until a later date or dates) are immediately due and payable (without the need for any demand by the Company).

17. Force Majeure

- a) The Company may suspend any or all of its obligations to the Customer that are affected by any act of God, fire, flood, storm, earthquake, strike, lockout, trade dispute, breakdown, theft, crime, delays in shipping, or the inability of the Company to procure necessary materials or articles preventing or retarding performance of the contract or any other cause not reasonably within the control of the Company (each a **"Force Majeure Event"**) and the Company is not responsible for any delay, default, loss or damage due to any Force Majeure Event.
- b) When a Force Majeure Event ceases to affect the performance of any of the Company's obligations, the Company must lift any suspension of those obligations that it makes under paragraph a).

18. Company's Warranties

The Company warrants that any diamonds that are sold to the Customer from time to time have been purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions. The Company warrants that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds. The Company further warrants that any diamonds supplied to the Customer are exclusively of natural origin and untreated based on personal knowledge and/or written assurances provided to the Company by the suppliers of these diamonds, unless otherwise stated.

19. Certificate

A certificate of the Customer's liability under any contract or contracts formed on these Trading Terms, signed by an officer of the Company, is prima facie evidence of the Customer's liability to the Company under these Trading

Terms as at the date of the certificate.

20. Termination

- a) Either party may terminate the arrangements under these Trading Terms by not less than 30 days notice to the other or immediately by notice to the other party if the other party is subject to an Insolvency Event.
- b) Upon termination all amounts actually or contingently owing by the Customer to the Company are immediately due and payable and the Customer shall immediately on demand deliver up to the Company all goods purchased from the Company for which it has not paid.

21. Time

Time is of the essence for payment of any monies owed by the Customer to the Company pursuant to the provisions specified in these Trading Terms.

22. Jurisdiction

- a) These Trading Terms are governed by the laws of the State of Victoria.
- b) The parties submit to the non-exclusive jurisdiction of the Courts of Victoria in relation to any dispute or claim arising under or in connection with the supply of Goods ^[SEP]or otherwise concerning these Trading Terms.

23. Notices

- a) Any notice required by or contemplated by these Trading Terms must be in writing in the English language.
- b) Any notice by one party to the other shall be sufficiently served if served:
 - i) personally;
 - ii) by facsimile transmission to the number specified in the application made to the Company by the Customer to establish the arrangements under ^[SEP]these Trading Terms or as otherwise notified to the other party, with a transmission confirmation receipt marked "OK";
 - iii) by e-mail to the address specified in the application made to the Company by the Customer to establish the arrangements under these Trading Terms ^[SEP]or as otherwise notified to the other party, if the e-mail is acknowledged by the recipient; or
 - iv) by pre-paid post to the party to be served at the registered office of the party or to the address specified in the application made to the Company by ^[SEP]the Customer to establish the arrangements under these Trading Terms or as otherwise notified to the other party, (in which case it is taken to be received 3 days after the date of posting).

24. Miscellaneous

- a) No employee of the Company is authorized to bind the Company unless the Company has given the Customer express written notice to that effect.
- b) The invalidity or unenforceability of any provisions of these Trading Terms shall not affect the validity or enforceability of the remaining provisions.
- c) No delay or failure to act is a waiver of any of the provisions herein contained.
No waiver is effective unless in writing. A waiver of a breach is not a waiver of any other breach.
- d) These Trading Terms shall bind the Company and the Customer and their respective successors and permitted assigns.
- e) The Customer may not assign any of its rights or obligations under these Trading Terms without the prior written consent of the Company.

(ADTC Trading Terms 11 March 2017)