



# DIAMOND VERIFICATION SERVICES

## CONDITIONS FOR PROVISION OF DIAMOND TESTING SERVICES

### 1. DEFINITIONS AND INTERPRETATION

In these Conditions, the definitions and rules of interpretation set out in the Schedule (Definitions and Interpretation) shall apply.

### 2. CONDITIONS, COMMENCEMENT AND DURATION

- a. These Conditions govern the supply of Services by the Supplier to the Customer.
- b. At the request of the Customer the Supplier shall supply Services for an article at the Facility.
- c. In order to request a Service to be undertaken by the Supplier for an article the Customer must follow the instructions set out on the Supplier's website, and particularly by consulting the How To Guide for Diamond Testing, complete a Diamond Verification Note and submit it to the Supplier together with the article in a securely sealed container.
- d. The Supplier is not obliged to undertake any service in respect of an article where the Customer has not followed the instructions on the Supplier's website and/or it is not accompanied by a fully completed Diamond Verification Note and/or it is not submitted in a securely sealed container.
- e. The Customer's request to purchase Services shall only be deemed to be accepted by the Supplier and a contract for the supply of the applicable Services shall only be entered into when the Supplier issues written acknowledgement to the Customer of receipt by the Supplier at the Facility of the Shipment sent by the Customer or when the Supplier begins to undertake the Services, at which point and on which date a contract between the Supplier and the Customer incorporating these Conditions shall come into existence in respect of that Shipment (each a "**Contract**").
- f. Each Contract shall continue from the date on which the Supplier issues such written acknowledgement or begins to undertake the Services (unless it is terminated earlier in accordance with these Conditions) until the Supplier has received payment for the applicable Services in full and in cleared funds in accordance with these Conditions (the "**Term**").
- g. Each request for Services placed with the Supplier will, if accepted by the Supplier, constitute a separate Contract between the Customer and the Supplier incorporating these Conditions for the supply of the Services in respect of any single Shipment received by the Supplier.
- h. The Customer acknowledges that the Supplier is under no obligation to accept any order placed by the Customer, whether under the Supplier's website or otherwise.

### **3. SERVICES**

- a. Provided that the Customer complies with its obligations set out in these Conditions, including in particular clause 3.c.i, the Supplier shall use reasonable endeavours to provide the Services to the Customer materially in accordance with their description on the Supplier's website from time to time.
- b. The Customer acknowledges that:
  - i. the Services that the Supplier provides to the Customer under each Contract will depend on the contents of the Lots that are provided to the Supplier by the Customer;
  - ii. The Supplier reserves the right to vary the scope of the Services to the extent that any Lots provided by the Customer do not meet the Supplier's requirements;
  - iii. The Supplier invoices will be calculated (in accordance with clause 5.a) to reflect the content of the Lots provided by the Customer and the Services provided by the Supplier; and
  - iv. any failure to comply with the Supplier's requirements, including in particular the instructions and requirements set out in the "How To Guide Diamond Testing" shall be deemed to be a material breach of these Conditions giving the Supplier the right to terminate any Contract in accordance with clause 10.b.
- c. The Customer:
  - i. shall accordingly comply with the instructions and requirements set out in the "How To Guide for Diamond Testing";
  - ii. represents, warrants and undertakes that no diamond contained in any Lot provided to the Supplier under these Conditions shall be a Conflict Diamond;
  - iii. shall ensure that the details of the Diamond Verification Note are completed and accurate;
  - iv. shall co-operate with the Supplier in all matters relating to the Services;
  - v. shall provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
  - vi. shall obtain and maintain all necessary licenses, permissions and consents which may be required to enable the Supplier to undertake the Services before the date of commencement of the Services.

### **4. DELIVERY AND HANDLING OF STONES**

The Customer shall be responsible and shall pay for the shipping, loading, storage, insurance and all other costs relating to the transportation of any Shipment to the Facility, and shall be responsible and shall pay for the shipping, insurance and all other costs

relating to the transportation of any Shipment from the Facility back to the Customer on completion of the Services.

## **5. CHARGES AND PAYMENT**

- a. In consideration of the provision of the Services, the Customer agrees to pay such charges as the Supplier may calculate by reference to the Diamond Testing Services Price List and the Services provided by the Supplier.
- b. On completion of the Services, the Supplier shall invoice the Customer monthly in arrears.
- c. The Customer shall pay each invoice submitted by the Supplier:
  - i. within 28 days of the date of the invoice; and
  - ii. in full and in cleared funds to a bank account nominated in writing by the Supplier.
- d. All amounts payable by the Customer under these Conditions 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 under these Conditions by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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 such services.
- e. The Customer acknowledges that time for payment shall be of the essence. Credit facilities granted to a Customer may be withdrawn at the Assay Office's absolute discretion at any time and the balance outstanding shall become due immediately on demand. If payment is made by corporate credit card the Supplier reserves the right to apply an additional charge to cover its costs of accepting the payment (and the Supplier will tell the Customer the amount of such charge before making it).
- f. Failure on the part of the Customer to settle charges due pursuant to these Conditions shall entitle the Supplier to cancel or suspend further work for the Customer without prejudice to any other right the Supplier may have until payment or satisfactory security for payment has been provided. The Supplier shall be entitled to charge interest (both before and after judgment) on any amount unpaid at the rate of 4% above the base rate of the Barclays Bank Plc from time to time until payment is made in full. When payment is not made by the due date, the Customer shall indemnify the Supplier for any costs and/or expenses it may suffer or incur in recovering the sum due, including reasonable legal fees and costs of collection.
- g. Any queries in respect of an invoice must be made in writing within 7 days of the date of the invoice otherwise it will be deemed to have been accepted and will be payable in full by the Customer.
- h. The Supplier shall have a lien for all outstanding charges on the property of the Customer in its possession.

- i. The Supplier may choose to operate an electronic invoicing system. When this is the case, all invoices, credit notes and statements will be sent to the Customer electronically and all invoices and statements sent in this way must be settled within 28 days of the issue of the statement. If the Customer requires paper invoices or credit notes (or cannot provide the Supplier with an email address) the Supplier reserves the right to make charges for the provision of such paper invoices or credit notes.
- j. The Customer shall pay all amounts due under these Conditions in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **6. EXCLUSION OF WARRANTIES**

- a. The Supplier warrants that the Services shall be performed with reasonable skill and care.
- b. Except as expressly and specifically provided in these Conditions:
  - i. the express provisions of this clause 6 are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose) all of which are hereby excluded to the maximum extent permitted by law; and
  - ii. the Services, the Reports and any other information provided by the Supplier are provided to the Customer on an "as is" basis.
- c. Without prejudice to the generality of clause 6.b, the Customer acknowledges that the Services may not be error-free or accurate and that, as a result, the Services and any Report should not be relied upon as being error-free or accurate. The parties agree that the Supplier shall not be responsible for nor have any liability to the Customer in any circumstances whatsoever in respect of any inaccuracy in any Report and that such Reports are provided to the Customer for information only. The Report shall not form part of the Contract and shall not have any legal binding effect on the Customer or the Supplier.

## **7. INTELLECTUAL PROPERTY RIGHTS**

The Supplier shall own and retain all rights, title and interest in and to any Intellectual Property Rights in the Services and any Reports as well as its Confidential Information. The Customer acknowledges that any disclosure pursuant to these Conditions shall not confer on the Customer any Intellectual Property Rights relating to the Services or any Reports.

## **8. CONFIDENTIALITY**

- a. The Customer undertakes that it shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the

Customer by the Supplier, its employees, agents, consultants or sub-contractors or of any member of the group of companies to which the Supplier belongs and any other confidential information concerning The Supplier business, services or products which the Customer may obtain (together "**Confidential Information**"), except as permitted by clause 8.b.

- b. The Customer may disclose Confidential Information:
  - i. to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Customer's obligations under these Conditions. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses Confidential Information comply with this clause 8; and
  - ii. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c. The Customer shall not use Confidential Information for any purpose other than to perform its obligations under these Conditions.
- d. All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

## 9. LIABILITY

- a. Nothing in these Conditions shall operate to exclude or limit the liability of either party to the other for:
  - i. fraud;
  - ii. death or personal injury arising out of negligence;
  - iii. any liability which cannot be excluded or limited by law; or
  - iv. any liability arising under or pursuant to clause 8 (Confidentiality).
- b. Subject to clause 9.a, the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for any of the following types of loss:
  - i. any loss of profits, business, contracts, anticipated savings, goodwill, or revenue or any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
  - ii. any indirect or consequential loss or damage whatsoever, even if the Supplier was aware of the possibility that such loss or damage might be incurred by the Customer.

- c. Without prejudice to any other provision, in the event that the Supplier is found to be liable to the Customer pursuant to or in connection with any Contract, then subject to clause 9.a and 9.b, the total aggregate liability of the Supplier to the Customer under or in relation to any Contract, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty shall not exceed:
  - i. in respect of any loss of or damage to any diamond or diamonds contained in an individual Lot of diamonds delivered to the Facility, an aggregate sum equal to the lower of (i) the polished wholesale price of the lost or damaged diamond or diamonds in that Lot; and (ii) £10,000 (ten thousand Pounds Sterling); and
  - ii. a sum equal to £10,000 (ten thousand Pounds Sterling) in aggregate in respect of any liability other than a liability of the type specified in clause 9.c.i.
- d. This clause 9 shall survive and shall not be rendered ineffective by the termination or expiry of any Contract for any reason whatsoever.

## 10. TERMINATION

- a. The Supplier may terminate any Contract (in whole or in part) for convenience at any time with immediate effect and without further liability to the Customer by giving written notice to the Customer.
- b. Either party may (without prejudice to its other rights) immediately terminate any Contract (in whole or in part) by giving written notice to the other party ("**Defaulting Party**") if the Defaulting Party commits a material breach of these Conditions and (in the case of a remediable breach) fails to remedy the breach within ten (10) days of receipt of the other party's written notice to do so.

## 11. CONSEQUENCES OF TERMINATION

- a. On expiry or termination of any Contract for any reason:
  - i. The Supplier shall, within a reasonable period, make the Lots comprising the relevant Shipment in the Supplier's possession available for collection by the Customer in accordance with clause 4 (Delivery and Handling of Stones);
  - ii. the Customer shall immediately pay to the Supplier all outstanding unpaid invoices, if any. With respect to Services supplied for which invoices have not yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer upon receipt; and
  - iii. the Customer shall promptly return any Confidential Information in its possession, custody or control.

- b. Each party's further rights and obligations under these Conditions shall cease immediately upon the expiry or termination of any Contract, provided that the expiry or termination of such Contract for any reason whatsoever:
  - i. shall not affect the continued operation of clauses 4, 6, 7, 8, 9, 11, 16, 17, 19, 20 and 21 and other provisions which are necessary for the interpretation or enforcement of these Conditions; and
  - ii. shall not prejudice or affect the rights of either party against the other in respect of any breach of any Contract in respect of any period prior to expiry or termination.

## **12. FORCE MAJEURE**

Neither party shall be in breach of any Contract nor liable for delay in performing, or failure to perform, any of its obligations under any Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## **13. TRANSFER OF THIS AGREEMENT**

- a. The Customer shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under these Conditions without the prior written consent of the Supplier (to be provided in the Supplier's sole and absolute discretion).
- b. The Supplier may assign, novate or otherwise dispose of any or all of its rights and obligations under these Conditions to a member of its Group. The Customer shall execute any document reasonably required by the Supplier to give effect to any such assignment, novation or other disposal.

## **14. SUBCONTRACTING**

The Supplier shall be entitled at any time to sub-contract any or all of its obligations under these Conditions without the Customer's consent, provided that the Supplier shall remain responsible for all acts and omissions of its sub-contractors as if they were its own.

## **15. NO PARTNERSHIP, AGENCY ETC**

The Supplier will provide the Services to the Customer as an independent contractor and not as the Customer's employee, agent, partner or joint venturer. Neither party has any right, power or authority to bind the other party.

## **16. CONTACT DETAILS**

The Customer may contact the Supplier by email or post using the contact details for the Supplier as detailed on the Supplier's website from time to time.

## **17. THIRD PARTY RIGHTS**

A person who is not a party to any Contract may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

## 18. SEVERABILITY

If any provision of these Conditions or any part of any provision is determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it will be void or unenforceable to that extent only and the validity and enforceability of any of the other provisions or the remainder of any such provision will not be affected. If any provision is rendered void or unenforceable, whether wholly or in part, the parties will endeavour, without delay, to attain the economic and/or other intended result in another legally permissible manner.

## 19. ENTIRE AGREEMENT

- a. These Conditions constitute the entire agreement between the parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, understandings or collateral contracts of any nature made by the parties, whether oral or written, in relation to that subject matter.
- b. Each party acknowledges that in entering into these Conditions it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings, misrepresentations or representations that were made by or on behalf of the other party in relation to the subject-matter of these Conditions at any time before any Contract is entered into (together, "**Pre-Contractual Statements**"), other than those that are set out expressly in these Conditions.
- c. Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements but for clause 19.b.
- d. Nothing in this clause 19 shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

## 20. WAIVER

No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of these Conditions will be or will be deemed to be a waiver or in any way prejudice any right of that party under any Contract. Any waiver by either party of any of its rights under any such Contract must be in writing and only applies to such Contract if expressly referred to in such waiver.

## 21. GOVERNING LAW AND JURISDICTION

- a. Any Contract and any disputes or claims arising out of or in connection with such Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- b. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any Contract, its subject matter or formation (including non-contractual disputes or claims).



## SCHEDULE

### DEFINITIONS AND INTERPRETATION

“Business Day” means a day other than a Saturday or a Sunday or a public holiday in England and Wales;

“Conditions” means clauses 1 to 21 (inclusive) of these terms and conditions together with its Schedule;

“Confidential Information” has the meaning given to it in clause 8.a;

“Conflict Diamonds” means any diamond that is mined in areas controlled by forces opposed to the legitimate, internationally recognised government of a country and that is sold to fund military action against that government;

“Contract” has the meaning given to it in clause 2;

“Customer” means a person authorised to issue orders to the Supplier for the provision of Services in accordance with clause 2 of these Conditions;

“Diamond Verification Note” means a diamond verification services request form copies of which are available from the Supplier’s website or upon request from the Supplier or by any other services application form the format of which is agreed by the Supplier to be acceptable;

“Diamond Verification Services Price List” means the price list for the diamond verification services as published from time to time by the Supplier on its website or as supplied to the Customer from time to time upon request by the Supplier;

“Facility” means the relevant premises nominated by the Supplier as the delivery address for any Shipment to be provided by the Customer to the Supplier pursuant to these Conditions;

“Group” means in relation to a company, that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company;

“How To Guide for Diamond Testing” means the guide identified as the “How To Guide for Diamond Testing” set out on the Supplier’s website from time to time;

“Intellectual Property Rights” means: (i) patents, inventions, designs, copyright and related rights, database rights, trademarks, service marks and trade names (whether registered or unregistered), and rights to apply for registration; (ii) proprietary rights in domain names; (iii) knowhow and Confidential Information; (iv) applications, extensions and renewals in relation to any of these rights; and (v) all other rights of a similar nature or having an equivalent effect which currently exist anywhere in the world;

“Lot” means any lot of articles containing set diamonds and/or other stones either: (a) detailed in the information submitted by the Customer on the Diamond Verification Note under clause 2; or (b) provided to the Supplier by the Customer in accordance with clause 3 (Services) and clause 4 (Delivery and Handling of Stones);

“Report” means any reports, outputs and other information (including any derivatives of the same) that may be provided to the Customer by the Supplier pursuant to or in connection with the Services;

“Shipment” means any shipment of Lots as provided to the Supplier by the Customer in accordance with clause 4 (Delivery and Handling of Stones);

“Services” means the full testing services and the referral testing services to be provided by the Supplier to the Customer, as further described in the How To Guide for Diamond Testing; and

“Supplier” means Sheffield Supplies Limited, a company incorporated in England and Wales under registration number 3147906, the registered office of which is at Guardians' Hall, Beulah Road, Hillsborough Sheffield S6 2AN;

“Term” has the meaning given in clause 2.

1. In these Conditions, “company” means any body corporate and “subsidiary” or “holding company” shall be construed in accordance with section 1159 of the Companies Act 2006.

2. In these Conditions, “party” means either the Supplier or the Customer (as applicable) and “parties” shall be construed accordingly.

3. The clause and Schedule headings are for convenience only and shall not affect the interpretation of these Conditions.

4. References to clauses are to clauses in the main body of these Conditions.

5. References to the singular include the plural and vice versa, and references to one gender include the other gender.

6. Any reference to persons includes natural persons, firms, partnerships, limited liability partnerships, companies, corporations, unincorporated associations (in each case whether or not having separate legal personality) and any agency of any of the above.

7. Any phrase introduced by the expressions “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.

8. Any reference to a statute, statutory provision or subordinate legislation (“legislation”) (except where the context otherwise requires): (i) shall be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation; and (ii) shall be construed as referring to any legislation which replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.