

Terms and Conditions

1. Definitions

In these Conditions:

Affiliate means, in relation to any entity, any other entity that is a Related Body Corporate of the first mentioned entity, or controls, or is controlled by, or under common Control by the first mentioned entity

Australian Consumer Law means Schedules 1 and 2 of the *Competition and Consumer Act 2010* (Cth) and any other relevant provisions contained in that Act;

Business Day means a day other than a Saturday, Sunday or public holiday in Victoria, Australia, and the capital city of the state in which the Goods are to be delivered or the Services are to be primarily performed.

CCA means the *Competition and Consumer Act 2010* (Cth);

Claim includes any claim, notice, demand, debt, account, action, lien, cost, loss, expense, liability, litigation (including legal costs), investigation, judgment or damages of any kind, whether known or unknown;

Conditions means these terms and conditions for the supply of the Goods and Services by the Supplier to the Purchaser as amended or varied in writing by the Supplier from time to time, and are intended to regulate the key trading terms for the supplies made by the Supplier, and apply to all Purchase Orders unless otherwise agreed in writing by a Representative of the Supplier;

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise;

Contract means the contract between the Purchaser and Supplier, pursuant to clause 2 of the Conditions, for the supply of Goods or Services constituted by a Purchase Order, the Conditions, delivery dockets supplied by the Supplier at the time of delivering the Goods or completion of the Services and any agreed written variations to the Contract;

Delivery Point means in relation to Goods, the delivery address for the Goods as communicated in the Purchase Order, or as otherwise specified by the Purchaser and agreed by the Supplier and, in relation to the Services, the place for performance of the Services as communicated in the Purchase Order, or as otherwise specified by the Purchaser and agreed by the Supplier;

Goods means any goods supplied by the Supplier (including any ancillary goods) to the Purchaser or to be supplied by the Supplier to the Purchaser, or as described in the Purchase Order;

Goods Act means the *Goods Act 1958* (Vic);

GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (GST Act) or any replacement or any other relevant legislation and regulations);

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property Rights means any intellectual or industrial property right, whether protected by statute, at common law or in equity, including any patent, registered design, (whether or not registrable), invention, trade secret, circuit layout design, or right in relation to circuit layouts, right to confidential information, technical information, trademark or name, copyright or other protected right;

Law includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether commonwealth, state, territorial or local in relation to environmental and occupational health and safety matters;

Loss means any loss, liability, costs (including legal costs at the higher of an indemnity or solicitor-client basis), Consequential Loss, a fine or penalty imposed by a statutory or other authority, or expense incurred by the Purchaser relating to this Agreement;

Order Date means the date on which the Purchaser order the Goods and/or Services and makes the first deposit to the Supplier.

Personal Information means:

- (a) information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; or
- (b) information or a document that relates to the affairs or personal particulars of another person (such as a company or a business), which is received or learnt from any source as a consequence of or in the performance of this Contract.

Personnel means employees, agents, consultants and sub-contractors but the Purchaser and the Purchaser's Personnel are not the Supplier's Personnel.

Purchase Order means any purchase order submitted by a Representative of the Purchaser to the Supplier in the form determined by the Supplier from time to time, or a purchase order that is otherwise placed or communicated by a Representative of the Purchaser in writing, verbally, or otherwise to the Supplier, and is accepted by the Supplier, and includes these Conditions and any agreed written variations to the Conditions;

Purchaser means any person, body corporate or entity which purchases or orders the Goods and Services from the Supplier;

Price means the price payable by the Purchaser to the Supplier and set out in the Contract or as otherwise advised to the Purchaser by the Supplier, but does not include currency fluctuations, charges for tax and duties and of all costs and charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Representative means that party's director, or authorised officer, employee, agent, sub-contractor, or adviser;

Services means any services supplied by the Supplier (including any ancillary services) to the Purchaser, or to be supplied by the Supplier to the Purchaser described in the Purchase Order;

Specifications means any technical or other specification relating to the Goods and/or Services referred to in a Purchase Order and details of which have been supplied by the Supplier or its Representative to the Purchaser;

Supplier means ADC ONLINE PTY LTD (ACN 624 689 256) or any related body corporate (within the meaning of section 50 of the *Corporations Act 2001*) which sells the Goods or provides the Services to the Purchaser, or as otherwise specified in the Purchase Order; and

Tax means any present or future taxes (including taxes on Goods and/or Services such as GST), rates, levies, imposts, duties (including stamp duties), deductions, charges, compulsory loans and withholdings (other than any such taxes on the overall net income of a party) which may be incurred in any jurisdiction and any interest, penalties, fines or expenses relating to any of them.

2. Contract

(a) The Supplier agrees to provide the Goods and/or Services in accordance with the Contract(s) in place from time to time and, in consideration for the provision of the Goods and/or Services, the Purchaser agrees to pay the Price to the Supplier;

(b) The Contract includes, but is not limited to, these Conditions and any agreed variations in writing.

(c) When more than one Purchaser has entered into the Contract, the Purchasers shall be jointly and severally liable for all payments of the Price;

(d) Upon acceptance of these terms and conditions by the Purchaser the Conditions are irrevocable and can only be rescinded in accordance with these Conditions or with the written consent of the Supplier;

(e) Any terms and conditions that are supplied by the Purchaser, howsoever provided, including being annexed to these Conditions, being provided with the Purchase Order (as printed on consignment notes or other documents, or endorsed upon any correspondence issued by the Purchaser), those terms and conditions will be of no legal effect, will not be binding upon the Supplier, and will not form part of the Contract.

(f) The parties agree that any variations to the Contract purported by the Purchaser, whether those variations are to apply to all subsequent Purchase Orders or a particular Purchase Order, can only be made if those variations are in writing, signed by the Representatives of both the Supplier and the Purchaser, expressly stated to be a variation to the Contract, and the parties agree and acknowledge that their respective representatives and employees that are not Representatives do not have the authority to vary the Contract, or to agree that these Conditions do not apply to a supply to which these Conditions would otherwise apply.

(g) Any quotation issued by the Supplier is not and will not be construed as an offer capable of acceptance by the Purchaser. Any Purchase Order made by the Purchaser is not binding on the Supplier and does not form a Contract until accepted by the Supplier in writing, and the Supplier reserves the right, in its sole discretion, to decline any Purchase Order or part thereof made by the Purchaser. Any Purchase Order or part thereof not accepted is deemed cancelled;

(h) The Purchaser may not alter or modify the requirements of the Purchase Order or Contract without the Supplier's prior written approval;

(i) The Purchaser agrees to these Conditions and that they will apply to all Purchase Orders issued and Contracts formed until such time as these Conditions are amended and reissued by the Supplier and the Purchaser is notified of the amendments;

(j) Each Contract is to be considered as a separate Contract, and termination by the Supplier of any one Contract or part thereof does not constitute a termination of any other Contract (or remaining part thereof) or of these Conditions; and

(k) Any terms and conditions implied by statute or otherwise are excluded to the extent it is lawful to do so; and

(l) For the avoidance of doubt, nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation.

3. Price of Goods and/or Services

(a) Unless otherwise agreed in writing by the parties, the Supplier may publish or otherwise set out the Price for the Goods and Services in the form consistent with the Supplier's trading practices from time to time which Price is subject to variation without notice, by the Supplier;

(b) At the Supplier's sole discretion, the Price shall be either:

(i) Stipulated on invoices provided by the Supplier to the Purchaser in respect of Goods and/or Services Supplied; or

(ii) The Supplier's current Price, at the date of delivery of the Goods and/or Services, according to the Supplier's current Price list (if applicable); or

(iii) The Supplier's quoted Price shall be binding upon the Supplier provided that the Purchaser shall accept in writing the Supplier's quotation in writing and provided that the quotation is current.

(c) For the avoidance of doubt, the Supplier's quotation may change at any time at the sole discretion of the Supplier;

(d) If between the date of acceptance of a Purchase Order by the Supplier and issue of an invoice to the Purchaser, there is an increase in the cost to the Supplier of supplying the Goods and/or Services which is beyond the control of the Supplier (which cost includes but is not limited to currency fluctuations, the costs of testing, inspection, labelling, packing and freight and delivery to and off-loading at the Delivery Point, as the case may be) then the Supplier may increase the amount of the invoice in line with the increase in cost;

(e) The Price for any Goods and/or Services does not include the ancillary costs of packing, insurance, freight and delivery of the Goods, or the cost of any items used or supplied in the performance of the Services, and, all local and foreign duties and taxes, costs, charges or expenses incurred by the Supplier in relation to delivery of the Goods and the performance of Services are payable by the Purchaser, unless the Supplier expressly advises the Purchaser in writing that these ancillary costs of delivering the Goods and/or performance of Services are included in the Price;

(f) The price at which the Goods and/or Services are provided by the Supplier to the Purchaser does not include (unless otherwise stated or agreed in writing) GST, if applicable, and any GST payable by the Supplier in respect of the supply of the Goods or performance of the Services must be paid by the Purchaser to the Supplier.

4. Payment Terms

(a) The Purchaser agrees that:

(i) The Supplier may issue an invoice to the Purchaser before, at or after the delivery of the Goods or the performance of the Services in accordance with the Contract;

(ii) It must pay the amount due under the invoice in full, without any deduction or setoff in accordance with the terms of the invoice;

(iii) At the Supplier's sole discretion, a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable;

(iv) Where the purchase price of the Goods or Services is paid by instalments, the full Price must be paid by way of no more than two (2) instalments as follows:

i. For purchases up to \$15,000.00: a non-refundable deposit of 30% of the Price is payable on the Order Date with the balance payable no later than six (6) weeks after the purchase date unless otherwise agreed in writing by the Supplier;

ii. For purchases \$15,001.00 to \$50,000.00: a non-refundable deposit of 50% of the Price is payable on the Order Date with the balance payable no later than six (6) weeks after the purchase date unless otherwise agreed in writing by the Supplier;

iii. For purchases over \$50,001.00: a non-refundable deposit of 60% of the Price is payable on the Order Date with the balance payable no later than six (6) weeks after the purchase date unless otherwise agreed in writing by the Supplier;

iv. Where the purchaser requires a specific type of gemstone not in the possession of the Supplier and required to be sourced by the Supplier, 100% of the Price is payable on the Order Date, which amount is non-refundable unless the Supplier is unable to source the required gemstone.

(v) Goods will only be released to the Purchaser upon receipt of the full Price.

(vi) Where payment is made by cheque, Goods will be released to the Purchaser after five (5) working days from presentation of the cheque and only if the cheque has been cleared.

(vii) Where payment is made by electronic funds transfer, the Purchaser must specify the invoice number as the reference on the electronic transfer. Goods will be released to the Purchaser after receipt of cleared funds by the Supplier's bank.

(viii) Goods will be released only to the Purchaser. The Purchaser may authorise the Supplier in writing to release the Goods to any other person. At the Supplier's sole discretion, the Supplier may require the Purchaser to provide proof of identity to enable the release of the Goods.

(ix) A Purchaser may cancel a purchase by notice in writing to the Supplier within two (2) weeks of the Order Date, however, any deposit paid will not be refunded.

(x) Where a Purchaser fails to pay the full Price and collect the Goods within six (6) weeks of the Order Date or any other date as agreed in writing by the Supplier, the Supplier may assume, and the Purchaser will be deemed, that the Purchaser has cancelled the purchase and the Supplier may sell the Goods at any time without notice to the Purchaser. In these circumstances, no deposit is refundable.

(xi) The time for payment for the Goods and Services shall be of the essence, and the time for payment for the Goods and Services will be stated on the invoice, specified in the Purchase Order or any other order forms as specified by the Supplier, or communicated by the Supplier to the Purchaser. If no time is stated or communicated, then payment shall be on delivery of the Goods or performance of the Services;

(xii) If the amount payable for the Goods and/or Services is not paid by the due date noted on the invoice or the Purchase Order or as communicated by the Supplier, then interest will accrue on that amount from the date of delivery of the Goods and Services until the amount is paid in full. Interest will be paid at a rate of 12% per annum. Interest will accrue on a daily basis and be payable on demand;

(xiii) The Purchaser must pay all costs and expenses (including legal costs on an indemnity basis) which may be incurred by the Supplier in the attempted recovery of the overdue amounts;

(xiv) It must pay any stamp duty assessed on any of the Goods and Services or Contract documents or fee to register or maintain any security interest held by the Supplier in respect of Goods (and if applicable the Services) supplied to the Purchaser;

(xv) The Supplier reserves the right to require payment in advance of any delivery in cash, or to suspend or cancel any further deliveries until payment has been received, if in the Supplier's sole judgment, the Purchaser's financial condition or creditworthiness has become impaired.

5. Retention of Title

(a) Notwithstanding any other provisions in these Conditions and notwithstanding that the Purchaser has possession of the Goods, the Supplier retains the legal and equitable interest in any Goods supplied to the Purchaser until payment in full for, or in connection with, the supply of the relevant Goods has been received by the Supplier. Further, until payment in full has been received, the following terms apply:

(i) Unless the Purchaser receives prior written consent of the Supplier to the contrary, and until the title in the Goods passes to the Purchaser, the Purchaser must:

A. refrain from encumbering the Goods;

B. allow the Supplier full and free access to the Purchaser's premises where the Goods are located to retake

I expressly acknowledge that I have read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, and that I agree to be bound by the terms and conditions of this Agreement

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- possession of such Goods if the Purchaser is in any way in breach of these Conditions;
- C. not dispose of the Goods unless all of the following conditions are satisfied:
- the Goods are disposed to a bona fide sub-purchaser in the ordinary course of the Purchaser's business;
 - as between the Purchaser and the purchaser of any item of the Goods, the Purchaser sells as principal and not as agent of the Supplier;
 - the Purchaser maintains records of all disposals of the Goods and permits inspection of the records by the Supplier promptly upon request;
 - the Purchaser holds money received by the Purchaser on account of the Goods on trust for the Supplier in a separate bank account identified as the Supplier's account, until the full amount owed for the Goods has been paid to the Supplier. The Purchaser acknowledges and agrees that it is under a duty to account to the Supplier for such monies obtained from the sale of the Goods. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Purchaser to pay an amount owed to the Supplier for the Goods supplied by the Supplier; and
 - the Purchaser indemnifies the Supplier against any claim, action, damage, loss, liability, cost, expense or payment which the Supplier suffers, incurs or is liable for in respect of the Supplier's exercise of its rights under this clause 5.
- (b) The Purchaser also acknowledges and agrees that:
- until the Goods are sold or used in a manufacturing or construction process, the Purchaser must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in such a way that they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier;
 - the Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Purchaser to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Supplier or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Purchaser to enter any of the Purchaser's premises or vehicles or those of any third party in order to access the Goods. The Purchaser agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods; and
 - this reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.
- ### 6.1 Security Interest
- (a) The Purchaser agrees and acknowledges that it grants the Supplier a purchase money security interest by the Purchaser in favour of the Supplier in respect of all present and after acquired Goods supplied to the Purchaser by the Supplier, and the Purchaser grants the Supplier a security interest in all Goods to which the Supplier retains title under these Conditions.
- ### 6.2 Risk
- (a) The Purchaser acknowledges and agrees that:
- the risk in the Goods passes to the Purchaser on delivery of the Goods or on dispatch of the relevant invoice in respect of the Goods, whichever is the earlier and from that time the Purchaser assumes all risk of loss and damage to the Goods including without limitation all loss or damage in the course of unloading the Goods following delivery;
 - for the purposes of this clause 6.2, the delivery of Goods will be:
 - at the Supplier's premises on collection of the Goods by the Purchaser, or its Representatives; or
 - if the Supplier has expressly agreed to deliver the Goods, the risk in the Goods passes immediately on delivery of the Goods to the Delivery Point by the Supplier or its agent.
- ### 7 Delivery of Goods and Performance of Services
- (a) The Supplier will deliver Goods and perform Services purchased by the Purchaser at the Delivery Point or to such other place as the Purchaser specifies and the Supplier agrees;
- (b) The Supplier will not be liable in any way for any failure or delay in delivery or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Goods irrespective of whether such failure or delay is negligent or within the Supplier's control or otherwise;
- (c) Unless otherwise agreed by the Supplier and Purchaser in writing, the Supplier will determine the time, route, and carrier of all Goods deliveries;
- (d) The Supplier will only deliver the Goods to the Purchaser and subject to the Purchaser providing proof of identification upon delivery of the Goods;
- (e) The risk of loss of the Goods shall pass to the Purchaser upon delivery of the Goods to the Delivery Point;
- (f) If the Purchaser requests expedited deliveries, special routing or special handling of the Goods being delivered which results in a higher transportation cost than would be incurred in a delivery but for such request(s), the additional cost incurred by Supplier shall be added to Purchaser's invoice as a separate line item;
- (g) If, due to any act, matter or thing beyond the control of the Supplier, the Delivery Point is unattended, the delivery cannot otherwise be effected or the Goods cannot be dispatched, the Supplier, in its sole discretion, may store the Goods at the Purchaser's risk and expense or take such other steps as it considers appropriate;
- (h) If any of the Goods are damaged or destroyed prior to property in them passing to the Purchaser, the Supplier is entitled, without prejudice to the Supplier's rights or remedies under the Contract (including the right to receive payment for the balance of the Price of the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries;
- The Supplier reserves the right to withhold deliveries of Goods if:
 - the Supplier, in its sole discretion, considers that the financial condition of the Purchaser so warrants and that such action is advisable to protect the Supplier's interests;
 - the Purchaser fails to provide proof of identification upon delivery of the Goods; or
 - the terms of payment for any Goods are not strictly adhered to by the Purchaser
 - The Purchaser acknowledges that all purchases made (including made online) are subject to the availability of the Goods and that, from time to time, Goods may not be available (despite appearing so). As such, the Supplier makes no representation as to the availability of any Goods.
- ### 7.1 Acceptance
- (a) To the fullest extent permitted by law, the Purchaser acknowledges that:
- prior to discharge from the delivery vehicle, or loading (in the event that the Purchaser collects the Goods from the Supplier's premises) of the Goods, the Purchaser shall check that the Goods are not damaged, and the description and quantity of the Goods on the delivery docket (and ancillary delivery documents) conforms with its requirements, and the Purchaser must record any discrepancies in writing on the delivery docket including, but not limited to, discrepancies in quantity and specification. Failure to make such notations on the copy of the docket retained by the Supplier is deemed to be conclusive evidence that the delivery docket is accurate and the Purchaser accepts the Goods have been supplied in accordance with these Conditions.
 - the Purchaser has 2 business days from the delivery of the Goods to notify the Supplier in writing of any damage to, and/or shortage in quantity of the Goods and if the Purchaser fails to notify the Supplier within that period, the Purchaser is deemed to have accepted such Goods as complete and in undamaged condition;
 - if the Purchaser notifies the Supplier of the damage in accordance with clause 7.2, the Purchaser is required to maintain custody and control of such Goods pending the receipt of Supplier's instructions concerning the disposition of the Goods, and permit the Supplier's representatives to inspect the Goods upon request;
- The Purchaser must provide any and all documentation in its possession in respect of the delivery, discrepancy or damage to the Goods, as requested by Supplier; and
 - Upon satisfactory completion of the Supplier's inspection and at the instructions of the Supplier the Purchaser must return any Goods to the Supplier or its designee as instructed and in accordance with clause 7.2 of these Conditions.
- ### 7.2 Return of Goods
- (a) To the full extent permitted by law, the Supplier won't accept any Goods that are returned by the Purchaser unless:
- prior authorisation has been given by the Supplier for such return;
 - the returns are made within 2 Business Days after authorisation has been given by the Supplier for the return;
 - If the Purchaser notifies the Supplier of the damage and/or discrepancy with the Goods and returns the Goods in accordance with clauses 7.1 and 7.2 of these Conditions, the Supplier, at its discretion, agrees to either provide a credit to the Purchaser for the value paid by the Purchaser for the Goods, or provide the Purchaser with replacement product(s) upon receipt and verification of a valid claim from the Purchaser;
 - Failure of the Purchaser to notify Supplier in accordance with clauses 7.1 and 7.2 of these Conditions, will be deemed acceptance of the Goods and may render any related claim of the Purchaser to be void and invalid;
 - Without limiting the generality of the foregoing clauses, the Supplier and the Purchaser agree that, to the fullest extent permitted by law, the Purchaser will not be entitled under any circumstances to return Goods which the Supplier has acquired specifically for and at the request of the Purchaser.
- ### 8 Material Quality
- (a) The Purchaser acknowledges that:
- The Purchaser warrants to the Supplier that all Specifications provided to the Supplier for the supply of Goods and Services are accurate and correct. Unless otherwise agreed in writing, the Supplier when giving a quote or supplying any Goods will not be taken to have approved any Specifications as being suitable for any particular purpose, and will not be liable for any loss, delay or damage resulting from any defects in or unsuitability of the Specifications. The Purchaser shall be liable to the Supplier for any costs arising from the Specifications as shown on the Purchase Order being changed to that shown on the delivery docket;
 - The Supplier does not accept any liability for any Loss or damage (whether direct, indirect or economic) however caused, and whether by negligence or otherwise which may result directly or indirectly from the use of the Goods supplied, and shall not be liable for and is hereby released from and indemnified by the Purchaser in respect of any claims made by the Purchaser or any third party which arise out of any defects which may develop in the Goods, or any other claims due to:
 - faulty handling or placement of the product by the Purchaser or any person other than the Supplier;
 - the addition of any materials to the product;
 - the incorrect selection of, or Specifications for the product and any additives for the required use, situation and conditions, except to the extent that the Supplier has made such selection (in which case, this indemnity and release applies to the extent that any information supplied by the Purchaser as to the use, situation and conditions is incorrect).
- ### 9 Customs, duties and taxes
- (a) Each package that contains a Good that the Purchaser has purchased may be subject to Taxes of the country to which such package is shipped. All such Taxes are the Purchaser's responsibility;
- (b) When the Purchaser purchases a Good online from the Supplier, the Purchaser is the "importer of record" and must comply with all Laws and regulations of the country from and to which such good is shipped.
- (c) In addition to the Taxes referred to above, the Purchaser is responsible for and shall bear any charges for customs clearance. The Supplier has no control over these charges and cannot predict what they may be. Customs policies vary widely from country to country so the Purchaser should contact the local customs authority for further information about such charges.
- (d) Cross-border shipments may be subject to opening and inspection by customs authorities. In order to facilitate customs clearance and comply with local Laws, the Supplier may provide certain order, shipment and good information, such as the Purchaser's title, to the Supplier's international carriers, and such information may be communicated by shipping service providers to customs authorities. Customs authorities may require the Supplier to declare the value of the Goods the Purchaser has purchased.
- (e) The Purchaser acknowledges that delays associated with customs clearance procedures may cause the Supplier's original delivery time frames estimates to be exceeded.
- ### 10 Warranties relating to Goods
- (a) The Purchaser acknowledges and warrants that:
- it has not expressly or impliedly made known to the Supplier any particular purpose for which it has acquired the Goods;
 - the use of the Goods by the Purchaser is outside the control of the Supplier; and
 - to the fullest extent permitted by law, the Supplier does not make any warranties or representations about the characteristics, quality and attributes that will make the Good suitable or fit for any particular purpose required for those Goods by the Purchaser;
 - Subject to any condition, warranty or right implied or imposed by the Goods Act, CCA or any other law which cannot by law be excluded by agreement or any express provision in these Conditions, the Supplier gives no warranties regarding any Goods supplied or Services performed, and all other implied or imposed conditions, warranties and rights are excluded from the Contract. Where any condition, warranty or right is implied or imposed by law and cannot be excluded, the Supplier limits its liability for breach of that implied or imposed condition, warranty or right to the fullest extent permitted by law;
 - Subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Supplier's liability for any breach of any implied or imposed condition, warranty or right in connection with the supply of Goods is limited to one or more of the following (at the election of the Supplier):
 - replacement of the Goods or supply of goods equivalent to the Goods;
 - repair of the Goods;
 - payment of the cost of replacing the Goods or acquiring goods equivalent to the Goods;
 - payment of the cost of having the Goods repaired.
 - Subject to clauses 9(b) and (c) and despite any implication arising from any other provisions of these Conditions:
 - to the fullest extent permitted by law, the Supplier will only be liable for a safety defect (as defined in the CCA) in any Goods if the Purchaser notifies the Supplier in writing of the safety defect (as defined in the CCA) in any such Goods within 2 business days after the date of receipt and the Supplier accepts such liability;
 - the Supplier is not liable to the Purchaser, its servants, agents or contractors, in contract, in tort (including negligence), under any statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any indirect or Consequential Loss or damage including without limitation financial loss or expense including loss of opportunity, loss of profits or loss of goodwill suffered by the Purchaser or any other person arising directly or indirectly out of or in any way attributable to the Goods, or their delivery, or the performance of the Contract for the sale of the Goods upon these Conditions even if that loss or damage was in the contemplation of the parties at the time of entry into the Contract; and
 - without limiting clause 9(m) herein, the aggregate liability of the Supplier in contract, in tort (including negligence), under statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any loss or damage arising directly or indirectly out of or in any way attributable to the Goods, or their delivery, or the performance of the Services, under the Contract, will not exceed 10% of the amount payable to the Supplier under the Contract;
 - Where the Supplier elects to replace the Goods, the Supplier will credit the cost of the Goods being replaced and will replace them as soon as possible with other Goods of the same or equivalent kind at the price charged for the original Goods and upon the same terms and conditions as those to which the original Goods were subject; and
 - If the Purchaser is a consumer as defined under the CCA and any of the Services supplied by the Supplier are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a failure to comply with a consumer guarantee under the Australian Consumer

I expressly acknowledge that I have read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, and that I agree to be bound by the terms and conditions of this Agreement

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- Law under the CCA in relation to those Services is limited to, at the option of the Supplier:
- (i) the supply of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- (g) The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Purchaser is entitled to a replacement or refund for a major failure, and compensation for any other reasonably foreseeable loss or damage. The Purchaser is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (h) In addition to your rights under the Australian Consumer Law we offer a limited lifetime warranty against defects in materials or workmanship from the date the goods are released to the purchaser ("**Lifetime Warranty**");
- (i) The Lifetime Warranty does not apply:
 - A. If you change your mind about the Goods;
 - B. If you found the Goods cheaper elsewhere;
 - C. If you misused the Goods in any way and/or caused or contributed to any damage to the Goods;
 - D. If you knew of, or were made aware of, any faults in the Goods before you bought the Goods;
 - E. If you asked for a Service to be done in a certain way against the advices of the Supplier or you were unclear about what you wanted;
 - F. To damage due to ordinary wear and tear, damage due to misuse, accident, substitution or abuse, repairs and alterations performed by someone other than the Supplier, theft, disappearance or loss (including loss of gemstones), and any type of use causing damage or deterioration;
 - G. To custom-designed Goods where the Purchaser has been advised against the design but the Purchaser wishes to proceed with the design regardless of that advice;
 - H. To gemstones not purchased from the Supplier, but it will apply and be limited to the services provided by the Supplier in respect of said gemstones, including but not limited to the setting of the gemstone; and
 - I. any part of the Goods is bent or out of shape, such as (but not limited to) claws, bands and settings; and any stones that are damaged, whether chipped, cracked broken etc.
 - J. The Purchaser acknowledges that white gold is rhodium plated to enhance its appearance and the rhodium plating can wear off during normal wear and tear. Accordingly, any rhodium plating or re-plating is excluded from the Lifetime Warranty.
- (k) The Lifetime Warranty is subject to the Goods being cleaned and inspected by the Purchaser at least once every six (6) months from the purchase date ("**Maintenance**"). If the Purchaser fails to obtain the Maintenance, the Lifetime Warranty will become void.
- (l) The Purchaser acknowledges that the Supplier has strongly recommended that the Purchaser ensures that at all times appropriate insurance cover in relation to any loss or damage is obtained in respect to the Goods.
- (m) The Supplier's total liability to the Purchaser under these Terms and Conditions is limited to that required under the Australian Consumer Law.
- (n) If the Purchaser experiences a minor problem with Goods under warranty, the Supplier may in its sole discretion repair the Goods, instead of providing a replacement or refund.
- (o) The Purchaser is responsible to return the Goods to the Supplier for inspection and the cost of return of any Goods.
- (p) Where the Supplier is requested to set gemstones, which gemstones have been provided by the Purchaser and not purchased from the Supplier, the Supplier shall not be, in any way, liable for any damage to such gemstone as a result of the Supplier setting that gemstone.
- (q) The Supplier may, from time to time, provide the Purchaser a reminder that Maintenance is due. However, the Purchaser acknowledges and agrees that the Supplier is under no obligation to provide any such reminder and that the Maintenance is the responsibility of the Purchaser;
- (r) All orders are subject to the availability of Goods. The Supplier may reject or cancel any order due to unavailability of any Good. If for any reason a Good is not available, the Supplier will endeavour to notify the non-availability on the Supplier's website. The Supplier may revise the range of goods or the specification of any Good at any time (save and except for where we have confirmed the Supplier's acceptance of the Purchaser's order) without notice to the Purchaser;
- (s) Where any Good is listed on the Supplier's website with an incorrect price or with incorrect information, the Supplier reserves the right to reject or cancel the Purchaser's order (regardless of whether the Purchaser has made payment for that order). The Purchaser acknowledges and agrees that the Supplier has no obligation to sell any Good either online or in-store where that Good is listed with an incorrect price or with incorrect information. Where the Purchaser has already made payment for an order that is subsequently rejected or cancelled by the Supplier, the Supplier will refund the full amount paid by the Purchaser in relation to that order.
- 10.1 Model prototypes for custom-designed Goods**
- (a) If a Purchaser wishes to custom-design any Goods, at the Supplier's sole discretion, the Supplier may produce a model prototype of such custom-designed Goods in accordance with the Purchaser's Specifications and at the Supplier's cost. If upon inspection of the model prototype:
 - (i) The Purchaser wishes to make further changes to the Specifications of the custom-designed Goods before ordering the Goods, the Purchaser agrees that any further model prototypes will be made at the Purchaser's expense;
 - (ii) The Purchaser orders the Goods, without limiting the provisions of Clause 4 herein, the Purchaser may not make any further changes to the Specifications.
- 11 Indemnity**
- (a) The Purchaser shall keep the Supplier indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing clauses, claims of death, personal injury, damage to property and Consequential Loss which may be made against the Purchaser or which the Purchaser may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of Contract or guarantee by, or negligence of, the Supplier.
- 12 Supplier's Obligations**
- (a) Notwithstanding any other provision of the Conditions, if the Purchaser breaches a term of a Contract, the Supplier is not bound to perform its obligations under the Contract until the breach is remedied by the Purchaser; and
 - (b) The Supplier is not liable for any failure to observe its obligations under these Conditions where such failure is wholly or substantially due to a force majeure event, which includes any cause beyond the control of the Supplier, including strike, industrial action, war, sabotage, terrorist activity, national emergency, blockade or governmental action, inaction or request, and an act of God.
- 13 Intellectual property**
- (a) The supply of Goods to the Purchaser does not constitute a transfer of any Intellectual Property Rights in the Goods or any part thereof. The Purchaser must not do anything inconsistent with or in infringement of such Intellectual Property Rights. The Supplier does not warrant that the supply by it and the use by the Purchaser of the Goods does not and will not infringe the Intellectual Property Rights of any third party;
 - (b) The Supplier will be entitled to all Intellectual Property Rights that arise as a result of, or in the course of, the performance of the Services by the Supplier;
 - (c) The Purchaser must execute and deliver to the Supplier any deeds, agreements or other documents which the Supplier may reasonably require to transfer or assure to the Supplier any Intellectual Property Rights to which the Supplier is entitled under the Contract; and
 - (d) The Purchaser indemnifies the Supplier against all loss, cost, expense or damage suffered or incurred by the Supplier as a result of the Goods or the Services infringing the Intellectual Property Rights of any person.
- 14 Variations**
- (a) The Supplier is not obliged to carry out any variation to the Goods and Services which is outside the scope of the Contract. Any variation that the Supplier does carry out shall be subject to these Conditions and shall be charged to and paid for by the Purchaser at an agreed rate or failing agreement at the rate determined by the Supplier.

15 Terms of Use of Website

- The information on the Supplier's website is not comprehensive and is intended to provide a summary of the subject matter covered. While the Supplier uses all reasonable attempts to ensure the accuracy and completeness of the information on the website, to the extent permitted by law, including the Australian Consumer Law, the Supplier makes no warranty regarding the information on the website. The User and/or Purchaser should monitor any changes to the information contained on the website.
- (b) The Supplier is not liable to the User and/or the Purchaser or anyone else if interference with or damage to the User's and/or the Purchaser's computer systems occurs in connection with the use of the website or a linked website. The User and/or the Purchaser must take their own precautions to ensure that whatever they select for their use from the website is free of viruses or anything else (such as worms or Trojan horses) that may interfere with or damage the operations of the User's and/or the Purchaser's computer systems.
 - (c) The Supplier may, from time to time and without notice, change or add to the website (including the Conditions) or the information, products or services described in it. However, the Supplier does not undertake to keep the website updated. The Supplier is not liable to the User and/or the Purchaser or anyone else if errors occur in the information on the website or if that information is not up-to-date.
 - (d) The Supplier's website may contain links to websites operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, the Supplier does not endorse and is not responsible for the content on those linked websites and the Supplier has no control over or rights in those linked websites.
 - (e) The User's and/or Purchaser's use of the website and use of and access to any Content does not grant or transfer any rights, title or interest to the User and/or Purchaser in relation to the website or the Content. However, the Supplier does grant a licence to access the website and view the Content on the terms and conditions set out in this Agreement and, where applicable, as expressly authorised by the Supplier and/or the Supplier's third party licensors.
 - (f) Any reproduction or redistribution of this website or the Content is prohibited and may result in civil and criminal penalties. In addition, you must not copy the Content to any other server, location or support for publication, reproduction or distribution is expressly prohibited.
 - (g) The User and/or Purchaser must not do any act that the Supplier would deem to be inappropriate, is unlawful or is prohibited by any laws applicable to the Supplier's website, including but not limited to:
 - A. any act that would constitute a breach of either the privacy (including uploading private or personal information without an individual's consent) or any other of the legal rights of individuals;
 - B. using the website to defame or libel the Supplier, its employees or other individuals;
 - C. uploading files that contain viruses that may cause damage to the Supplier's property or the property of other individuals;
 - D. posting or transmitting to the website any non-authorised material including, but not limited to, material that is, in the Supplier's opinion, likely to cause annoyance, or which is defamatory, racist, obscene, threatening, pornographic or otherwise or which is detrimental to or in violation of the Supplier's systems or a third party's systems or network security.
 - (t) If the Supplier allows the User and/or Purchaser to post any information to the Supplier's website, the Supplier has the right to take down this information at the Supplier's sole discretion and without notice.
 - (u) To the maximum extent permitted by law, including the Australian Consumer Law, the Supplier makes no warranties or representations about the Supplier's website or the Content, including but not limited to warranties or representations that the website will be complete, accurate or up-to-date, that access will be uninterrupted or error-free or free from viruses, or that the website will be secure.
 - (v) The Supplier reserves the right to restrict, suspend or terminate without notice the Purchaser's access to the website, any Content, or any feature of the website at any time without notice and the Supplier will not be responsible for any loss, cost, damage or liability that may arise as a result.

16 Termination

- (a) Without prejudice to any of its other rights, powers or remedies, the Supplier may cancel any order for the delivery of Goods and terminate any Contract governed by these Conditions if:
 - (i) the terms of payment for any Goods delivered to the Purchaser by the Supplier have not been strictly adhered to by the Purchaser;
 - (ii) the Purchaser defaults under any of its obligations under these Conditions; or
 - (iii) the Purchaser becomes insolvent, commits an act of bankruptcy or, being a company, a liquidator, provisional liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Purchaser, a mortgagee goes into possession of the Purchaser's assets or business, an application is made to appoint a liquidator or to have the company wound up, the Purchaser is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors or if anything analogous occurs in respect of the Purchaser, in which case, the Supplier will be released from all liability under the Agreement;
- (b) The Supplier will be entitled to payment for all Goods delivered up to the effective date of termination. Termination of the Agreement is without prejudice to the rights of the Supplier accruing up to the date of termination.

17 Privacy

- (a) The Supplier collects Personal Information for the purposes of performing its obligations under the Contract;
- (b) By entering into the Contract, the Purchaser consents to the Supplier using the Personal Information to perform its obligations under the Contract;
- (c) The Supplier may disclose the Purchaser's Personal Information to:
 - (i) third parties that are associated or connected with giving effect to the transaction contemplated under the Contract and the performance of the Purchaser's obligations under the Contract; and
 - (ii) the Supplier's Related Body Corporate(s), Affiliates, Personnel, successors, or assigns.

18 General

- (a) Any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be read down so as to be enforceable, and if it cannot be read down, severed to the extent necessary to make the Contract enforceable, unless this would materially change the intended effect of the Contract;
- (b) The Purchaser acknowledges that it has received a copy of these Conditions prior to them signing;
- (c) The Purchaser warrants that it has read and fully understood the nature and effect of these Conditions;
- (d) The Contract is governed by the laws of the State of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Victoria and the Victorian Registry of the Federal Court of Australia.
- (e) The Purchaser must take out and maintain those policies of insurance that would be held by a reasonably prudent Purchaser in the position of the Purchaser;
- (f) The warranties and indemnities in the Contract survive rescission, termination or completion of the Contract and do not merge on completion of any transaction under the Contract;
- (g) The Purchaser may not assign or encumber a right or interest under the Contract without the prior written consent of the Company; and
- (h) No variation of the Contract or these Conditions purported by the Purchaser will bind the parties unless it is made in writing and is agreed by the Supplier.

-----The remainder of this document is intentionally blank-----

I expressly acknowledge that I have read, understood, and taken steps to thoughtfully consider the consequences of this Agreement, and that I agree to be bound by the terms and conditions of this Agreement