

## GENERAL TERMS AND CONDITIONS

### SUPPLY OF DIAMOND VERIFICATION INSTRUMENTS

These Terms and Conditions are entered into between **DE BEERS UK LIMITED**, a company incorporated in England and Wales with company number 2054170, whose registered office is at 17 Charterhouse Street, London, EC1N 6RA ("**Supplier**"), and the entity as specified on the Quote & Purchase Order ("**Customer**"), together the "**parties**" or a "**party**".

These General Terms and Conditions, together with any and all Schedules and Quote & Purchase Orders, form the contract between Supplier and Customer ("**Agreement**"). For the avoidance of doubt, "**Agreement**" does not include tender documents or correspondence, including letters of offer or acceptance exchanged between the parties prior to the Effective Date or provisions which are implied by trade, custom, practice or course of dealing.

In the event that there is any conflict, the relevant Schedule shall take precedence, followed by (1) these General Terms and Conditions; and (2) any Quote & Purchase Order(s).

#### 1. INTERPRETATION

##### 1.1 Definitions

**Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Business Integrity Policy** means the policy of that name published by the De Beers Group, which has the purpose of combating corrupt behaviour including such behaviour among those with whom the Customer does business, as amended from time to time and available at [www.debeersgroup.com](http://www.debeersgroup.com);

**Collection Location** has the meaning given to it in Clause 4.2;

**Conditions** means these General Terms and Conditions set out in this document, as amended from time to time in accordance with Clause 20.9;

**Confidential Information** means all confidential information, directly or indirectly disclosed, or made available, to the other party or its representatives, before, on or after the date of this Agreement, including but not limited to all confidential or proprietary information relating to (a) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of a party; and (b) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of a party, as well as any information, findings, data or analysis derived from Confidential Information and any other information that is identified as being of a confidential or proprietary nature.

**Customer Premises** means the Customer's premises as set out in the Quote & Purchase Order;

**Customer Responsibilities** means the responsibilities set out in the Agreement, including in the applicable Schedules;

**Data Protection Laws** means as applicable and binding on each party: a) the Data Protection Act 2018, the UK GDPR as defined in the Data Protection Act 2018, and the Privacy and Electronic Communications Regulations 2003; b) the EU General Data Protection Regulation (Regulation (EU) 2016/679 (EU GDPR)), EU Directive 2002/58/EC (Directive on privacy and electronic communications), and/or any corresponding or equivalent national laws or regulations; and c) any applicable laws replacing, amending, extending, re-enacting, consolidating or implementing any of the above Data Protection Laws from time to time (whether or not before or after the date of this Agreement);

**Defect** has the meaning given to it in Clause 5.1;

**Delivery** has the meaning given to it as per the Incoterms;

**Device** means the relevant Diamond Verification Device as set out in the Quote & Purchase Order;

**Device Fees** has the meaning given to it in Clause 12.1;

**Effective Date** has the meaning given to it in Clause 2.1;

**End Customer** has the meaning given to it in Clause 15.

**Excluded Causes** means:

(a) use of the Device with equipment or materials (other than test diamonds) not supplied by the Supplier or permitted by the relevant Operating Manual;

(b) any maintenance of or alteration, modification or adjustment to the Device performed by persons other than the Supplier (or a third party approved in writing by Supplier);

(c) the use, storage or handling of the Device in breach of these Conditions or the applicable Schedule;

(d) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Device, a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Device, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;

(e) the neglect or misuse of the Device; or

(f) failure by the Customer to comply with the requirements set out in the applicable Schedule;

**EULA** means the applicable end-user licence agreement made available to Customer or an End Customer at <https://verification.debeersgroup.com/help-support/>;

**Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage,

breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions;

**Group** means any company directly or indirectly controlled by De Beers plc of 44 Esplanade, St Helier, Jersey, JE4 9WG;

**Hazardous Materials** means any substance, emission or material: (a) regulated by applicable law; and/or (b) deemed, whether by the Supplier or a relevant government agency or otherwise, to be dangerous to safety, health or the environment;

**Incoterms** means the International Chamber of Commerce (ICC) rules defining the position of risks, costs and obligations relating to international movement of goods, as specified in the relevant Quote & Purchase Order;

**Intellectual Property Rights** means patents, registered and unregistered design rights, petty patents, inventions, utility models, supplementary protection certificates, registered trademarks, service marks, community design right, copyright, database rights and all other intellectual or industrial property rights (including, where such rights are obtained or enhanced by registration, any registration of such rights and applications therefore) wherever and however in the world such rights may subsist;

**Operating Manual** means the English language operating manual supplied with the Device (and any translations thereto which may be provided by Supplier to Customer from time to time), which shall contain information relating to the use and maintenance of the Device;

**Quote & Purchase Order** means the quote and purchase order entered into by Supplier and Customer from time to time in relation to an order for the Device(s);

**Schedule** means the applicable schedule attached to these Conditions as per the Device identified in the Quote & Purchase Order;

**Service Desk** means the single point of contact provided by the Supplier in respect of the repair of Defects that is operated by the Supplier on Business Days and which can be contacted by e-mail (techsupport@debeersgroupservices.com) monitored between 09:30 and 16:30 (London, UK time) or as otherwise specified by the Supplier from time to time;

**Shipment** has the meaning given to it in Clause 4.2;

**Software** means any software which is owned by the Supplier (or its licensors), which is installed on or provided with a Device and any Software Update thereto;

**Software Licence** has the meaning given to it in Clause 13.3;

**Software Update** has the meaning given to it in Clause 7.1;

**Software Update Fee** has the meaning given to it in Clause 7.1;

**Specification** means the specification for the Device as set out in the Operating Manual and/or as may be communicated to Customer by the Supplier in writing from time to time;

**Statements** has the meaning given to it in Clause 2.2;

**Supplier Materials** means (a) any equipment, material, supplies, consumables, data or information that is generated, collected, recorded or uploaded either by, from or in connection with, the Device and/or Software that are obtained by, or to be provided to Customer subject to the terms of this Agreement, including any information relating to the Supplier's business, operations or use of the Device and/or Software; and (b) any derivatives of or modifications to such material or information;

**Tax or Taxation** mean any and all forms of taxes, contributions, levies, imposts, import duties or charges in the nature of taxation and all withholdings or deductions in respect thereof of any nature whenever created or imposed chargeable by or accountable or payable to or imposed by, any

relevant taxing authority and all charges, interest, penalties, surcharges and fines incidental or relating to any of the foregoing or which arise as a result of any failure or delay in reporting any matter or making any return or payment required to any relevant taxing authority;

**VAT** means value added tax imposed in any member state of the European Union pursuant to Council Directive EC 2006/112 on the common system of value added tax and national legislation implementing that Directive or any predecessor to it or supplemental to it and any similar tax which may be substituted for or levied in addition to it and/or any value added, sales, goods and services, turnover, use, distribution, consumption or similar or corresponding tax imposed in any other jurisdiction;

**Warranty** has the meaning given to it in Clause 5.1; and

**Warranty Period** has the meaning given to it in Clause 5.1.

## 1.2 Construction

In these Conditions, the following rules apply:

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

## 2. BASIS OF AGREEMENT

- 2.1 Where Supplier provides a quote in the Quote & Purchase Order, such quote shall constitute an offer by the Supplier to sell the Device(s) in accordance with these Conditions (**Quote**). The Customer is responsible for ensuring that the terms of the Quote are complete, accurate and meet their needs. A Quote shall only be valid and capable of being accepted by the Customer for a period of 30 Business Days from its date of issue and shall only be deemed to be accepted when the Customer signs and returns the Quote & Purchase Order, at which point the Agreement shall come into existence (**Effective Date**). If the Supplier does not receive the Purchase Order within 30 Business Days from date of issue of the Quote, the Quote shall automatically cancel and be of no further force or effect.
- 2.2 No Device or Software shall be provided unless a Quote & Purchase Order has been entered into between the Supplier and the Customer. All Quote & Purchase Orders are subject to these Conditions and the Supplier will not be bound by any other terms and conditions that may appear on a quotation or any other order and/or delivery documentation provided by the Customer to the Supplier in relation to the Device and Software.
- 2.3 The Agreement constitutes the entire agreement between the parties in relation to its subject matter. It replaces and extinguishes all and any prior agreements, draft agreements, arrangements, statements, assurances, representations or undertakings of any nature made by or on behalf of the parties, whether oral or written, in relation to the subject matter (together **Statements**). The Customer acknowledges that it has not relied on any Statement made or given by or on behalf of the Supplier which is not set out in the Agreement. Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Statements. Nothing in this Clause 2.2 shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

## 3. DEVICE

The Device is described in the Specification. The relevant Schedule in relation to the applicable Device, shall apply. The Supplier reserves the right to update or amend the Specification and/or any Schedule for any reason, including if required by any applicable statutory or regulatory requirements. Customer shall procure and ensure that any of its personnel operating and/or otherwise using any Device shall comply with the EULA.

## 4. DELIVERY, INSTALLATION AND USE

- 4.1 The Supplier shall ensure that Delivery of each Device is accompanied by a delivery note which shows the date of the Quote & Purchase Order and any relevant Supplier reference numbers.
- 4.2 The Supplier shall dispatch each Device (**Shipment**) to the Customer Premises set out in the Quote & Purchase Order or such other location as the parties may agree at any time following confirmation of payment of the Fees. The Supplier will wait until the Device Fees are paid before Shipment of any Device.
- 4.3 Delivery of the Device shall be completed in accordance with the Incoterms.
- 4.4 Any dates quoted for Shipment or Delivery are approximate only, and the time of Dispatch or Delivery is not of the essence. The Supplier shall not be liable for any delay in Shipment of a Device that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate Shipment instructions or any other instructions that are relevant to the supply of a Device.
- 4.5 Upon Delivery, the Customer shall unpack, install and store the Device in accordance with the written instructions of Supplier, as may be communicated to Customer from time to time, including in accordance with the requirements set out in the Operating Manual and the applicable Schedule to these Conditions.

## 5. WARRANTY

5.1 In consideration of the Customer meeting its payment obligations in respect of the Device(s), including pursuant to Clause 10 of these Conditions, the Supplier warrants that, for a period of one (1) year from:

5.1.1 the date upon which a Device is available for collection at the Collection Location; or

5.1.2 14 days following the date of Shipment of a Device,

whichever is the earlier, the Device(s) shall substantially conform to the Specification (**Warranty Period**). In the event of a Device failing to substantially conform to the Specification (a **Defect**), the Customer's sole and exclusive remedy shall be the repair of such Defect, or the receipt of a replacement Device, in accordance with Clause 5.2 (the **Warranty**).

5.2 If there is a Defect, the Customer shall immediately cease using the relevant Device and shall, as soon as reasonably practicable, notify the Supplier of the Defect by contacting the Service Desk (or by such other means as may be notified to the Customer by the Supplier from time to time) and provide reasonable details of the nature of the Defect. Under no circumstances shall the Customer attempt, or permit an unauthorised third party to attempt, to repair the Defect. Following notification, the Supplier shall use its reasonable endeavours to repair the Defect or provide a replacement Device (whether a Device is repaired or replaced shall be at the sole discretion of Supplier), by choosing to:

5.2.1 provide written or verbal guidance to the Customer as to how to repair the Defect. Customer shall have sole responsibility for ensuring that it only uses suitably qualified and competent Customer staff or a third party who has been approved by the Supplier in writing to undertake any such repair activity;

5.2.2 subject to the Customer maintaining the Internet connection in accordance with Clause 8.1, remotely diagnose and/or remotely fix the Defect itself;

5.2.3 provide a spare part for inclusion into the relevant Device by Customer (who shall ensure that it only

uses suitably qualified and competent Customer staff or a third party who has been approved by the Supplier in writing to undertake any such repair activity) and/or a third party approved in writing by Supplier;

5.2.4 require that the Customer returns the relevant Device or part of the Device to the Supplier for repair or replacement; and/or

5.2.5 perform any combination of the options referred to in Clauses 5.2.1 to 5.2.4 or take such other action as it deems appropriate.

5.3 The Supplier shall not be liable for a Device's failure to comply with the Warranty (and a Customer's entitlement to the repair or replacement of its Device shall not apply) in any of the following circumstances:

5.3.1 the Defect arises from or is caused by any of the Excluded Causes;

5.3.2 the Device is not connected to a working Internet connection in accordance with Clause 8.1;

5.3.3 the Device, temporary replacement or removed component is not made available for collection by the Supplier in accordance with Clause 6; and/or

5.3.4 the Customer fails to comply with the Customer Responsibilities.

5.4 Except as provided in this Clause 5, the Supplier shall have no liability to the Customer in respect of the Device's failure to comply with the Warranty.

5.5 This Agreement sets forth the full extent of the Supplier's obligations and liabilities in respect of the Device and the sale to the Customer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on the Supplier except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Device which might otherwise be implied or incorporated into this Agreement, whether by statute, common law or otherwise, is expressly excluded.

5.6 These Conditions shall apply to any repaired or replacement Device supplied by the Supplier.

5.7 Any repaired or replacement Device shall not benefit from a new Warranty Period and the original Warranty Period shall apply to any repaired or replacement Device.

5.8 Given the nature of the Device and its intended function, the Customer acknowledges that the Device may not be error-free or completely accurate. Subject to Clause 18.2, the parties agree that the Supplier shall not, to the extent permitted by law, be responsible for or have any liability to the Customer in any circumstances whatsoever in respect of:

5.8.1 the accuracy of any results, data or other output developed from the use of the Device;

5.8.2 any damage to or loss of any property caused by or arising out of the use of the Device; or

5.8.3 any loss or damage caused by or arising out of the Customer's use of the Device for purposes other than those specified in the Specification, the Operating Manual and/or the relevant applicable Schedule.

5.9 Where applicable, Customer is prohibited from amending, editing and/or modifying any reports produced from use of the Device and Customer acknowledges and agrees that the Customer assumes sole responsibility for results and reports obtained from the use of the Device by the Customer, for conclusions drawn from such use and reliance on such results and reports.

## **6. DEVICE RETURN AND SPARE PARTS**

6.1 If the Supplier requires the return of a Device or a part of the Device in accordance with Clause 5.2.4, then the Customer shall make such Device or part available for collection by the Supplier (or its representative) at the Customer Premises on the date notified by the Supplier. The Supplier shall, subject to Clause 5.3, bear its own costs of the collection and return of the Device.

6.2 In the event that a Device is returned under a defect's liability claim and is established to be

operable, the Supplier shall be entitled to charge and recover from the Customer any reasonable costs incurred by the Supplier, including transportation charges, in connection with such a defects liability claim.

6.3 Subject to availability and the expected duration of the repair of a Device that has been returned to the Supplier in accordance with Clause 6.1, the Supplier may, in its discretion, deliver a temporary replacement for the Device to the Customer. The Customer shall be entitled to use such temporary replacement in accordance with the terms of this Agreement as if such temporary replacement were a Device sold to the Customer pursuant to the terms of this Agreement. The Customer shall cease to use the temporary replacement immediately upon the earlier of:

6.3.1 the return of the repaired Device to the Customer;

6.3.2 the date of a notice from the Supplier requiring the Customer to cease using the temporary replacement; and

6.3.3 the date of termination or expiry of the Warranty,

and the Customer shall make such replacement available for collection by the Supplier (or its representative) at the Customer Premises on the date notified by the Supplier. The Supplier shall, subject to Clause 5.3, bear its own costs of the delivery and collection of the temporary replacement.

6.4 All parts and components removed from a Device and replaced with spare parts in the course of repairing a Defect in accordance with Clause 5.2.3 shall, upon the Supplier's instruction, be disposed of by the Customer in accordance with the Supplier's instructions. A part or component that has been removed from a Device shall continue to form part of the Device until such time as the Supplier requests that the part or component is disposed of in accordance with the Supplier's instructions.

6.5 Once a spare part has been delivered to the Customer Premises it shall be deemed to form part of the Device for the purposes of this Agreement.

## 7. UPDATES

7.1 The Supplier may from time to time notify the Customer of any update to any Software (**Software Update**), and any associated costs of installing such Software Update on a Customer's Device (including as set out in a Quote & Purchase Order) (**Software Update Fee**).

7.2 If the Customer elects to have a Software Update installed on its Device(s), it shall permit the Supplier to remotely install any such Software Update and ensure that all associated Software Update Fees are paid to Supplier in accordance with Clause 12 of this Agreement.

## 8. INTERNET CONNECTION

8.1 Customer shall ensure that each Device is at all times capable of being connected to a working Internet connection that meets Supplier's requirements as may be notified to Customer in writing from time to time, including (but not limited to):

8.1.1 for any purpose in connection with or contemplated by the Warranty and this Agreement as the Supplier may notify to Customer in writing;

8.1.2 remote diagnostics and fixing of Defects; and

8.1.3 installing Software Updates.

8.2 The Customer hereby fully consents to any such access referred to in Clause 8.1, on behalf of itself and any of its relevant employees, agents, representatives or contractors and for the avoidance of doubt, Clause 17 shall apply to any data (including personal data, where applicable) processed and/or accessed by Supplier pursuant to Clause 8.1. If required by law, the Customer shall be responsible for notifying its relevant employees, agents, representatives or contractors of such access and/or for procuring any required consents.

8.3 The Customer acknowledges and agrees that the Supplier will not be liable for any loss or damage caused to the Customer as a result of a virus or other malware.

## 9. TITLE AND RISK

Unless otherwise specified in the Agreement, title in and to the Device will pass to the Customer upon the earlier of: (i) payment of the Device Fees by the Customer to the Supplier; or (ii) delivery of the Device. Risk in and to the Device will pass to the Customer in accordance with the relevant Incoterms specified in the Quote & Purchase Order.

## 10. IMPORT CLEARANCES

In the event the Device is imported directly from outside of the tax jurisdiction of the Customer and unless otherwise specified in the Agreement, the Customer shall be responsible at its own cost for all import clearances for, and payment of any fees, charges, duties, levies or imposts in respect of the import of the Device and Supplier Materials as may be required for delivery thereof to the Customer Premises.

## 11. HAZARDOUS MATERIALS

Customer shall ensure that the disposal of components of any Device or associated equipment containing Hazardous Materials shall be carried out according to the applicable legislation.

## 12. FEES, PAYMENT AND TAXES

12.1 The price of the Device(s) shall be the price set out in the relevant Quote & Purchase Order, plus any associated costs and charges of insurance and transport of the Device(s), which shall also be set out in the relevant Quote & Purchase Order and will be invoiced to the Customer (together, the **Device Fees**).

12.2 Where applicable, the price of the Software shall be the price set out in the relevant Quote & Purchase Order, and will be invoiced to the Customer ("**Software Fees**"). In accordance with Clause 7, Supplier shall also be entitled to charge a Software Update Fee for any Software Updates installed on the relevant Device(s).

12.3 The Device Fee and any Software Update Fees (where relevant), and any other amounts paid or payable or consideration for supplies for VAT purposes, service tax purposes or any equivalent

indirect taxes (if applicable) made or deemed to be made under or in connection with this Agreement or provided or to be provided under or in pursuance to this Agreement (**Fees**) are exclusive of amounts in respect of VAT, service tax or any equivalent indirect taxes. The Customer shall be responsible for calculating the appropriate VAT, service tax or any equivalent indirect taxes or withholding tax on top of the amount invoiced and making appropriate payment to their local tax office. The Supplier shall receive an amount equal to the sum it would have received if no such withholding had been made. The Customer will provide the Supplier with the original withholding tax certificate.

- 12.4 Where applicable, the Customer shall be responsible for paying all relevant import duties and entry taxes, except where otherwise agreed with the Supplier in writing.
- 12.5 Where applicable, the Customer will be solely responsible for seeking any approval for the outward remittance of payments with the designate foreign exchange remittance bank.
- 12.6 The Customer shall provide the Supplier with details of its EU VAT registration number and any other information or documentation related to the validity of such VAT registration number thereof as may be required by the Supplier, where applicable. The EU VAT registration number will be quoted on all invoices issued by the Supplier to the Customer.
- 12.7 The Supplier may invoice the Customer for the Device Fees (including costs and charges of packaging, insurance and transport of the Device) on or at any time after the date on which the Customer signs and accepts the Order. The Supplier may also invoice the Customer for Software Update Fees in the event Customer elects to have a Software Update installed on its Device(s) in accordance with Clause 7 of this Agreement.
- 12.8 Without limiting the foregoing, the Customer agrees to pay (including pursuant to Clause 12.3 above where applicable), and to indemnify and hold the Supplier harmless from, any Tax levied upon the purchase, provision, importation, exportation and/or delivery of the Device and any other deliverables (including, without limitation, any replacement or spare part or component) or

provision of services related thereto and/or related to the performance of obligations or exercise of rights under this Agreement, and any costs associated with the collection or withholding thereof, including penalties and interest, and the Customer shall take all necessary steps to comply with any administrative, filing and reporting obligations in relation to the foregoing. For the avoidance of doubt (and unless expressly directed or agreed otherwise by the Supplier in writing), the Customer shall act or be designated as the importer in respect of any importation of the Device to an applicable territory and the Customer shall be responsible for paying all relevant Taxes (including, for the avoidance of doubt) import duties, VAT or equivalent indirect tax and entry taxes relating thereto.

- 12.9 If, as a result of any assignment of its rights or obligations in accordance with Clause 20.1 of this Agreement, the Customer (including its assignees(s)) has an obligation to withhold or deduct any taxes on payments made to the Supplier which would not otherwise have been the case, the Customer (including its assignees(s)) will pay to the Supplier such additional sum as shall ensure that the Supplier receives and retains a net sum equal to the amount it would have received and retained in the absence of any such assignment.
- 12.10 All fees due from Customer under this Agreement (including Fees) are to be paid in US Dollars (\$), unless otherwise specified in a Quote & Purchase Order, from a bank account owned by the Customer.
- 12.11 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Invoices in respect of the Device Fees and/or Software Update Fees shall be paid in full prior to dispatching any Device and/or installing any Software Update, as relevant. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence in respect of the obligations contained in this Clause 12.11.
- 12.12 If the Customer fails to make any payment due to the Supplier under this Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum

above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date for payment until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

12.13 The Customer shall pay all amounts due under the Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

12.14 The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

### 13. INTELLECTUAL PROPERTY

13.1 The Customer acknowledges that the Intellectual Property Rights in or relating to the Device, Software, Supplier Materials and the Operating Manuals (including any improvement, modification or amendment to the same) shall at all times remain the Supplier's (or its licensor's) property.

13.2 The Customer shall not use (other than pursuant to this Agreement), assert any claim over or seek to register any Intellectual Property Rights in or relating to the Device, Software, Supplier Materials or the Operating Manuals anywhere in the world.

13.3 The Supplier grants to the Customer a non-exclusive, non-sublicensable and non-transferable right to use the Software in object code form at the Customer Premises where such Software is delivered for the sole and exclusive purpose of using and/or operating the Device at those Customer Premises in accordance with the terms of this Agreement (**Software Licence**). The Customer shall not use the Software other than as specified in this Clause 13.3 without the prior written consent of the Supplier.

13.4 The Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software, Supplier Materials

and/or Device in whole or in part, except as permitted by law (where such permission cannot be excluded by agreement of the parties).

13.5 The Customer shall not, without the prior written consent of the Supplier:

13.5.1 sublicense, assign or novate the benefit or burden of the Software Licence in whole or in part;

13.5.2 allow the Software to become the subject of any charge, lien or encumbrance; and

13.5.3 deal in any other manner with any or all of its rights and obligations under this Agreement.

13.6 The Customer shall promptly and fully notify the Supplier of any use of any Intellectual Property Rights in or relating to the Device, Software, Supplier Materials or the Operating Manuals in breach of the terms of this Agreement, or by any unauthorised third party of which it becomes aware. The Customer agrees (at the Supplier's request and expense) to do all such things as may be reasonably required to assist the Supplier in taking or resisting any proceedings in relation to any infringement of the Supplier's Intellectual Property Rights in or relating to the Device, Software, Supplier Materials or Operating Manuals.

### 14. THIRD PARTY SOFTWARE

Software made available by Supplier to Customer may include, link to or use certain third-party software components made generally available under free and open-source software licenses (**Third Party Components**). Customer's use of such Third Party Components may be subject to additional terms, conditions and policies provided to Customer by the applicable third party. For more information, and to see the relevant attribution notice, see <https://verification.debeersgroup.com/help-support/>.

### 15. RESALE

Any account or log in details provided by the Supplier to the Customer are intended to be personal to the Customer to whom the Supplier has sold the Device. In the event that the Customer

transfers or sells a Device to a third party (**End Customer**) the Customer may not pass on the account or login details to the End Customer and instead shall direct the End Customer to the Supplier to obtain new unique account and/or login details for the End Customer's use of the Device. In advance of any sale the Customer shall also provide to such End Customer a copy of the relevant EULA and shall ensure that such End Customer acknowledges and is aware of its obligation to agree to the terms of such EULA prior to the End Customer's use of the Device. For the avoidance of doubt, this Clause 15 does not prevent the Customer from transferring the Device and account details to an Affiliate of the Customer.

## **16. TERMINATION**

- 16.1 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so.
- 16.2 Without limiting its other rights or remedies, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer and/or require that Customer returns the Device to Supplier if the Customer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 16.3 Termination of the Agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Agreement shall continue in full force and effect.

## **17. DATA PROTECTION AND CONFIDENTIALITY**

- 17.1 Each party shall ensure that it complies at all times with all obligations imposed on a controller under the Data Protection Laws in connection with the processing of personal data pursuant to this Agreement.

17.2 Each party shall implement appropriate technical and organisational measures to protect any personal data that is processed pursuant to this Agreement (including but not limited to personal data processed by the Supplier pursuant to Clause 8), against unauthorised and unlawful processing and against accidental loss, destruction, disclosure, damage or alteration, including implementing appropriate information security processes which are in line with internationally recognised industry standards.

17.3 Each party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by Clause 17.4.

17.4 Each party may disclose the other party's confidential information:

17.4.1 to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with Clauses 17.3 – 17.5 (inclusive); and

17.4.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.5 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

17.6 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

## 18. LIMITATION OF LIABILITY

18.1 Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable), fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979, defective products under the Consumer Protection Act 1987, or any matter in respect of which it would be unlawful to exclude or restrict liability.

18.2 Subject to Clause 18.1:

18.2.1 the Supplier shall under no circumstances whatsoever be liable to the Customer for any of the following types of loss or damage arising out of or in connection with the Agreement, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty or otherwise: loss of profit, data, business, agreements, anticipated savings, wasted expenditure, revenue or goodwill (whether direct or indirect), or any indirect or consequential loss whatsoever; and

18.2.2 subject to Clause 18.2.1, the Supplier's total aggregate liability to the Customer (however arising) in respect of all other losses arising out of or in relation to the Agreement, including (but not limited to) liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including but not limited to negligence), breach of statutory duty or otherwise, shall in no circumstances exceed a sum equivalent to 100% of the Fees that the Customer has paid to Supplier pursuant to Clause 12.1.

## 19. CUSTOMER INSOLVENCY OR INCAPACITY

19.1 If the Customer becomes subject to any of the events listed in Clause 19.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, the without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Agreement without incurring any liability to the Customer, and all outstanding

sums in respect of the applicable Device and the Warranty shall become immediately due.

19.2 For the purposes of Clause 19.1, the relevant events are:

19.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 within the meaning of section 268 of the Insolvency Act 1986;

19.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

19.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

19.2.4 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

19.2.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

19.2.6 a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

- 19.2.7 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- 19.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 19.2.1 to Clause 19.2.7 (inclusive);
- 19.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 19.2.10 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

## 20. GENERAL

- 20.1 Each party warrants and represents that it has the legal capacity and has taken all necessary corporate action required to authorise and empower it to be bound by and implement the terms of this Agreement. Neither of the parties has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this Agreement.
- 20.2 **Anti-bribery and Corruption**. The Customer shall comply with the Business Integrity Policy and any other Supplier policies provided to the Customer from time to time.
- 20.3 **Force Majeure**. Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. If the Force Majeure Event shall continue for more than 60 (sixty) consecutive days, the Supplier will be entitled to cancel this Agreement on the expiry of such period.
- 20.4 **Assignment and Subcontracting**. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with the Agreement, or any of the rights or obligations under it. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with the

Agreement, or any of its rights or obligations under it, without the prior written consent of the Supplier.

- 20.5 **Notices**. Any notice that is required to be given to a party under the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause. Notices shall be delivered by pre-paid first class post, recorded delivery or email, and satisfactory proof of such delivery or sending must be retained by the sender of a notice under this clause. A notice or other communication shall be deemed to have been received: (a) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or (b) if sent by e-mail, one Business Day after transmission. The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

- 20.6 **Severance**. If any court or competent authority finds that any provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If any provision or part provision of the Agreement, which is found to be invalid, illegal or unenforceable in accordance with this Clause, would be legal, valid and enforceable if some part of it were deleted, the provision or part provision in question shall apply with the minimum modification necessary to make it legal, valid and enforceable.

- 20.7 **Waiver**. A waiver of any right or remedy under the Agreement is only effective if given in writing. No failure or delay by a party to exercise any right, power or remedy provided by the Agreement or by law shall constitute a waiver of that or any other right, power or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. If a party waives a breach of any provision of the Agreement, this shall not operate as a waiver of a

subsequent breach of that provision, or as a waiver of a breach of any other provision.

- 20.8 **Third Party Rights.** The Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person who is not a party to the Agreement under the Agreements (Rights of Third Parties) Act 1999 or otherwise, save that any member of the Group may enforce and rely on the terms of this Agreement to the same extent as if it were a party.
- 20.9 **Variation.** Except as set out in these Conditions, no variation to the Agreement, including the introduction of any additional terms and conditions, shall be effective unless made in writing and signed by the Supplier.
- 20.10 **Governing Law and Jurisdiction.** The Agreement, and any dispute or claim arising out of or in connection with it (including disputes or claims relating to non-contractual obligations), shall be governed by, and construed in accordance with, English law. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement (including non-contractual disputes or claims).

## SCHEDULE 1: AMS2

This Schedule hereby incorporates the General Terms and Conditions for the Supply of Diamond Verification Instruments. The General Terms and Conditions, together with any and all applicable Schedules and Quote & Purchase Orders, form the contract between Supplier and Customer ("Agreement").

In the event that there is any conflict, the relevant Schedule shall take precedence, followed by (1) the General Terms and Conditions; and (2) any Quote & Purchase Order(s).

Defined terms in this Schedule shall have the same meaning as defined in the General Terms and Conditions and/or applicable Quote & Purchase Order.

### 1. PURPOSE AND DESCRIPTION OF DEVICE

- 1.1. AMS2 is a device designed to automatically screen and detect loose natural melee diamonds, and distinguish them from synthetic diamonds and diamond simulants. It is intended for use in identifying colourless or near colourless diamonds and is not suitable for classifying other precious gems or treated stones.

### 2. PERIPHERAL EQUIPMENT AND ACCESSORIES REQUIREMENTS

- 2.1. The Supplier shall not provide the Customer with a computer mouse and/or keyboard with the AMS2.
- 2.2. The Customer shall ensure that the power supply used as part of the AMS2 is not used for any purpose other than the use and/or operation of the AMS2 in accordance with the terms of this Agreement.
- 2.3. The Customer shall ensure that the computer, which is part of the AMS2, is not used for any purpose other than the use and/or operation of the AMS2 in accordance with the terms of this Agreement. In particular, the Customer shall (i) ensure that AMS2 is not connected to and is virtually and/or physically separated from any Customer IT system, software or device (other than any IT system or device required to provide the Internet connection referred to in Clause 8 of the General Terms and Conditions); and (ii) not install or access any software (except the Software) or website using the AMS2.

### 3. PRE-INSTALLATION REQUIREMENTS

- 3.1. The Customer shall ensure that the AMS2 is always connected to the Internet (minimum connection speed 20 Mbps) and allow remote connection for diagnostics and Software updates as the Supplier may notify to the Customer either via the AMS2 or in writing from time to time.
- 3.2. The Customer shall ensure that a 120-240 VAC  $\pm$  10% 50/60 Hz single phase mains power supply is available within 2m of the proposed location of the AMS2 and that a safe routing for the power cable to the AMS2 is possible. Such safe routing should avoid the creation of trip hazards, cable stresses and chafing of cables.

### 4. OPERATING REQUIREMENTS

- 4.1. The Customer shall only install, use, operate, maintain and repair the AMS2 strictly in accordance with the Operating Manual, this Agreement and any other instructions provided by the Supplier in writing to the Customer from time to time.
- 4.2. In particular, the Customer shall ensure that the AMS2 Device is only used to test diamonds which are:
  - 4.2.1. colourless or near colourless;

- 4.2.2. polished; clean and dry with no evidence of grease or electrostatic charge; and acid cleaned prior to screening;
- 4.2.3. have dimensions between:
  - i) 0.0033 ct and 0.20 ct for round brilliant diamonds; or
  - ii) a smallest linear dimension of 1mm and a largest linear dimension of 4mm for fancy cut diamonds,

Diamonds should be sieved to ensure that they are within the stated size range for use and that no debris or other foreign material is present;

For the avoidance of doubt, the smallest linear dimension corresponds to the smallest value of diameter, length, width or height of the smallest diamond in a parcel, and the largest linear dimension corresponds to the largest value of diameter, length, width or height of the largest diamond in a parcel.

Diamonds which are smaller than the lowest size will jam inside the mechanism and those which exceed the largest size will not be automatically handled. In both cases, attempting to process diamonds outside of the stated size range will cause the AMS Device to malfunction and may cause damage to the AMS Device and/or the diamonds,

- 4.3. If the Customer uses the AMS2 for loose stones outside the stated size limits outlined in this Schedule, the stones may not be retrievable from the AMS2. It is also likely that loose stones below the stated minimum size may not be correctly contained within the AMS2.
- 4.4. At no time shall the Customer use the AMS2 to classify other precious gems or diamond simulants, or to detect treated stones (including, but not limited to, those treated by fracture filling, irradiation or heat-treatments), for which the AMS2 is not suitable.
- 4.5. The Customer shall only unpack, install, operate, maintain, and repair the AMS2 strictly in accordance with the instructions of the Supplier as laid out in the Operating Manual and this Agreement, or as may be communicated in writing to Customer from time to time.
- 4.6. The Customer shall ensure that the AMS2 unit is kept and operated in a suitable environment, which shall as a minimum: (i) have a relative humidity between 45% and 65% and an ambient temperature between 15 and 28 degrees Celsius, and (ii) and operating altitude no greater than 2000 metres, and (iii) comply with such other environmental requirements as are set out in this Schedule.
- 4.7. The Customer acknowledges that for the efficient operation of the AMS2, the Customer must comply with all written instructions for use of the AMS2 as laid out in the Operating Manual, this Agreement and as may be communicated in writing to Customer from time to time.
- 4.8. The Customer shall ensure that the AMS2 is used only for the purposes for which it is designed as specified in the Operating Manual and this Agreement.
- 4.9. The Customer shall take such steps necessary, including but not limited to the compliance with all safety and usage instructions provided by the Supplier as set out in the Operating Manual, to ensure that the AMS2 is at all times safe and without risk to the health of any person(s) at work when being unpacked, installed, operated, maintained and repaired (to the extent permitted by the Operating Manual and this Agreement).
- 4.10. The Customer shall make no alteration, modification or adjustment to the AMS2 or combine it with any other equipment or material and shall not remove any existing part of component(s) from a AMS2 (unless specifically authorised in writing by the Supplier).

- 4.11. The Customer shall not break open, dismantle or reverse engineer the AMS2 or remove any anti-tamper devices installed on a AMS2, unless in accordance with the written instructions of the Supplier, as may be provided from time to time.
- 4.12. The Customer shall not use the AMS2 for any unlawful purpose.
- 4.13. The Customer shall obtain, at its own cost, such licences, permits and consents in relation to the receipt, possession, handling and use of the AMS2 as are required from time to time and, if requested by the Supplier, the Customer shall make those licences, permits and consents available to the Supplier.

## **5. MAINTENANCE**

- 5.1. In the event that there is a Defect with the AMS2, to aid diagnosis and rectification, the Customer shall send an email to the Service Desk containing a description of the problem. If required, the Service Desk may ask the Customer to:
  - 5.1.1. forward a log file and/or other associated files created by that AMS2; and/or
  - 5.1.2. arrange for a member of the Customer's staff to liaise with the Service Desk by participating in a remote diagnostic session (and for the avoidance of doubt, this will require the computer associated with the AMS2 to be connected to the Internet).
- 5.2. The Customer shall ensure that the AMS2 is operated, maintained and repaired in accordance with the Operating Manual and this Agreement.
- 5.3. The Customer shall not, under any circumstance, allow any third party to maintain or attempt to maintain or repair the AMS2, unless otherwise agreed in advance by the Supplier in writing.
- 5.4. The Customer shall maintain, at its own expense, the AMS2 in good and substantial repair strictly in accordance with the Operating Manual and this Agreement.
- 5.5. The Customer shall ensure that when undertaking repair activity itself, that it only uses suitably qualified and competent staff of the Customer or a third party who has been approved in writing by the Supplier.

## **6. EXTENDED WARRANTY**

- 6.1. When a Customer elects to purchase the AMS2, the Supplier may give the Customer the option to purchase an extended warranty (such option may be set out in the relevant Quote/Purchase Order and the Supplier will notify the Customer in writing if the option is available) for a period of either two (2) or three (3) years, depending on the extended warranty product purchased, from either: (a) the date upon which a AMS2 is available for collection at the Collection Location; or (b) 14 days following the date of Shipment of a AMS2 (whichever is the earlier) (the "**Extended Warranty Period**"), in lieu of the standard one (1) year warranty period set out in Clause 5.1 of the Conditions. Any Extended Warranty Period purchased by the Customer shall be agreed (if available) in the Quote & Purchase Order for the AMS2, or shall be otherwise agreed in writing by the Supplier.
- 6.2. Where the Customer elects to purchase an Extended Warranty Period for the AMS2 pursuant to paragraph 7.1 above, the definition of "Warranty Period" in the Conditions shall be deemed amended accordingly to reflect the relevant Extended Warranty Period. All other terms and conditions of the Warranty, including the scope of coverage, exclusions, and remedies available under the Conditions, shall remain unchanged and continue to apply throughout the Extended Warranty Period.

END OF AGREEMENT