

CONDITIONS FOR PROVISION OF MELEE TESTING (FULL TESTING AND REFERRALS TESTING) SERVICES

1. DEFINITIONS AND INTERPRETATION

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

2. CONDITIONS, COMMENCEMENT AND DURATION

- 2.1 These Conditions govern the supply of the Services by IIDGR to the Customer.
- 2.2 The Customer may order Services by following the instructions set out on this website, and particularly by consulting the How To Guide: A link to this How To Guide is also available on the order form.
- 2.3 The completion by the Customer of the online order form and acceptance of these Conditions constitutes an offer by the Customer to purchase Services in accordance with these Conditions and is subject to acceptance by IIDGR.
- 2.4 Once the Customer has submitted details of its offer via the online order form, IIDGR will send the Customer an email confirming receipt of the order form information. The Customer acknowledges that such confirmation of receipt from IIDGR does not constitute acceptance by IIDGR of the Customer's order, but is confirmation that IIDGR has received the information submitted by the Customer.
- 2.5 The Customer's offer to purchase Services shall only be deemed to be accepted by IIDGR and a contract for the supply of the applicable Services shall only be entered into when IIDGR issues written acknowledgement to the Customer of receipt by IIDGR at the Facility of the Shipment sent by the Customer, at which point and on which date a contract between IIDGR and the Customer incorporating these Conditions shall come into existence, (each a "**Contract**").
- 2.6 Each Contract shall continue from the date on which IIDGR issues such written acknowledgement (unless it is terminated earlier in accordance with these Conditions) until IIDGR has received payment for the applicable Services in full and in cleared funds in accordance with clause 5 (Charges and Payment), (the "**Term**").
- 2.7 Each order placed with IIDGR using the online order form will, if accepted by IIDGR, constitute a separate Contract between the Customer and IIDGR incorporating these Conditions for the supply of the Services in respect of any single Shipment received by IIDGR.
- 2.8 The Customer acknowledges that IIDGR is under no obligation to accept any order placed by the Customer, whether under this website or otherwise.

3. SERVICES

- 3.1 Provided that the Customer complies with its obligations set out in these Conditions, including in particular clause 3.3.1, IIDGR shall use reasonable endeavours to provide the Services to the Customer materially in accordance with their description on this website at the following link:

3.2 The Customer acknowledges that:

- 3.2.1 the Services that IIDGR provides the Customer under each Contract will depend on the contents of the Lots that are provided to IIDGR by the Customer;
- 3.2.2 IIDGR reserves the right to vary the scope of the Services to the extent that any Lots provided by the Customer do not meet IIDGR's requirements;
- 3.2.3 IIDGR's invoices will be calculated (in accordance with clause 5.1) to reflect the content of the Lots provided by the Customer and the Services provided by IIDGR; and
- 3.2.4 any failure to comply with IIDGR's requirements, including in particular the instructions and requirements set out in the "How To Guide for IIDGR Melee Testing" shall be deemed to be a material breach of these Conditions giving IIDGR the right to terminate any Contract in accordance with clause 10.2.

3.3 The Customer:

- 3.3.1 shall accordingly comply with the instructions and requirements set out in the "How To Guide for IIDGR Melee Testing";
- 3.3.2 shall at all times during the Term comply with the Business Integrity Policy;
- 3.3.3 represents, warrants and undertakes that no diamond contained in any Lot provided to IIDGR under these Conditions shall be a Conflict Diamond;
- 3.3.4 shall ensure that the details of the online order form are completed and accurate;
- 3.3.5 shall co-operate with IIDGR in all matters relating to the Services;
- 3.3.6 shall provide IIDGR with such information and materials as IIDGR may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and
- 3.3.7 shall obtain and maintain all necessary licenses, permissions and consents which may be required before the date of commencement of the Services.

4. DELIVERY AND HANDLING OF STONES

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

5. CHARGES AND PAYMENT

- 5.1 In consideration of the provision of the Services, the Customer agrees to pay such charges as IIDGR may calculate by reference to the Melee Testing (Full Testing and Referral Testing) Services Price List (as published on this website from time to time) and the Services actually provided by IIDGR.

- 5.2 On completion of the Services, IIDGR shall invoice the Customer monthly in arrears.
- 5.3 The Customer shall pay each invoice submitted by IIDGR:
- 5.3.1 within 30 days of the date of the invoice; and
 - 5.3.2 in full and in cleared funds to a bank account nominated in writing by IIDGR.
- 5.4 All amounts payable by the Customer under these Conditions are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under these Conditions by IIDGR to the Customer, the Customer shall, on receipt of a valid VAT invoice from IIDGR, pay to IIDGR such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of such services.
- 5.5 The Customer acknowledges that time for payment shall be of the essence. If the Customer fails to make any payment due to IIDGR under these Conditions by the due date for payment, then the Customer shall pay interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.6 Without prejudice to clause 5.5, if the Customer fails to make any payment due to IIDGR under these Conditions within 60 days of its due date, IIDGR reserves the right to suspend the Customer's account and/or freeze the provision of any Services.
- 5.7 The Customer shall pay all amounts due under these Conditions in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). IIDGR may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by IIDGR to the Customer.

6. EXCLUSION OF WARRANTIES

- 6.1 IIDGR warrants that the Services shall be performed with reasonable skill and care.
- 6.2 Except as expressly and specifically provided in these Conditions:
- 6.2.1 the express provisions of this clause 6 are in place of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, (including but not limited to implied undertakings of satisfactory quality, conformity with description and reasonable fitness for purpose) all of which are hereby excluded to the maximum extent permitted by law; and
 - 6.2.2 the Services, the Reports and any other information provided by IIDGR are provided to the Customer on an "as is" basis.
- 6.3 Without prejudice to the generality of clause 6.2, the Customer acknowledges that the Services may not be error-free or accurate and that, as a result, the Services and any Report should not be relied upon as being error-free or accurate. The parties agree that IIDGR shall not be responsible for nor have any liability to the Customer in any circumstances whatsoever in respect of any inaccuracy in any Report and that such Reports are provided to the Customer for information only. The Report shall not form part of the Contract and shall not have any legal binding effect on the Customer or IIDGR.

7. INTELLECTUAL PROPERTY RIGHTS

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

8. CONFIDENTIALITY

8.1 The Customer undertakes that it shall not at any time disclose to any person technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by IIDGR, its employees, agents, consultants or sub-contractors or of any member of the group of companies to which IIDGR belongs and any other confidential information concerning IIDGR's business, services or products which the Customer may obtain (together "**Confidential Information**"), except as permitted by clause 8.2.

8.2 The Customer may disclose Confidential Information:

8.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Customer's obligations under these Conditions. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses Confidential Information comply with this clause 8; and

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

8.3 The Customer shall not use Confidential Information for any purpose other than to perform its obligations under these Conditions.

8.4 All materials, equipment and tools, drawings, specifications and data supplied by IIDGR to the Customer shall, at all times, be and remain the exclusive property of IIDGR, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to IIDGR, and shall not be disposed of or used other than in accordance with IIDGR's written instructions or authorisation.

9. LIABILITY

9.1 Nothing in these Conditions shall operate so as to exclude or limit the liability of either party to the other for:

9.1.1 fraud;

9.1.2 death or personal injury arising out of negligence;

9.1.3 any liability which cannot be excluded or limited by law; or

9.1.4 any liability arising under or pursuant to clause 8 (*Confidentiality*).

- 9.2 Subject to clause 9.1, IIDGR shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for any of the following types of loss:
- 9.2.1 any loss of profits, business, contracts, anticipated savings, goodwill, or revenue or any wasted expenditure (regardless of whether any of these types of loss or damage are direct, indirect or consequential); or
 - 9.2.2 any indirect or consequential loss or damage whatsoever,
- even if IIDGR was aware of the possibility that such loss or damage might be incurred by the Customer.
- 9.3 Without prejudice to any other provision, in the event that IIDGR is found to be liable to the Customer pursuant to or in connection with any Contract, then subject to clause 9.1 and 9.2, the total aggregate liability of IIDGR to the Customer under or in relation to any Contract, including liability for breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence) and breach of statutory duty shall not exceed:
- 9.3.1 in respect of any loss of or damage to any diamond or diamonds contained in an individual Lot of diamonds delivered to the Facility, an aggregate sum equal to the lower of (i) the polished wholesale price of the lost or damaged diamond or diamonds in that Lot; and (ii) \$10,000 (ten thousand US Dollars); and
 - 9.3.2 a sum equal to \$10,000 (ten thousand US Dollars) in aggregate in respect of any liability other than a liability of the type specified in clause 9.3.1.
- 9.4 This clause 9 shall survive and shall not be rendered ineffective by the termination or expiry of any Contract for any reason whatsoever.

10. TERMINATION

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

11. CONSEQUENCES OF TERMINATION

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

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

12. FORCE MAJEURE

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

13. TRANSFER OF THIS AGREEMENT

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

14. SUBCONTRACTING

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

15. NO PARTNERSHIP, AGENCY ETC

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

16. CONTACT DETAILS

The Customer may contact IIDGR by emailing testing@IIDGR.com or at the addresses set out below:

IIDGR

For the attention of:

Richard Giles
IIDGR (UK) Limited
17 Charterhouse Street
London
EC1N 6RA
United Kingdom

With a copy to:

Jonathan Kendall
IIDGR (UK) Limited
17 Charterhouse Street
London
EC1N 6RA
United Kingdom

17. THIRD PARTY RIGHTS

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

18. SEVERABILITY

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

19. ENTIRE AGREEMENT

19.1 These Conditions constitute the entire agreement between the parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings, understandings or collateral contracts of any nature made by the parties, whether oral or written, in relation to that subject matter.

19.2 Each party acknowledges that in entering into these Conditions it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings, misrepresentations or representations that were made by or on behalf of the other party in relation to the subject-matter of these Conditions at any time before any Contract is entered into (together, "**Pre-Contractual Statements**"), other than those that are set out expressly in these Conditions.

19.3 Each party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements but for clause 19.2.

19.4 Nothing in this clause 19 shall exclude or restrict the liability of either party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

20. WAIVER

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

21. GOVERNING LAW AND JURISDICTION

21.1 Any Contract and any disputes or claims arising out of or in connection with such Contract or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

21.2 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with any Contract, its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE DEFINITIONS AND INTERPRETATION

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

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 IIDGR does business, as amended from time to time and available at www.debeersgroup.com;

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

Confidential Information has the meaning given to it in clause 8.1;

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

Contract has the meaning given to it in clause 2.5;

Customer means a person registered on www.iidgr.com and authorised to issue orders to IIDGR for the provision of Services in accordance with clause 2 of these Conditions;

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

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

IIDGR means IIDGR (UK) Limited, a company incorporated in England and Wales under registration number 08597754, the registered office of which is at 17 Charterhouse Street, London, EC1N 6RA;

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

Lot means any lot of melee stones either: (a) detailed in the information submitted by the Customer via the online order form under clause 2.2; or (b) provided to IIDGR by the Customer in accordance with clause 3 (*Services*) and clause 4 (*Delivery and Handling of Stones*);

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

Shipment means any shipment of up to ten (10) Lots as provided to IIDGR by the Customer in accordance with clause 4 (*Delivery and Handling of Stones*);

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

Term has the meaning given in clause 2.

1. In these Conditions, “**company**” means any body corporate and “**subsidiary**” or “**holding company**” shall be construed in accordance with section 1159 of the Companies Act 2006.
2. In these Conditions, “**party**” means either IIDGR or the Customer (as applicable) and “**parties**” shall be construed accordingly.
3. The clause and Schedule headings are for convenience only and shall not affect the interpretation of these Conditions.
4. References to clauses are to clauses in the main body of these Conditions.
5. References to the singular include the plural and vice versa, and references to one gender include the other gender.
6. Any reference to persons includes natural persons, firms, partnerships, limited liability partnerships, companies, corporations, unincorporated associations (in each case whether or not having separate legal personality) and any agency of any of the above.
7. Any phrase introduced by the expressions “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
8. Any reference to a statute, statutory provision or subordinate legislation (“**legislation**”) (except where the context otherwise requires): (i) shall be deemed to include any bye-laws, licences, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation; and (ii) shall be construed as referring to any legislation which replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.