



ABN: 57 078 910 611

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## TERMS OF TRADE

The Customer (being the person identified as "The Customer" in the execution clause located on the last page of these Terms of Trade) requests Twinkle Diamonds Pty Ltd (ABN 57 078 910 611) of Level - 4, 250 Pitt Street Sydney NSW 2000 ("Twinkle Diamonds") to supply the Customer with goods ("Goods"). The Customer agrees that it will be bound by the following Terms of Trade for all transactions ("Orders") and dealings between the Customer and Twinkle Diamonds now and in the future. The Customer acknowledges receipt of the Twinkle Diamonds Terms of Trade.

1. **Application of Terms and Conditions.** To the fullest extent legally possible, all dealings between Twinkle Diamonds and the Customer are subject to the following Terms & Conditions of Trade ("these Terms") unless otherwise agreed in writing.
  2. **Placing an Order.**
    - 2.1. All Orders placed with Twinkle Diamonds must be in writing and in the manner required by Twinkle Diamonds (whether online, on a Twinkle Diamonds order form or as otherwise agreed).
    - 2.2. If the Customer has specific requirements for a particular Order, the Customer must provide Twinkle Diamonds with the details of such requirements in writing at the time of placing that Order, in the manner directed by Twinkle Diamonds, depending on the medium by which the Order is being placed, If the Customer wishes to advise of specific requirements by separate written correspondence, it must indicate this at the time of placing the Order (by advising that the Order is subject to certain requirements).
    - 2.3. Once Twinkle Diamonds receives an Order in its appropriate form, it will consider the Order details provided by the Customer to be confirmed and will process the Order on the presumption that all details noted on the Order are correct.
    - 2.4. If the Customer wishes to change any aspect of an Order it has placed, it must advise Twinkle Diamonds in writing. The Customer must notify Twinkle Diamonds of any changes it wishes to make in respect of an Order it has placed within 2 working days of placing the Order. Twinkle Diamonds will use its best endeavours to accommodate changes to Orders within the above stated time frame, but cannot be held liable if it is unable to do so.
    - 2.5. If Twinkle Diamonds cannot, or becomes aware that it cannot process or fulfil an Order placed by the Customer, it shall notify the Customer within 5 working days of reasonably becoming aware of its inability to process or fulfil that Order.
    - 2.6. Unless otherwise agreed, the Customer may not cancel an Order any later than 2 working days after the Order was originally confirmed in accordance with clause 2.3. If the Customer wishes to cancel an Order (or any part of an Order) within the above timeframe, it must do so in writing, specifying which aspects of the relevant Order are cancelled. The Customer must indemnify Twinkle Diamonds against any claim, loss or damage it may incur as a result of the Customer cancelling its Order, irrespective of whether the Order was cancelled within the nominated time frame or not.
  - 2.7. Twinkle Diamonds may, at its sole discretion, refuse to accept an Order placed by a Customer and will advise the Customer accordingly if it elects to do so.
- ### 3. Purchase Price and Payment
- 3.1. Unless Twinkle Diamonds and the Customer otherwise agree, Twinkle Diamonds will provide the Customer with a correctly rendered tax invoice setting out the total purchase price payable for each Order (the "purchase price") and applicable GST following acceptance of the Customer's Order.
  - 3.2. Unless otherwise stated in writing, the stated purchase price will be exclusive of Goods and Services Tax ("GST") and the Customer acknowledges and agrees that it is responsible for paying any GST applicable to an Order it places.
  - 3.3. Twinkle Diamonds may, in its sole discretion, require the Customer to pay a deposit for an Order. Twinkle shall determine the deposit payable in respect of an Order on a case by case basis. If Twinkle requires a deposit for an Order, Twinkle shall issue the Customer with a correctly rendered tax invoice for the deposit payable the Customer shall pay the deposit to Twinkle within two (2) working days of the date of the invoice.
  - 3.4. Unless otherwise agreed in writing, any Order that is endorsed or described as being "on applicable credit terms" must be paid in full, without any deduction or set off, in accordance with the credit terms applicable to the Customer and that particular Order, as determined by Twinkle Diamonds from time to time. (the "payment period").
  - 3.5. Unless otherwise agreed in writing, if an Order is not endorsed or described as being "on applicable credit terms", the Customer must pay for that Order in full, without any deduction or set off, within the timeframe stated on the invoice applicable to that Order. The Customer and Twinkle Diamonds agree that the time for payment is of the essence.
  - 3.6. If Twinkle Diamonds does not receive full payment of the purchase price within the payment period referred to in clause 3.4 or in accordance with clause 3.5:
    - 3.6.1. Any monies owing on account will immediately become due and payable;
    - 3.6.2. Twinkle Diamonds may defer or cancel any existing Orders; and
    - 3.6.3. the Customer will be liable to pay interest on any amount outstanding as at the expiry of the relevant payment periods at a rate of 2% per annum over the base rate quoted by the Commonwealth Bank in Sydney (\$100,000 plus overdrafts) compounding from the date payment becomes due until Twinkle Diamonds receives payment in full.
  - 3.7. Twinkle Diamonds is irrevocably authorised to allocate payment of any monies received from time to time from the Customer towards any outstanding account incurred by the Customer.

3.8 If the Customer wishes to make any payment to Twinkle Diamonds by credit card, the Customer must first complete in full in the manner required and return to Twinkle Diamonds the Credit Card Authorisation form Twinkle Diamonds may issue to the Customer. In order to properly complete and return the Credit Card Authorisation Form, the Customer must, at the time of returning the Credit Card Authorisation Form, provide Twinkle Diamonds with a copy of the signature panel on the credit card being used to make the relevant payment and a copy of both sides of the Customer's current and valid drivers licence. Twinkle Diamonds will not process the Credit Card Authorisation Form or release any Goods purchased until this process is properly completed. Any payments made by the Customer to Twinkle Diamonds by credit card may attract an additional fee of up to 3.5% of the total purchase price (or such other percentage as may be advised to the Customer by Twinkle Diamonds) in addition to the purchase price at Twinkle Diamonds' sole discretion.

3.9 If Twinkle Diamonds grants any credit facility to the Customer, Twinkle Diamonds can vary or withdraw such credit facility at its unfettered discretion, without liability to the Customer or any other party. If Twinkle Diamonds does withdraw or vary such credit facility it does not affect the credit terms which apply to any amounts the Customer owes Twinkle Diamonds at that time.

3.10 Twinkle Diamonds issues invoices on an "Errors and Omissions Excluded" basis. Twinkle Diamonds reserves the right to revise any invoice and/or stated purchase price issued to the Customer in respect of any Order placed by the Customer in the event of an error (on Twinkle Diamonds' part) in the calculation of the purchase price, delivery fee, GST or any other cost payable by the Customer.

3.11 Twinkle Diamonds reserves the right to revise stated prices without notice due to, amongst other things, changes in government duties and taxes, supplier changes in price, trading terms and exchange rates.

#### 4. Delivery

4.1 Twinkle Diamonds will use its best endeavours to deliver any Goods ordered by the Customer by the completion or delivery date(s) (as applicable) advised to the Customer, but cannot be held liable for any delay, failure or inability to deliver Goods ordered by the Customer.

4.2 If the Customer is having the Goods delivered, the ordinary purchase price of Goods ordered by the Customer will include the cost of delivery to a metropolitan area in Australia. If the Customer requires delivery outside the metropolitan area, additional delivery fees will be incurred. The Customer will be advised of the delivery fee applicable to their Order when placing their Order, before confirming their purchase.

4.3 If the Customer has any specific delivery requirements (including but not limited to requiring urgent delivery, delivery outside a stated metropolitan area, delivery to an address other than the Customer's stated delivery address, delivery outside of standard business hours or specific packaging or delivery requirements), the Customer must advise Twinkle Diamonds of such special delivery requirements at the time of placing their Order in the manner required by Twinkle Diamonds (depending on the medium in which they place their Order).

4.4 Depending on the Customer's special delivery requirements, the Customer may be required to pay additional delivery fees. The Customer will be advised of any additional fees payable in respect of its special delivery requirements (to the greatest extent possible) at the time of placing its Order.

4.5 If for any reason Twinkle Diamonds is unable to confirm the total amount of additional delivery fees that may be payable in respect of an Order at the time an Order is made, Twinkle Diamonds shall notify the Customer of the additional delivery fees as soon as reasonably practicable upon receiving the Order from the Customer, before processing the Order. The Customer agrees to take delivery of all Goods if Orders from Twinkle Diamonds at the time and on the date Twinkle Diamonds delivers Goods to the Customer.

#### 5. Return Policy

5.1 All Goods shall be inspected by Twinkle Diamonds before being delivered to the Customer. The Customer shall inspect all Goods it purchases from Twinkle Diamonds before finalising the purchase of such Goods. If, on or after receipt of the Goods, the Customer finds the Goods are damaged, faulty or not in accordance with the Order placed or the Customer otherwise wishes to make a warranty claim in accordance with clause 6 ("Returnable Goods") it must immediately notify Twinkle Diamonds.

5.2 If Twinkle Diamonds receives notice from the Customer in accordance with clause 5.1 and the grounds of fault, damage or incorrect delivery in respect of the Returnable Goods are reasonably acceptable to Twinkle Diamonds, Twinkle Diamonds shall, subject to clause 5.3 and at its sole discretion and at its own cost:

5.2.1 replace or repair the Returnable Goods;

5.2.2 refund or credit the purchase price paid for the Returnable Goods in the manner in which original payment was received from the Customer; or

5.2.3 substitute the Returnable Goods for equivalent goods (if applicable).

5.3 If Twinkle Diamonds receives notice from the Customer in accordance with clause 5.1, Twinkle Diamonds reserves the right to inspect and verify that the item(s) returned to Twinkle Diamonds are the Returnable Goods referred to in the notice issued in accordance with clause 5.1 before proceeding to provide the relief set out in clause 5.2. In conducting such verification, Twinkle Diamonds may:

5.3.1 verify the authenticity of the item(s) returned are the applicable Returnable Goods by an independent and duly registered valuer or another laboratory, such item(s) will also be certified by the appropriate laboratory;

5.3.2 if the item(s) returned are the Returnable Goods, verify that the item(s) returned have not been damaged, tampered with, used or been subject to any other activity or exposure that may have reduced their value; and

5.3.3 in the case of diamonds, verify that the sealed case in which the diamonds were originally delivered to the Customer (such sealed cases being provided by independently certified laboratories) has not been tampered with or broken.

5.4 All diamonds being returned must be accompanied by the original copy of the matching and/or identifying certificates. Twinkle Diamonds shall not accept the return of any item(s) that are not accompanied by these documents. Before dispatching any Returnable Goods (in accordance with the processes set out above), the Customer must obtain a "Return Merchandise Authorisation Code" ("RMA Code") from Twinkle Diamonds. Twinkle Diamonds shall not accept the return of any Goods before it has issued the Customer with an RMA Code for those Goods. The RMA Code must be clearly displayed on the packaging of any Goods being returned.

5.5 Twinkle Diamonds shall only accept items returned on the terms stated above. Twinkle Diamonds shall not accept the return of any Goods if the Customer simply changes its mind.

5.6 Twinkle Diamonds shall use its best endeavours to process any returned Goods it receives in accordance with the above provisions as quickly as possible but advises that it may take up to 6 working days to finalise the "return" process.

#### 6. Warranties

- 6.1. Without limiting clause 6.2, Twinkle Diamonds shall provide the Customer with a lifetime warranty on the workmanship of any Good(s) purchased and guarantees the quality and standard of any Good(s) purchased and the metals and stones used in any Good(s) purchased.
- 6.2. Any warranty offered by Twinkle Diamonds excludes any damage to the relevant Good due to fair wear and tear or negligent or inappropriate use of the relevant Good.
- 6.3. Any claims made by the Customer under this clause 6 shall be attended to by Twinkle Diamonds in accordance with the processes set out in clause 5.
- 6.4. The benefits conferred by any guarantees stated in these Terms of Trade are in addition to all other rights and remedies in respect of the product (or services) which the consumer has under the Trade Practices Act and other state and territory laws.

## 7. Acknowledgements and Limitation of Liability

- 7.1. The Customer agrees and acknowledges that:
  - 7.1.1. it will satisfy itself as to the fitness of the Goods for the purpose for which they are being purchased on a case by case basis; and
  - 7.1.2. it will rely on its own knowledge and expertise in electing to purchase any Good from Twinkle Diamonds.
- 7.2. Except as provided in these Terms and Conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of any Goods purchased from Twinkle Diamonds for any purpose are hereby expressly excluded and Twinkle Diamonds shall not be liable, to the extent allowed by law, for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply of such Goods whether by negligence or otherwise.
- 7.3. Statutory warranties that are implied under Division 2 Part V Trade Practices Act are not excluded if goods or services are of a kind ordinarily acquired for personal, domestic or household use. Twinkle Diamonds' liability for a breach of a condition or warranty implied by Division 2 of Part V of The Trade Practices Act 1974 in respect of goods not ordinarily acquired for personal, domestic or household use is limited to (at Twinkle Diamonds' election) either the replacement of the relevant Goods, the supply of equivalent goods, the repair of the relevant Goods, the payment of the cost of replacing the Goods or of acquiring equivalent goods or the payment of the costs of having the Goods repaired.

## 8. Passing of Title and Risk

- 8.1. All risk in Goods supplied by Twinkle Diamonds to the Customer passes to the Customer immediately upon the delivery of those Goods to the Customer (or elsewhere, at the Customer's direction).
- 8.2. Twinkle Diamonds and the Customer expressly agree that title in any Goods purchased will not pass to the Customer until Twinkle Diamonds receives full payment of the purchase price (and any interest applicable to the late payment of the purchase price).
- 8.3. If Twinkle Diamonds supplies Goods to the Customer before it receives full payment of the purchase price, the Customer:
  - 8.3.1. shall take custody of the Good only as the fiduciary agent and bailee of Twinkle Diamonds;
  - 8.3.2. shall have no right to bind Twinkle Diamonds to any liability to any third party by contract or otherwise; and
  - 8.3.3. agrees not to resell the Goods.

- 8.4. The Customer acknowledges and agrees that Twinkle Diamonds may, in its absolute discretion, lawfully and without notice to the Customer enter any premises occupied by the Customer or any other place where the Goods may be and retake possession of them.

## 9. Indemnities and Recovery of Costs

- 9.1. The Customer indemnifies Twinkle Diamonds against any claim or loss arising from or related to any dealing with Twinkle Diamonds, including any liability arising under the Trade Practices Act any other law or as a result of any default as described in clause 10 or otherwise. Nothing in these Terms will derogate from Twinkle Diamonds' right to maintain any action against the Customer for any part of any unpaid purchase price, for any monies owed to Twinkle Diamonds for any damages loss, liability or any other cause of action.
- 9.2. The Customer will pay all the costs & expenses (on a full indemnity basis) incurred by Twinkle Diamonds (or its solicitors, mercantile agents or other parties acting on Twinkle Diamonds' behalf) in respect of any proceedings instituted or being considered against the Customer whether for debt, loss, damages, possession of any Goods or otherwise.

## 10. Default

- 10.1. An event of default will occur in respect of these Terms and Conditions if:
  - 10.1.1. the Customer fails to provide Twinkle Diamonds with payment in full for Goods it purchases by the due date for payment noted on the invoice for those Goods;
  - 10.1.2. any distress or execution is levied upon the Customer or its property;
  - 10.1.3. the Customer, being a company:
    - 10.1.3.1. becomes unable to pay its debts as they fall due;
    - 10.1.3.2. offers to enter into any scheme of arrangement with its creditors;
    - 10.1.3.3. passes a resolution for its winding up;
    - 10.1.3.4. is the subject of a third party's application or petition to wind up the Customer; or
    - 10.1.3.5. has an administrator or receiver/manager appointed;
  - 10.1.4. the Customer, being a natural person, is declared bankrupt.
- 10.2. If an event of default occurs in respect of these Terms and Conditions, Twinkle Diamonds may, at its discretion, retain all monies paid, call-up any monies unpaid, cease further deliveries, recover from the Customer all loss of profits and take immediate possession of any Good held by the Customer, without prejudice to any other rights & without being liable to any party.
- 10.3. The Customer acknowledges and agrees not to commence or continue or permit to be commenced or continued through it any suit or action against Twinkle Diamonds whilst the Customer is in default of these Terms and Conditions.

## 11. Life Time Upgrade Policy

- 11.1. For the purposes of this clause, a "lifetime upgrade policy" is a policy available to the Customer in respect of all Round, Brilliant, and Princess cut diamonds that are graded and sold by Twinkle

Diamonds to the Customer as Ideal Cut, Excellent Cut and Very Good Cut.

11.2. If the "lifetime upgrade policy" applies to Goods the Customer purchases, the Customer may, at any time during the Customer's personal lifetime and on satisfaction of the criteria set out below, offer Twinkle Diamonds to "upgrade" the diamond(s) purchased from Twinkle Diamonds. In order to qualify for the "upgrade", the buy-back price offered to Twinkle Diamonds must be 10% less than the original purchase price paid for the Goods being upgraded (not including GST) and the upgraded item being purchased by the Customer must cost at least 20% more than the original purchase price of the Goods being upgraded.

11.3. Before the "lifetime upgrade policy" is offer is accepted by Twinkle Diamonds, Twinkle Diamonds must receive the original Goods purchased and:

11.3.1. verify the authenticity of the item(s) returned are the original Goods purchased by the Customer. Where the item(s) returned are or include diamonds that were previously certified by GIA or another laboratory, such item(s) must also be certified by the appropriate laboratory; along with laser inscription registry.

11.3.2. verify that the Goods returned have not been damaged, tampered with, used or been subject to any other activity or exposure that may have reduced their value.

11.4. All diamonds being upgraded must be accompanied by the original copy of the matching and/or identifying certificates. Twinkle Diamonds shall not accept a request for an upgrade for item(s) that are not accompanied by these documents.

11.5. Twinkle Diamonds shall use its best endeavours to administer the verification procedures as quickly as possible but advises that it may take up to 5 working days. Twinkle Diamonds will use its best endeavours to provide the Customer with the requested "upgraded" diamond(s) as quickly as possible, but shall not be held liable for any delays.

## 12. Tourist Refund Scheme

12.1 If the Customer is eligible for the Tourist Refund Scheme, the Customer may claim a refund of GST payable on a particular Order. The Customer can go to <http://www.customs.gov.au/site/page.cfm?u=4366> for further information regarding the Tourist Refund Scheme.

## 13. General

13.1. No other terms and conditions may be imposed on Twinkle Diamonds or the Customer unless agreed by both parties in writing. Any variation or cancellation of these Terms and Conditions must be agreed in writing.

13.2. These Terms and Conditions will apply to all transactions between Twinkle Diamonds and the Customer, to the exclusion of any Customer terms and conditions.

13.3. Any part of these Terms and Conditions may be severed without affecting any other part.

13.4. These Terms and Conditions are governed by the law of the state of New South Wales in the Commonwealth of Australia and the parties submit to the non-exclusive jurisdiction of the courts and tribunals of New South Wales or the Federal Court sitting in New South Wales, Australia.

13.5. If Twinkle Diamonds grants any credit facility or nominates any credit limit, this is an indication only of its intention at that time. Twinkle Diamonds can vary or withdraw any credit facility at its unfettered discretion, without liability to the Customer or any other party.

13.6. If Twinkle Diamonds elects not to exercise any of its rights in respect of any breach of these Terms and Condition, it shall not be a waiver of any rights relating to any subsequent or other breach.

13.7. Twinkle Diamonds will not be in default or in breach of any contract with the Customer as a result of Force Majeure. Force Majeure means anything or event beyond the reasonable control of Twinkle Diamonds and includes any strike or lock-out.

13.8. Twinkle Diamonds collects personal information about the Customer (including its employees servants and agents) to process and fulfil Orders made by the Customer. The Customer acknowledges a further primary purpose for collection of the Customer's personal and/or business information by Twinkle Diamonds is to enable Twinkle Diamonds to use the information to assist Twinkle Diamonds in improving goods and services and to contact the Customer in the future with information on special offers or provide the Customer with marketing materials via any medium including mail, telephone and commercial electronic messages. By becoming a customer of Twinkle Diamonds, the Customer agrees that the Promoter may use the Customer's personal and business information in this manner. The Customer can also gain access to, update or correct any personal or business information by contacting Twinkle Diamonds directly. Customers can also gain access to, update or correct any personal information by contacting Twinkle Diamonds at [admin@twinklediamonds.com.au](mailto:admin@twinklediamonds.com.au) (02) 9261 5005. All personal information will be stored at the office of Twinkle Diamonds. A copy of the Twinkle Diamonds Privacy Policy in relation to the treatment of personal information collected may be obtained by visiting the Twinkle Diamonds website at [www.twinklediamonds.com.au](http://www.twinklediamonds.com.au).

EXECUTED by Twinkle Diamonds and the Customer as an AGREEMENT.

Dated:

For **TWINKLE DIAMONDS PTY LIMITED (ABN 57 078 910 611)**

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name and position

For **THE CUSTOMER**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Name of Business and ABN (if applicable)

\_\_\_\_\_  
Current residential/business address (as applicable)



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## Credit Card Authorisation

I, \_\_\_\_\_ hereby authorise **Twinkle Diamonds Pty Ltd** to

debit my credit card for the amount of **Australian Dollars** (in words) \$

\_\_\_\_\_

on the (date) \_\_\_\_/\_\_\_\_/\_\_\_\_ for purchase of

Enquiry Number (dated) \_\_\_\_/\_\_\_\_/\_\_\_\_ Invoice Number (dated) \_\_\_\_/\_\_\_\_/\_\_\_\_

My Credit Card details are as follows: **VISA** [  ] **MASTERCARD** [  ] **AMEX** [  ]

Name (on Card) \_\_\_\_\_

Card Number \_\_\_\_\_

[  ] Visa / MasterCard 3 digit security code: \_\_\_\_\_ (Located at the back of the card)

[  ] Amex 4 digit security code \_\_\_\_\_ (Located at the front of the card)

Card Expiry Date \_\_\_\_/\_\_\_\_ Issuing Bank \_\_\_\_\_

**Signature** \_\_\_\_\_

Australian Drivers Licence \_\_\_\_\_ Licence Expires \_\_\_\_/\_\_\_\_/\_\_\_\_

**Card Members Billing Address** (This address is to be the same as appears on your Bank Statement)

Street Address: \_\_\_\_\_

Suburb \_\_\_\_\_ State \_\_\_\_\_ Post Code \_\_\_\_\_

Land Line Telephone No ( ) \_\_\_\_\_ Mobile No \_\_\_\_\_

**Please fax back to Twinkle Diamonds Pty Ltd on (02) 9264 2734, with a copy of signature side of credit card and driver's licence.**

This goes to a private and secure fax. To place a confirmed order all the above fields must be completed.  
 Thank you so much for shopping at Twinkle Diamonds Pty. Ltd.