

TERMS AND CONDITIONS OF TRADING

1. Interpretation

1.1 In these conditions:-

"Article" means [Any object or material submitted for testing, hallmarking, opinion or engraving]

"Assay Office" means [The Assay Office Scotland whose principal place of business is at Goldsmiths Hall, 24 Broughton Street, Edinburgh EH1 3RH]; and

"Consignor" means [any person who or on behalf of whom Articles are delivered, sent or consigned for receipt with the Assay Office].

2. Application of the Conditions

2.1 These Conditions apply in respect of all Articles received by or on behalf of the Assay Office from the Consignor (and without limitation shall prevail over any contrary terms of the Consignor) and no variation to these conditions shall be binding unless agreed in writing between the authorized representative of the Consignor and the Assay Office, save that the Assay Office may amend these conditions from time to time on giving at least four weeks prior written notice to the Consignor.

2.2 Any person consigning delivery or sending Articles to the Assay Office shall be deemed to have the required authority of any person having an interest in the Articles to so deliver, send or consign them and request the provision of services by the Assay Office in respect of them and to bind all such parties to these Conditions; the Consignor shall indemnify the Assay Office against any loss it may incur as a result of any want of authority on the part of the Consignor.

3. Submission of Articles

3.1 All parts of an Article must be submitted to the Assay Office and all metal parts are liable to sampling and marking.

3.2 The Assay Office shall incur no liability in respect of any damage caused to any Article in the reasonable exercise or (as the case may be) discharge of any of the powers and the duties conferred upon the Assay Office by the Hallmarking Act 1973, or by any other Statute for the time being in force.

3.3 Any precious or semi-precious stone attached to or forming part of any Article received by the Assay Office shall be at the sole risk of the Consignor and the Assay Office shall, in no circumstances, be liable for any loss of or damage to the same howsoever caused.

4. Terms of payment

4.1 The Consignor shall pay the price of the Articles (less any discount to which the Consignor is entitled, but without any other deduction) within the period as stated in the Assay Office's acceptance and where not otherwise clearly stipulated within 30 days of the date of the Assay Office's invoice, and the Assay Office shall be entitled to recover the price, notwithstanding that delivery may not have taken place (unless such non-delivery is the fault of the Assay Office). The time of payment of the price shall be of the essence. Receipts for payment will be issued only upon request.

4.2 If the Consignor fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Assay Office, the Assay Office shall be entitled to, in accordance with the terms of the Late Payment of Commercial Debts (Interest) Act 1998, charge the Customer interest (both before and after decree) on the amount unpaid on all of the Consignor's debts, at the rate of 4% per annum above Bank of Scotland base rate from time to time, until payment in full is made.

5. Delivery

5.1 Delivery of the Articles shall be made by the Consignor collecting the Articles at the Assay Office's premises at any time after the Assay Office has notified the Consignor that the Articles are ready for collection or, if some other place for delivery is agreed by the Assay Office, by the Assay Office delivering the Articles to that place.

5.2 Any dates quoted for delivery of the Articles are approximate only and the Assay Office shall not be liable for any delay in delivery however caused. Time for delivery shall not be of the essence unless previously agreed by the Assay Office in writing. The Articles may be delivered by the Assay Office in advance of the quoted delivery date upon giving reasonable notice to the Consignor.

6. Risk and property

6.1 Risk of damage to or loss of the Articles shall pass to the Consignor:

6.1.1 in the case of Articles to be delivered at the Assay Office's premises, at the time when the Assay Office notifies the Consignor that the Articles are available for collection; or

6.1.2 in the case of Articles to be delivered otherwise than at the Assay Office's premises, at the time of delivery or, if the Consignor wrongly fails to take delivery of the goods, the time when the Assay Office has tendered delivery of the goods.

6.2 Notwithstanding delivery and the passing of risk in the Article or Articles, the Assay Office shall have a special and general lien over any Article or Articles in its possession and may retain any Article or Articles received by it or on behalf of the Assay Office until payment of any charge due by the Consignor to the Assay Office is outstanding.

7. Warranties and liability

7.1 The Assay Office shall, in no circumstances, be under any liability to the Consignor in respect of any loss of or damage to the Article while the Article is in the course of carriage to or from the Assay Office unless such loss or damage is shown to have been directly caused by theft or other dishonesty on the part of the employees (but not independent contractors) of the Assay Office (unless otherwise agreed in writing).

7.2 Subject as aforesaid, the Assay Office accepts liability to the Consignor in respect of loss or damage to an article while in the actual custody of the Assay Office where such loss or damage is caused directly by the wilful default or negligence of the Assay Office or of its employees (but not independent contractors) whilst acting in the course of their employment by the Assay Office.

7.3 Notwithstanding anything herein contained any liability of the Assay Office shall be limited to the unwrought value by weight of the metal comprised in the Article. The Assay Office shall, in no circumstances, be liable for any consequential or other loss or damage resulting from loss of or damage to the Article.

7.4 Any claim by the Consignor which (a) is based on any defect in the quality or condition of the Articles or their failure to correspond with the specification or (b) arises from shortages or damages in transit shall (whether or not delivery is refused by the Consignor) be notified in writing to the Assay Office and (in the case of (b) above) the carrier within 14 days from the date of the invoice. Claims for non-delivery must be notified to the Assay Office and the carrier in writing within 14 days of being notified of despatch. If delivery is not refused, and the Consignor does not notify the Assay Office accordingly, the Consignor shall not be entitled to reject the Articles and the Assay Office shall have no liability for such defect or failure, and the Consignor shall be bound to pay the price as if the Articles had been delivered in accordance with the contract.

8. The Consignor

8.1 The Consignor shall be responsible for ensuring that each Article is insured for the full replacement value thereof under a Policy of Insurance against loss or damage by accident, fire and theft and against any risk not accepted by the Assay Office hereunder. In particular, the Consignor should ensure that such Policy extends to the Article while in the custody of the Assay Office, its employees and independent contractors and covers any additional value in excess of that referred to in Condition 7.3 above and any other consequential loss or damage resulting from loss of or damage to the Article.

8.2 Save where the Consignor does not make or hold himself out as making his contract with the Assay Office in the course of the business (as defined under the Unfair Contract Terms Act, 1977) the Consignor shall indemnify the Assay Office against all and any liability, costs or expenses in excess of the liability of the Assay Office to the Consignor hereunder, which shall or may be incurred by the Assay Office by reason of any claim, action or legal proceedings brought against the Assay Office or its employees by the owner of the Article or by any person having a legal or other interest in the Article whether such claim, action or legal proceedings arise from or as a result of negligence of the Assay Office, its employees or otherwise.

8.3 Every right, exemption, defence and immunity of whatsoever nature applicable to the Assay Office or to which the Assay Office is entitled hereunder shall also be available to and shall extend to protect every employee of the Assay Office in the course of or in connection with their employment and for the purpose hereof the Assay Office is or shall be deemed to be acting as Agent on behalf of and for the benefit of all persons who are or shall be its employees from time to time and all such persons shall to this extent be or be deemed to be parties to the Contract contained in these Conditions or of which these Conditions form part.

9. General

9.1 Nothing herein contained shall affect any right of compensation specifically conferred by any Statute for the time being in force.

9.2 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.

9.3 No waiver by the Assay Office of any breach of the Conditions by the Consignor shall be considered as a waiver of any subsequent breach of the same or any other provision.

9.4 The Conditions shall be governed by the laws of Scotland, and the Consignor agrees to submit to the non-exclusive jurisdiction of the Scottish courts.