

TERMS AND CONDITIONS

1. **General.** These terms apply to all Services requested by the Client identified on the front side hereof (“Client”) (including without limitation Inscriptions) and to all Articles (as such items are defined in the Client Agreement) delivered by Client to the facilities of the Gemological Institute of America, Inc. (“GIA”). These terms and conditions, along with the terms in Client’s Client Agreement with GIA, represent the sole understanding between GIA and Client regarding the subject matter hereof and thereof. Terms in the Client Agreement that are inconsistent with these terms and conditions will control over the terms and conditions herein. Client’s purchase orders are solely for the purpose of requesting specific Services, delivery dates, and shipping destinations. Any provision of Client’s purchase order (or other documents and communications) which is in any way inconsistent with or in addition to these terms or the terms in the Client Agreement shall not be binding on GIA and are hereby rejected by GIA.

2. **Price.** All prices published by GIA may be changed at any time without notice. All prices are exclusive of transportation, insurance costs and all taxes including use, sales, property (ad valorem) and similar taxes. Client agrees to pay all such transportation, insurance costs and such taxes.

3. **Invoice and Payment.** GIA will invoice Client for all Services and any applicable transportation and insurance costs. All invoices will be due and payable in full in U.S. dollars immediately upon receipt of GIA’s invoice, unless otherwise provided on the front side hereof. If payment is not received within thirty (30) days after the date of the invoice, a service charge of one and one-half percent (1-1/2%) per month or the maximum rate permitted by law, whichever is less, shall be assessed on overdue payments until paid in full. If, in GIA’s judgement, Client’s financial condition does not justify continuation of the provision of Services on the original terms of payment, GIA may require full or partial payment in advance. If Client refuses to accept such change in credit terms, Client’s order may, at GIA’s option, be canceled without liability arising therefrom to GIA, in whole or in part. Further, on delinquent accounts, GIA shall not be obligated to continue performance under any agreement with Client. If Client has its principal place of business outside the United States of America, GIA reserves the right to bill in either United States dollars or the currency where the Services are provided. In the event GIA invoices Client in a foreign currency, the rate of exchange will be that in effect on the date of invoice. In the event (i) of Client’s bankruptcy or insolvency, (ii) that any proceeding is brought or threatened against Client or brought by Client under any bankruptcy or insolvency laws or their equivalent or (iii) that Client commences to be wound up or suffers a receiver to be appointed, GIA may cancel any order for Services then outstanding without liability to GIA and GIA shall receive reimbursement from Client for costs incurred, including but not limited to attorneys’ fees, lost profit for Services so cancelled, and all other costs associated with the cancellation, direct and indirect.

4. **F.O.B.** Except as otherwise expressly provided in the Client Agreement, all Articles will be shipped F.O.B. GIA’s facility and the risk of loss or damage shall pass to Client upon tender by GIA of the Article to the carrier at GIA’s shipping point. All claims for damages must be filed directly with the carrier. The planned shipment date is an estimate only, and GIA will not be subject to liability for failure to ship on or before such date under any circumstances. Any carrier selected by GIA shall not be deemed an agent of GIA, GIA reserves the right to make partial shipments of Articles, and invoices will be issued accordingly. Client may not reject a delivery by reason of partial shipment.

5. **Force Majeure.** GIA shall not be liable for nonperformance or delays, under any circumstances, which occur due to any causes beyond its reasonable control, including without limitation, flood, fire, earthquake, other weather related events, acts of terrorism or government actions.

6. **No Licenses Granted.** The provision of Services by GIA does not convey any license, expressly or by implication, estoppel or otherwise, under any GIA patent, copyright, trademark,

or other intellectual property right. GIA expressly reserves all its rights under such intellectual property rights.

7. **Limitation of Liability.** GIA’s sole liability to Client and Client’s sole and exclusive remedy hereunder for any claim whether in contract, tort, negligence or otherwise shall be limited to a refund or credit to Client of the purchase price for the specific Services, or the re-performance of the specific Services, at GIA’s option. In no event shall GIA be liable for Client’s costs of procurement of substitute services or Client’s inability to obtain substitute services. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL GIA BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES INCLUDING WITHOUT LIMITATION LOST PROFITS, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT, NEGLIGENCE OR OTHERWISE EVEN IF GIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.**

8. **Indemnification by Client.** Client shall defend, indemnify, and hold harmless GIA, its directors, officers, employees and agents from and against any claims, demands, causes of action, liabilities, losses, costs, damages, and expenses (including attorneys’ fees and costs) for any personal or bodily injury, illness or death or property damage or any other claims, demands, allegations, damages, costs or liabilities arising out of or resulting in any way from Articles provided by Client to GIA.

9. **No Warranty.** ALL SERVICES AND REPORTS ARE PROVIDED “AS IS” AND WITHOUT WARRANTY. GIA SPECIFICALLY DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING DESIGN WARRANTIES, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT. CLIENT SHALL HAVE NO RIGHT TO MAKE OR PASS ON ANY WARRANTY ON BEHALF OF GIA TO ANY THIRD PARTY.

10. **Miscellaneous.** The validity, performance, and construction of these terms shall be governed by the laws of the jurisdiction set forth in the Client Agreement. The U.N. Convention on Contracts for the International Sale of Goods is specifically excluded from application. Client agrees to comply strictly and fully with all export controls imposed by any jurisdiction. Client further agrees that disputes arising under these terms and conditions shall be resolved by the courts or through arbitration as if such disputes arose under the Client Agreement. The governing law, forum selection and arbitration provisions set forth in the Client Agreement are hereby incorporated herein by this reference. The prevailing party in any such litigation or arbitration shall be entitled to recover reasonable attorneys’ fees and expenses. Client may not assign this agreement or any interest or right herein without GIA’s prior written consent. Any assignment without such consent shall be null and void. These terms may be amended or supplemented only by a writing that is signed by the authorized representatives of both parties. No term or provision of these terms will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party will constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party. If any part of these terms is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of these terms will remain in full force. Client hereby acknowledges that it has not entered into this agreement in reliance upon any warranty or representation by any person or entity. These terms shall not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing without GIA’s written consent. No representation, promise or condition not expressly provided in writing and signed by authorized representatives of Client and GIA shall be binding on either party.