

Except as otherwise agreed in writing, all transactions, quotations, tenders, offers to contract and contracts, whether written or oral, for the supply of the Products and/or services ("Products") by BYL Diamonds (Pty) Ltd t/a First Diamonds, shall be subject to these standard terms and conditions of sale. These terms and conditions are subject to the Consumer Protection Act 68 of 2008, as amended, ("CPA") and the National Credit Act 34 of 2005, as amended, ("Credit Act").

## 1. DEFINITIONS

- 1.1 "Affiliate" means any person, firm or corporation which is a subsidiary company, parent company or affiliate company of First Diamonds or the successor to First Diamonds by a merger or by a transfer of a substantial amount of First Diamonds' assets;
- 1.2 "Customer" means the person, natural or otherwise, who purchases the Products from First Diamonds under these terms and conditions;
- 1.3 "Days" means any day, other than a Saturday, Sunday or statutory public holiday in South Africa;
- 1.4 "First Diamonds" means BYL Diamonds (Pty) Ltd t/a First Diamonds with registration number 2015/145946/07 and business address at 5<sup>th</sup> Floor, 33 Bree Street, Cape Town, South Africa and is a jeweller that designs, manufactures and sells diamond and other precious stone jewellery;
- 1.5 "Products" means all items, including services, presently being sold or supplied by First Diamonds, including, but not limited to: diamonds, precious stones, jewellery and such other items as may be sold by First Diamonds from time to time;
- 1.6 "Purchase Price" means the nett purchase price excluding any withholding taxes which are for the account of the Customer plus VAT excluding any settlement discounts and as stated on the Quotation;
- 1.7 "Quotation" means the proforma invoice to which these standard terms and conditions of sale are attached reflecting the Purchase Price of the Products selected by the Customer;
- 1.8 "VAT" means Value Added Tax imposed in terms of the Value Added Tax Act, No. 89 of 1991, including any similar tax which may be imposed in place thereof from time to time;

## 2. PURCHASE AND SALE

- 2.1. The Customer buys the Products from First Diamonds in accordance with the Quotation and First Diamonds agrees to sell such Products in terms thereof.
- 2.2. To purchase Products from First Diamonds the Customer must be 18 years of age or older. If the Customer is under the age of 18 or otherwise cannot lawfully enter into a contract, the Customer must have his/her parent or guardian assent to these terms and conditions of sale on his/her behalf.
- 2.3. **The Quotation shall be binding on the Customer on his/her signature, which signature shall constitute acceptance of the Quotation.**

## 3. ORDERS

**First Diamonds reserves the right to reasonably decline any order and/or to suspend delivery and/or to decline to supply the Products to the Customer.**

## 4. PURCHASE PRICE AND PAYMENT

- 4.1. The Purchase Price reflected on the Quotation is valid for 30 (thirty) Days only, unless otherwise specified; oral quotations are valid only for the day they are given. The Purchase Price excludes charges for VAT, transport, insurance, exclusive of customs, excise, or other duties payable in respect of the Product.
- 4.2. The payment terms are as follows:
- 4.2.1. The terms of payment are strictly that payment is due the day the Quotation is accepted by the Customer as per clause 2.3 above, unless otherwise agreed to by First Diamonds in writing;
- 4.2.2. The Customer must provide proof of payment of the Purchase Price on the day the Quotation is accepted as per clause 2.3 above and payment should be reflected in First Diamonds' bank account within the normal length of time depending on the bank facilitating the payment, unless, otherwise agreed to by First Diamonds in writing.
- 4.3. **Subject to the Credit Act, all overdue accounts shall accrue interest at the rate of 2% (two per cent) per month, reckoned from the due date for payment, to the date of final payment.**

## 5. DELIVERY

- 5.1. Subject to the CPA, and although First Diamonds will endeavour to deliver the Products according to the Customer's requirements, First Diamonds will not be bound to such delivery requirements of the Customer and accordingly First Diamonds shall not be liable in any manner whatsoever for failure or delay in delivery in the event that delivery is required by the Customer.
- 5.2. Unless otherwise agreed in writing, the Customer shall accept delivery of the Products at the Customer's physical address specified in writing on the Quotation on the day First Diamonds delivers same or, alternatively if delivery is not required, the day the Customer purchases the Products from First Diamonds' premises located at 5<sup>th</sup> Floor, 33 Bree Street, Cape Town (the "Delivery Date").
- 5.3. First Diamonds shall at its discretion be entitled to effect and invoice for part deliveries, if applicable.
- 5.4. When effecting delivery at the Customer's premises, or such other premises as nominated by the Customer, the Customer shall be responsible for receiving, unloading and checking the Products in the presence of the First Diamonds representative making delivery.
- 5.5. Delivery of the Products at the place of delivery nominated by the Customer shall constitute good delivery. Any acknowledgement of receipt by the Customer or any authorised representative or employee, whether direct or indirect, in writing or otherwise shall serve to also confirm delivery.
- 5.6. If, on the instructions of the Customer, the Products are delivered to a carrier for delivery to the Customer, delivery to the Customer shall be deemed to have been duly effected on delivery to the carrier, who shall at all times be and remain the Customer's agent for purposes of these terms and conditions.
- 5.7. For purposes of this clause, "First Diamonds" shall include any Affiliate, agent or independent contractor who may effect delivery on behalf of First Diamonds.
- 5.8. **First Diamonds hereby reserves the right to charge a reasonable handling fee for the return of any Product due to any reason other than the fact that the Product failed, is defective, hazardous or unsafe as defined in the CPA.**

## 6. OWNERSHIP

- 6.1. Irrespective of the type of transaction, First Diamonds hereby reserves all rights to ownership of the Products until paid for in full by the Customer.

## 7. RISK

**On delivery of the Products to the Customer, the risk in and to the Products shall pass to the Customer, notwithstanding that ownership in the Products remain vested in First Diamonds.**

## 8. REFUNDS AND RETURNS

- 8.1. Please see refund and return policy located on the First Diamonds website at <https://www.firstdiamonds.co.za/wp-content/uploads/2020/04/REFUNDS-AND-RETURNS.pdf>

## 9. WARRANTY

- 9.1. **Subject to the CPA and clause 8.2 hereunder, First Diamonds makes no representations whatsoever and gives no guarantees against latent or patent defects in respect of the Products and all conditions and warranties whatsoever whether implied or otherwise are hereby expressly excluded.**
- 9.2. **Unless otherwise stated in writing, First Diamonds guarantees all parts and workmanship on the Products for a period of 6 (six) months from the original date of purchase reflected on the Quotation, provided that such guarantee expressly excludes the normal wear and tear of the Products and the parts comprising the Products; and/or any damage to or malfunctioning of the Products which is caused by any act or omission of the Customer. The Customer must retain and present his/her receipt as the original proof of purchase is the warranty. If a receipt is not available a credit card or bank statement will suffice. This will not affect the Customer's statutory rights in terms of the CPA. This guarantee is limited to the replacement or repair of the parts of the Products. First Diamonds does not warrant the Products are suitable for the purpose for which the Customer intends to use it.**
- 9.3. **The warranty in terms of clause 9.2 does not entitle the Customer to replacements or refunds for lost or stolen items. First Diamonds advises insurance cover on all valuable jewellery to its Customers. For the avoidance of doubt, general wear and tear, misuse and tarnishing are not covered under the warranty.**

## 10. INDEMNITY

**Without derogating from the generality of any of the provisions herein, and subject to the CPA, First Diamonds shall not at any time be liable for any damage, loss, injury or claims of whatsoever nature resulting from any misuse of the Products or any use which is not in accordance with the prescribed manner or purpose for which the Products were designed for direct or consequential loss or damage which may be sustained by the Customer or any third party in connection with the use of the Products and the Customer hereby indemnifies First Diamonds against all such claims. First Diamonds accepts no liability of any nature for any repurposed or reconditioned Products.**

## 11. PROPRIETARY RIGHTS

The Customer shall not do anything to infringe any rights owned or licensed by First Diamonds, including but not limited to, any form of intellectual property right in respect of the Products.

## 12. EXCHANGE RATE

- 12.1. In respect of any transaction where First Diamonds quotes in Rands and the exchange rate applies First Diamonds will be paid the Rand equivalent of the quoted price irrespective of the exchange rate ruling at the date of payment.

## 13. BREACH

- 13.1. **Should the Customer fail to make any payment to First Diamonds in terms of the Quotation or under any contract, commit any act of insolvency or be in breach of any of the provisions of these standard terms and conditions of sale and fail to remedy such breach within 7 (seven) Days after receiving a written demand that it be remedied from First Diamonds, First Diamonds shall be entitled, without prejudice to any alternative or additional right of action or remedy available to First Diamonds to cancel any contract with the Customer with immediate effect and all amounts outstanding will become immediately due and payable to First Diamonds.**

## 14. APPLICABLE LAW

- 14.1. All transactions shall be governed in all respects by, and shall be construed according to the laws of the Republic of South Africa.

## 15. DOMICILIUM

The Customer chooses its *domicilium citandi et executandi* as at the address as reflected on the Quotation.