I. General
1. The provisions of these general terms and conditions of sale (“GTC”) shall apply to all current and future offers and agreements for the delivery of goods or services by KGS DIAMOND HOLDING B.V. and by KGS Diamond Nederland B.V. (“KGS”) to or with a professional party, unless a different payment term has been agreed upon and referred to on an order confirmation shall constitute the entire agreement between KGS and Buyer.
2. The GTC shall also apply to any agreements with KGS for the performance of which the services of third parties are needed.
3. The GTC together with any amendments or special conditions, to be understood in line with the order or agreement, agreed upon and referred to on an order confirmation shall constitute the entire agreement between KGS and Buyer.

II. Offers and agreements
1. All offers made by KGS are without obligation and may be changed at any time, unless stated otherwise in writing by KGS. Orders placed by Buyer and the acceptance of our offer by Buyer are binding on Buyer.
2. Offers made by KGS in catalogues, sales literature and also – unless expressly stated as firm - on the website are without obligation on the part of KGS, i.e. they shall only be understood as an invitation to send an order.
3. A binding agreement with KGS enters into force when KGS has confirmed the order in writing within 8 days of receiving an order for the purchase of goods or services, or if KGS has dispatched the goods or services without a written confirmation. In the case of immediate execution of an order, the delivery note or invoice for the products shall also constitute an order confirmation. Any additions or amendments to the order are only binding on KGS if KGS has confirmed them in writing.
4. If the notice of acceptance deviates from the offer made, also in the event of aspects of minor importance, KGS shall not be bound by it until KGS has sent a revised confirmation of the order.
5. A composite quotation does not obligate KGS to supply part of the goods offered at a proportionate part of the price offered.
6. Offers shall not automatically be deemed to apply to follow-up orders.

III. Prices and costs
1. Prices on KGS’s price lists, offers and order confirmation are indicative and may be changed at any moment without prior notice unless a binding agreement has entered into force.
2. KGS may charge on price increases, also if they are due to foreseeable change in circumstances, if significant price increases occurred with regard to, among others, exchange rates, wages, raw materials, unfinished goods and packaging materials between the moment of offering and the performance of the Agreement.
3. The prices applied by KGS are exclusive of VAT and any other (governmental) levies as well as any costs to be incurred in connection with the Agreement, including shipping and administrative costs, unless explicitly stated otherwise in writing.

IV. Payment
1. Invoices of KGS are payable upon receipt thereof by Buyer. Payment will – without any deductions or offset – be made by Buyer in advance or, if indicated by KGS, within the terms of payment mentioned on the invoice. Invoice will be made in the way indicated by KGS and in the currency invoiced, unless KGS has explicitly agreed in writing to any delaying payment arrangements.
2. Any objection to the invoiced amounts shall not be deemed to suspend the payment obligation. KGS shall at all times be entitled to suspend the fulfillment of its obligations, also during the performance of an agreement, until the Buyer has at the request and to the satisfaction of KGS paid the invoiced amount or provided security for the fulfillment of its obligations under the Agreement. If payment is not made or security not provided within 10 working days following a request to that effect, KGS shall be entitled to rescind all pending payment agreements.
3. If the Buyer fails to effect payment within the indicated period of thirty days, or such period as may be agreed on in writing, the Buyer shall be deemed to be in default. The Buyer must then pay an interest rate in amount of one percentage point per month from the due date on, unless this amount to a lower interest rate than 8% per annum applies without regard to the base interest rate of the European Central Bank per year, in which case the latter interest rate applies. KGS reserves the right to claim damages for default beyond this amount.
4. In the event of no payment on the due date, a winding up, involuntary liquidation or bankruptcy, attachment or suspension of payment (in accordance with bankruptcy law) of the Buyer or another circumstance that may entail the inability of the Buyer to fulfill its payment obligations, any amount due to KGS shall be payable immediately.
5. KGS shall be entitled to use payments by the Buyer in the first place to be offset against the costs, subsequently to be offset against the interest due and finally to be offset against the principal. KGS may, without being deemed to be in default, reject an offer for payment if the Buyer applies a different allocation order. KGS is entitled to refuse full repayment of the principal, if the same is not accompanied by payment of interest fallen due and accrued interest as well as costs.

V. Performance of the Agreement
1. If and insofar as required for a proper performance of the Agreement, KGS shall be entitled to have work carried out by third parties.
2. The Buyer shall ensure that all information which KGS indicates is necessary or which the Buyer should reasonably understand is necessary for the Agreement are provided to KGS free of charge. Such information is not provided to KGS in a timely manner, KGS shall be entitled to suspend the performance of the Agreement until such information has been received and/or to charge the Buyer for the costs resulting from the delay according to the customary rates.
3. KGS shall not be liable for any damage caused by the fact that KGS relied on incorrect and/or incomplete information provided by the Buyer, unless the information was so obviously incorrect that KGS’s reliance thereon is considered negligent.
4. If it is agreed that the duties contained in the Agreement will be performed in phases, KGS may suspend parts of the Agreement belonging to the next phase until the Buyer has approved the results of the previous phase in writing.
5. If KGS or any third party engaged by KGS in the context of the order performs work at the Buyer’s location or at a location designated by the Buyer, the Buyer shall without charge provide such facilities as KGS or third party may reasonably require.
6. The Buyer shall indemnify KGS against any claim by any third party that, in connection with the performance of the Agreement, suffers a loss which is attributable to the Buyer.

VI. Delivery
1. Delivery shall take place ex factory/warehouse of KGS.
2. If delivery takes place on the basis of the “Incoterms”, the most recent version of the “Incoterms” available on the date of conclusion of the Agreement shall apply.
3. The Buyer shall take delivery of the goods when KGS delivers the same or has the same delivered to the Buyer or when the same are put at the Buyer’s disposal in accordance with the Agreement.
4. If the Buyer refuses to take delivery of goods or fails to provide information or instructions required for delivery thereof, KGS shall be entitled to store such goods for the Buyer’s account and risk. KGS shall then be entitled to demand payment from the Buyer as if delivery took place.
5. If KGS needs certain information to be provided by the Buyer in the context of the performance of the Agreement, the period of delivery shall commence only after the Buyer has put such information at the disposal of KGS.
6. Delivery dates confirmed by KGS shall be deemed to be provided by way of indication and only commit KGS to use its best endeavors to meet said dates. Delivery dates requested by Buyer are only deemed to be accepted if specifically confirmed in writing by KGS. The fact that a period of delivery is exceeded does not, however, entitle the Buyer to reject an offer for delivery.
7. KGS shall be entitled to deliver part of the goods, unless otherwise agreed on conclusion of the Agreement or unless such part delivery is not considered to be an independent delivery. KGS shall be entitled to invoice the goods thus delivered separately.

VII. Drawings, calculations, specifications, samples, models etc.
1. Any catalogue, illustration, drawing, statement of dimensions and weights, sample, model, etc. shown and provided to the Buyer is to be interpreted as an indication, shall not be understood as an invitation to send an offer for or another circumstance that may entail the inability of the Buyer to fulfill its payment obligations, any amount due to KGS shall be payable immediately.
2. KGS shall retain the ownership of any drawings, calculations, programmes, specifications, models, tools, etc. made or provided by KGS as well as of the information contained therein and of information regarding the manufacturing or construction methods for the goods, irrespective of whether any cost has been charged. The Buyer shall guarantee that such information, except when used for the performance of the Agreement, will not be copied, published or disclosed to and used by third parties, unless permitted in writing by KGS.

VIII. Inspection
1. On delivery, or at any rate within the smallest possible amount of time, the Buyer shall inspect the goods. If the quality and quantity of the goods delivered are as has been agreed on or at least comply with the requirements applying in normal commercial practice.
2. Buyer will give notice to KGS in writing of any visible defects or shortcomings within 5 working days after delivery. Buyer will notify KGS of hidden defects or shortcomings within 6 months after delivery. Failure to give such notice will be deemed a consent for the goods delivered.
3. If a notice of complaint is given in time as specified in the previous paragraph, the Buyer shall nevertheless continue to be obliged to take delivery of and effect payment for the goods purchased. If the Buyer wishes to return defective goods, the same shall take place subject to the prior written permission of KGS and in the way indicated by KGS.
General Terms and Conditions of Sale
of
KGS Nederland B.V.
KGS HOLDING B.V.
(trading under the name KGS INTERNATIONAL)

Issue date: June 2020

IX. Guarantee and Complaints
1. KGs guarantees that the goods that have been manufactured by KGs are in conformity with the customary requirements and standards and furthermore guarantees that they are free from any defects. This also applies to hidden defects that could not be observed immediately through examination or transfer testing, insofar as the Buyer notifies KGs within 10 days of discovery and proves that these defects surfaced within 6 months after delivery either exclusively or predominantly as a direct result of a fault in the construction by KGs, proof of which was submitted, use of inferior materials or improper fitting/installation by KGs. The costs of the inspection or transfer testing remains for the Buyer’s account, if no construction or material faults, improper fitting/installation or poor workmanship are found to exist. Complaints shall be addressed to the corporate or accounting departments of KGs. Complaints made to sales representatives are only considered to be received by KGs once KGs has sent written confirmation to Buyer. 2. The guarantee referred to under the first paragraph of this clause shall apply for a period of 6 months after delivery, or, if fitting/installation is carried out by KGs, for a period of 6 months commencing on the date of completion of fitting/installation by KGs. 3. Complaints on account of defects or incomplete deliveries shall be lodged in writing as soon as possible following detection thereof but, in any case, no later than 10 days after detection and no later than 5 working days after expiry of the guarantee period; if these periods are exceeded, any claim against KGs for such defects shall be deemed invalid. If the Buyer is unsatisfied with the service offered and wishes to start legal proceedings concerning the defect, Buyer undertakes to institute these within 1 year after giving timely notice of the defect to KGs. 4. If goods supplied do not comply with the provisions of these guarantees, KGs shall within a reasonable period after delivery or, if they cannot reasonably be returned, after written notification by the Buyer of the relevant defect, replace or repair such goods at the option of KGs. In the event of replacement, the Buyer undertakes to return to KGs the goods to be replaced and transfer the ownership thereof to KGs. The costs of the replacement, in particular transportation, labor and material costs shall be borne by KGs. If such costs exceed 50% of the value of the original order, KGs is entitled to refuse providing a replacement. 5. The aforementioned guarantee shall not apply if the defect is due to injudicious or improper use of or, without written permission by KGs, the Buyer or any third party made alterations to the good or, more in detail: a. non-compliance with operating and maintenance instructions or any use other than the normal use; b. normal wear; c. fitting/installation or repair by any third party, however, including the Buyer; d. the application of any national government regulation regarding the nature or quality of the materials used; e. used materials or items applied in consultation with the Buyer; f. materials or items which the Buyer provided to KGs for processing/incorporation; g. materials, items, working methods and constructions/structures, injuriously applied as explicitly instructed by the Buyer, and materials and items supplied by or on behalf of the Buyer; h. parts which KGs obtained from a third party, injurious as such third party has not submitted a guarantee to KGs. 6. Defects which are not covered by the guarantee are those that occur in or which are fully or partly due to: a. non-compliance with operating and maintenance instructions or any use other than the normal use; b. normal wear; c. fitting/installation or repair by any third party, however, including the Buyer; d. the application of any national government regulation regarding the nature or quality of the materials used; e. used materials or items applied in consultation with the Buyer; f. materials or items which the Buyer provided to KGs for processing/incorporation; g. materials, items, working methods and constructions/structures, injuriously applied as explicitly instructed by the Buyer, and materials and items supplied by or on behalf of the Buyer; h. parts which KGs obtained from a third party, injurious as such third party has not submitted a guarantee to KGs. 7. If the guarantee provided by KGs relatable to items manufactured by a third party, it shall be limited to the guarantee provided by the manufacturer. 8. If the Buyer fails to comply with any obligation arising from the Agreement concluded with KGs, if such obligation is connected therewith, in any way assists in fitting/installation or processing/composition or commingling of the goods under retention of title with other goods, KGs retains ownership rights, to be made on demand as soon as reasonably can be expected. 9. Failure by KGs to comply with any guarantee obligation, either fully or partly or not to release the Buyer from its obligations arising from any agreement concluded with KGs. X. Liability 1. If goods supplied by KGs are defective, KGs is only liable so far as it has made, and to the extent of, any guarantees as provided for in these terms and conditions under “Guarantee”. 2. KGs’s liability for a failure attributable to KGs or on the basis of any laws is, insofar as permitted by law, limited to repair of the defect, replacement of the defective items, performance of the duties under the Agreement or to refund the amount invoiced for the performance of the duties to which the liability relates. 3. Direct loss shall exclusively be understood to mean: - the costs incurred to establish incurred to establish the use and extent of the loss, insofar as relating to damage/loss within the meaning of these terms and conditions, - any reasonable costs incurred to cause the imperfect performance of KGs to comply with the duties under the Agreement, if the default or shortfall cannot be imputed to KGs, - any reasonable costs incurred to prevent or limit any damage/loss, insofar as the Buyer proves that such costs have resulted in limiting the direct damage/loss as referred to in these GTC. 4. KGs shall never be liable for: a. any indirect loss, including consequential loss, loss of profit, missed opportunities for savings, and loss due to delays; b. any loss due to guarantees or delivery periods stated by the Buyer or third parties; c. the effects of faults or shortcomings in designs, calculations, drawings, technical descriptions, technologies, goods, services, goods, etc. by third parties whose services, information or goods were used by KGs; d. any violation of patents, licences or any other rights of third parties due to the use of information provided by or on behalf of the Buyer; e. any damage or loss of raw materials, semi-finished products, models, tools, equipment and any other items made available by the Buyer. 5. If KGs in any way assists in fitting/installation or advises the Buyer, without this being written in the order or invoice, this shall be for the Buyer’s risk and KGs cannot be held liable. 6. The limitations of the liability for direct loss included in these terms and conditions shall not apply if such loss is due to gross negligence or intention of KGs or its employees. 7. Whenever KGs’s liability is excluded or limited, the same shall be the case for the personal liability of KGs’s staff, employees or personnel. XI. Changes in the Agreement 1. If during the performance of the Agreement it turns out that, for a proper performance, it is necessary that the work to be carried out is changed and/or supplemented, the Parties shall in good time and in mutual consultation change the Agreement accordingly. 2. If the Parties agree on the Agreement to be changed and/or supplemented, this may affect the time of completion of the performance of the Agreement. If so, KGs shall inform the Buyer thereof as soon as possible. 3. If such change and/or addition to the Agreement should have any consequences, financially or in terms of quality, KGs shall inform the Buyer thereof in advance. 4. If a fixed price has been agreed on, KGs will inform Buyer to what extent such change and/or addition to the Agreement will affect the agreed-upon price. 5. Unless provided otherwise in the Agreement or confirmed in writing by Buyer, KGs shall not be allowed to charge extra costs if such change and/or addition is the result of circumstances that can be attributed to KGs. XII. Retention of title 1. KGs retains the ownership of all goods delivered supplied to Buyer by KGs until all claims KGs has against the buyer arising out of this or other agreements have been settled, including future claims arising from simultaneously concluded contracts. 2. The Buyer may not pledge or otherwise encumber any goods subject to retention of title. 3. Any higher costs incurred by KGs for inspection on first demand thereto and to the extent such changes to the good exceed 50% of the value of the original order, KGs is entitled to refuse providing a replacement. 4. If goods supplied do not comply with the provisions of these guarantees, KGs shall within a reasonable period after delivery or, if they cannot reasonably be returned, after written notification by the Buyer of the relevant defect, replace or repair such goods at the option of KGs. In the event of replacement, the Buyer undertakes to return to KGs the goods to be replaced and transfer the ownership thereof to KGs. The costs of the replacement, in particular transportation, labor and material costs shall be borne by KGs. If such costs exceed 50% of the value of the original order, KGs is entitled to refuse providing a replacement. 5. The aforementioned guarantee shall not apply if the defect is due to injudicious or improper use of or, without written permission by KGs, the Buyer or any third party made alterations to the good or, more in detail: a. non-compliance with operating and maintenance instructions or any use other than the normal use; b. normal wear; c. fitting/installation or repair by any third party, however, including the Buyer; d. the application of any national government regulation regarding the nature or quality of the materials used; e. used materials or items applied in consultation with the Buyer; f. materials or items which the Buyer provided to KGs for processing/incorporation; g. materials, items, working methods and constructions/structures, injuriously applied as explicitly instructed by the Buyer, and materials and items supplied by or on behalf of the Buyer; h. parts which KGs obtained from a third party, injurious as such third party has not submitted a guarantee to KGs. 7. If the guarantee provided by KGs relatable to items manufactured by a third party, it shall be limited to the guarantee provided by the manufacturer. 8. If the Buyer fails to comply with any obligation arising from the Agreement concluded with KGs, if such obligation is connected therewith, in any way assists in fitting/installation or processing/composition or commingling of the goods under retention of title with other goods, KGs shall inform KGs thereof as soon as reasonably can be expected. 9. Failure by KGs to comply with any guarantee obligation, either fully or partly or not to release the Buyer from its obligations arising from any agreement concluded with KGs. XIII. Collection costs 1. If the Buyer fails to comply with any of its obligations, all reasonable extrajudicial costs incurred to obtain fulfillment thereof shall be for the Buyer’s account. If the Buyer fails to effect timely payment of an amount due, it shall be liable to forfeit an immediately payable penalty of 15% over the amount due, which, however, shall be at least EUR 100. 2. Any higher costs incurred by KGs which were reasonably necessary shall also qualify for compensation. 3. Any reasonable judicial costs and costs of execution incurred by KGs shall be borne by the Buyer. 4. The Buyer shall pay interest on the collection costs incurred. XIV. Suspension and dissolution 1. KGs shall be entitled to suspend the fulfillment of its obligations or dissolve the Agreement, if: - the Buyer fails to comply with its obligations under the Agreement, either fully or partly; - after conclusion of the Agreement, on account of circumstances that have come to KGs knowledge, there are good grounds to believe that the Buyer will not fulfill its obligations. If there are good grounds to believe that the Buyer will fail to fulfill its obligations properly or fully, suspension shall only be allowed insofar as justified by the relevant shortage. 2. If suspension of the Agreement, the Buyer was requested to provide security for the fulfillment of its obligations under the Agreement and if such security has not been provided or has proven to be insufficient. As soon as security has been provided, KGs’s authority to suspend its obligations shall be cancelled, unless the fulfillment by the Buyer of its obligations has been unreasonably delayed on account thereof.
2. KGS shall furthermore be entitled to dissolve the Agreement, if circumstances occur that renders performance of the Agreement impossible or on account of which performance can in reasonableness and fairness no longer be required, or if any other circumstances occur on account of which KGS cannot reasonably be expected to uphold or continue the Agreement unchanged.

3. Upon dissolution of the Agreement, any claim which KGS may have against the Buyer shall be immediately payable. If KGS suspends the fulfillment of its obligations, it will retain any claims it may have by law and under the Agreement.

4. KGS shall at any time be entitled to claim damages.

XV. Return of goods made available

1. If during the performance of the Agreement KGS puts items at the Buyer's disposal, the Buyer shall return such items in their original condition, free from defects within 14 days. If the Buyer fails to do so, any resulting costs shall be for the Buyer's account.

2. If the Buyer, for any reason, after having been duly warned, fails to comply with the obligation referred to in paragraph 1 of this clause, KGS shall be entitled to recover the resulting loss and costs, including the costs of replacement, from the Buyer.

XVI. Transfer of risk

1. The risk of damage to or loss of the goods subject to the Agreement shall in any case, subject to other provisions or agreements, pass to the Buyer when the goods are placed under the control of the Buyer or any third party to be designated by the Buyer.

XVII. Force majeure

1. The Parties shall not be bound to comply with an obligation arising from their agreement and/or from the GTC if they are prevented to do so due to no fault of their own and for which they cannot be held responsible under any law, legal act or according to generally accepted practice.

2. In these general terms and conditions, force majeure shall, in addition to that provided by law and case law, be understood to mean all external circumstances, whether foreseen or unforeseen, beyond the control of KGS, on account of which KGS is unable to fulfill its obligations and which shall at any rate be deemed to include: strikes, lockouts, fire, water damage, natural disasters or any other external contingency, or mobilization, war or threats of war, traffic impediments, transport from abroad, government measures or regulations and other factors causing serious disturbance of the business operations of KGS and/or its suppliers/manufacturers. Force majeure shall also be deemed to exist if, for any reason, the supplier from which KGS has bought goods to be resold, failed to deliver the same to KGS or failed to do so in time, or if the relevant agreement has for any reason been cancelled.

3. KGS will also be entitled to invoke force majeure, if the circumstance that renders the (further) performance impossible commences after KGS has fulfilled some of its obligations.

4. For as long as the impeding circumstances continue, the Parties may suspend compliance with their obligations under the Agreement. If this period lasts longer than three months, either Party shall be entitled to withdraw from the Agreement by confirming this in writing, without being obliged to pay damages to the other Party.

5. Insofar as KGS, on commencement of the force majeure, has performed or will be able to perform part of its duties under the Agreement, KGS will be entitled to invoice Buyer separately for the performance these obligations. The Buyer shall settle such invoice as if the price due had arisen from a separate agreement.

XVIII. Indemnification

1. The Buyer will indemnify KGS against any third-party claims regarding intellectual property rights to any materials or information provided by the Buyer used for the performance of the Agreement.

2. The Buyer guarantees that any information carriers, electronic files, software, etc. provided by it to KGS are free from viruses and harmful defects.

XIX. Intellectual property and copyrights

1. Without prejudice to any other provisions of these general terms and conditions, KGS expressly retains all the rights and powers that belong to it pursuant to intellectual property law. This should be interpreted in the broadest sense, to include but not be limited to patents, trademarks, trade names, word marks, devices, copyrights, drawings, models, designs, know-how and the KGS logo or slogans. Under no conditions are any Intellectual Property rights transferred to Buyer.

2. The Buyer may not make any alterations to the goods or otherwise bring them into the market as if Buyer were the manufacturer, unless otherwise agreed in writing.

3. Unless agreed otherwise, KGS shall retain the ownership of any designs, sketches, drawings, films, software and any other items or (electronic) files made by it in the context of the Agreement, irrespective of whether these were made available to the Buyer or any third party.

4. Any documents provided by KGS such as designs, sketches, drawings, films, software, (electronic) files, etc. are exclusively intended to be used by the Buyer and, unless following from a natural consequence of their nature, may not without prior permission by KGS be reproduced, published or disclosed to any third party.

5. KGS reserves the right to use any additional knowledge obtained on account of the performance of the work for other purposes, insofar as no confidential information is disclosed to any third party when doing so.

XX. Confidentiality

1. Both Parties shall observe secrecy with regard to any confidential information obtained from each other in the context of the Agreement or from other sources. Information shall be deemed confidential if indicated as such by a Party or resulting from its nature.