

## GENERAL TERMS AND CONDITIONS

of the Netherlands Jewellers and Watchmakers Industry (NJU - Nederlandse Juweliers- en Uurwerkenbranche) and the Association of Goldsmiths and Silversmiths (VGZ - Vereniging Goud- en Zilversmeden) (GM CZ/98, February 2010)

Dear reader,

To avoid misunderstandings, we use the General Terms and Conditions set out in this document. These arrangements have been specially drawn up for jewellers and goldsmiths, in collaboration with the Consumers' Association, among others.

The arrangements are part of the agreements we enter into with you. This way you are better protected in the event of unforeseen complaints or disputes. Although we shall make every effort to satisfy you, you may also rely on the independent Disputes Committee. In addition, there is a special performance guarantee provided by the industry. The exact terms and conditions are set out in this document.

These General Terms and Conditions are from 2011. In the meantime, consumer protection legislation has been amended in certain areas. For example, by way of derogation from the General Terms and Conditions, if you make a purchase through the website (so-called Distance Selling) you are entitled to a statutory reflection period of 14 days. The other terms and conditions continue to apply to our agreements.

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ARTICLE 1 - Definitions

In these General Terms and Conditions, the following terms are defined as stated below:

Consumer: The natural person who is not acting in the exercise of a profession or business and who enters into an Agreement relating to a Product.

Entrepreneur: The natural or legal person who as a member of NJU/VGZ makes an offer or enters into an Agreement relating to a Product

Agreement: Agreement between the Entrepreneur and the Consumer regarding a Purchase/Sale Contract, assignment and/or contracting of work.

Distance Agreement: An Agreement formed through a system organized by the Entrepreneur, in which only means of distance communication are used.

Product: Jewellery, articles of gold and silver, timepieces, precious stones and related articles, as well as the repair, design, manufacture and valuation of said goods.

ARTICLE 2 - Applicability

These General Terms and Conditions apply to every offer made and all Agreements entered into between the Entrepreneur and the Consumer.

GENERAL

ARTICLE 3 - The offer

1. The Entrepreneur's offer will preferably be made in writing or electronically and - if a period for acceptance has been stated - will be

effective during the period specified.

2. The offer shall at least include:
  - a. the description of the Product including any accessories
  - b. the price of the Product indicating whether the price is a fixed or non-fixed agreed price
  - c. the date of delivery and whether this date is a fixed or expected date of delivery

#### ARTICLE 4 - The price

1. The price to be paid by the Consumer is agreed in advance, unless the parties expressly agree otherwise. If a non-fixed price is agreed upon, the Entrepreneur shall indicate as accurately as possible the factors that determine the price.
2. If, within three months of the conclusion of the Agreement, but prior to delivery, a change occurs with respect to a price agreed upon as fixed this will have no bearing on the agreed price. The Consumer is entitled to terminate the Agreement if the price is increased three months after the conclusion of the Agreement, but prior to delivery.
3. The second paragraph does not apply to price changes arising from legislation.

#### ARTICLE 5 - The Agreement

1. The Agreement comes into effect on acceptance of the Entrepreneur's offer.
2. The Consumer's acceptance of the offer is valid only if this occurs within the stated period. As long as the receipt of an electronic acceptance has not been confirmed by the Entrepreneur, the Consumer may terminate the agreement.
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3. The Agreement should preferably be recorded in writing or electronically. A copy of a written Agreement must be provided to the Consumer. However, the absence of a written or electronically recorded Agreement does not invalidate this Agreement.

#### ARTICLE 6 - Payment

1. Payment is in cash upon delivery, unless otherwise agreed.
2. If payment in instalments has been agreed, the Consumer must pay according to the instalments and percentages as stated in the Agreement.
3. Upon purchase, the Entrepreneur shall have the right to require advance payment by the Consumer, with a maximum of 60 percent (60%) of the price.

#### ARTICLE 7 - Delivery and delivery date

1. Delivery occurs by putting the Product in the possession of the Consumer.
2. Delivery date is defined as the date agreed in the Agreement.

Parties may agree on a fixed or expected delivery date.

3. If the expected delivery date is exceeded, the Entrepreneur will still be given a certain period to deliver. This new delivery date is a

maximum of 50% of the expected delivery period, unless the Consumer cannot reasonably be held to this new delivery date or the parties agree otherwise (preferably in writing).

4. If this new delivery date or the fixed delivery date agreed is exceeded, the Consumer - while retaining his right to performance - shall have the right to terminate the Agreement and/or claim damages without notice of default or judicial intervention.

#### ARTICLE 8 - Retention of title and transfer of ownership

The Entrepreneur shall maintain ownership of the Product as long as the Consumer has not fully fulfilled his payment obligations, including what he may owe in connection with the failure to fulfil his obligations (in accordance with article 12 paragraph 2 of these General Terms and Conditions).

#### ARTICLE 9 - Conformity

1. The Entrepreneur guarantees that the Product delivered conforms to the Agreement (conformity). The Company furthermore warrants that the Product possesses such characteristics, bearing in mind all circumstances, as are required for normal use, as well as for any special use to the extent agreed.

2. The Entrepreneur guarantees that the work carried out by him complies with the Agreement and is carried out with good workmanship and with the use of sound material.

3. Minimal deviations with regard to design, sample and model cannot be held against the Entrepreneur.

#### ARTICLE 10 - Warranties

1. In the case of purchase/sale and production of jewellery, the Entrepreneur shall, for a period of six months, guarantee the absence of defects that become apparent after delivery. In the case of repairs, the Company warrants the absence of defects for a period of three months, unless otherwise agreed in writing, to the extent that they relate to the repaired/replaced parts. The Consumer is entitled to a free replacement of defective parts within a reasonable time. In addition, the Consumer is also entitled to free repair, compensation, price reduction and dissolution of the Agreement as conferred to by law.

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2. The Entrepreneur is not responsible for defects that have arisen after the delivery of the Products as a result of incompetent use or lack of due care on the part of the Consumer, or that are the result of changes made to the Product by the Consumer or third parties. Nor does the Entrepreneur assume any responsibility for any damage resulting from such defects.

3. The Consumer retains his statutory warranty rights in full, irrespective of what is stipulated in paragraphs 1 and 2 regarding the commercial guarantee issued by the Entrepreneur.

#### ARTICLE 11 - Non-performance of the Agreement

1. If one of the parties fails to fulfil an obligation under the Agreement, the other party may suspend the fulfilment of its related obligation. In the event of partial or improper performance, suspension is permitted only insofar as any shortcoming would justify such action.

2. The Entrepreneur has the right of retention if the Consumer fails to meet the obligation which is due unless such retention is not justified by the failure.

3. If one of the parties fails to comply with the Agreement, the other party shall be entitled to terminate the Agreement, unless the failure does not justify the dissolution in view of its minor significance.

#### ARTICLE 12 - Non-timely payment and establishment of security

1. The Consumer shall be in default from the expiry of the payment deadline. The Entrepreneur shall send a payment reminder after the expiry of said date and shall afford the Consumer the opportunity to pay within 14 days of receipt of this payment reminder.

2. If, after the expiry of the period stipulated in the payment reminder, payment has not been made, the Entrepreneur shall be entitled to charge the statutory interest as from the expiry of the payment date, as well as reasonable collection costs and the costs of insurance and storage of the relevant Product.

3. By issuing a Product to the Entrepreneur in the performance of an Agreement, the Consumer establishes a possessory pledge on this Product in favor of the Entrepreneur in order to provide the Entrepreneur with additional security for payment of all that is owed or to be owed by the Consumer to the Entrepreneur.

4. If the Consumer has not fully fulfilled his payment obligations with regard to the repair, maintenance, design or manufacture of a Product to the Entrepreneur within one year of expiry of the payment date, the Entrepreneur shall have the right to terminate the Agreement and to sell the pledged item in public, unless the Consumer has lodged a complaint as set out in Article 17, within the stated period. The Entrepreneur shall order the Consumer to pay,

a. if and insofar as the Consumer's address details are known, twice by registered letter (at intervals of at least three months) or

b. if and insofar as the Consumer's address details are not known or if the first registered letter has not reached the Consumer for any reason whatsoever, by means of an announcement in a national or regional newspaper and announce that the Product will be sold by public sale if he remains in default, after the expiry of the period referred to therein.

5. The public sale may be replaced by a private sale if the expected costs of a public sale will exceed the estimated proceeds of the Products. If the proceeds of the sale of the pledged Product exceed the claims of the Entrepreneur, the surplus shall be made available to the Consumer, where possible.

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#### ARTICLE 13 - Liability

1. The Entrepreneur is liable to the Consumer for damage resulting from a shortcoming attributable to or for the risk of the Entrepreneur, to persons employed by him or to persons appointed by him for the execution of the work assigned by the Consumer.

2. The amount for which the Entrepreneur is to be held liable by the Consumer for Products that he holds in his possession shall be limited to €12,500 per Product or as much more as covered by the liability insurance effected by the Entrepreneur, except in cases of intent, gross

negligence or the purchase of a Product.

3. The Entrepreneur reminds the Consumer of the Entrepreneur's limited liability in the event of repair and of the option of effecting supplementary insurance, unless it is clear that the value of the Product does not exceed the maximum amount of liability. The Consumer must inform the Entrepreneur as fully as possible about the specifications of the Product.
4. The Entrepreneur shall not be obliged to compensate the Consumer for any damage resulting from force majeure, such as, inter alia, damage resulting from a robbery, burglary, shoplifting or fire and/or where the Consumer's insurance of household effects and or the insurance of valuables cover the damage. Any further payments of non-life insurance to the Entrepreneur that relate to damage to a Consumer's Product will be paid to this Consumer by the Entrepreneur.
5. Emotional and/or immaterial damage shall never qualify for compensation.
6. The Consumer shall be liable to the Entrepreneur for damage caused by a shortcoming attributable to him.

#### DISTANCE AGREEMENT

##### ARTICLE 14 - Additional provisions to a Distance Agreement

1. Before the Distance Agreement is entered into, the Entrepreneur must provide the Consumer with the following information in a clear and comprehensible manner:
  - a. the identity and geographical address of the Entrepreneur;
  - b. the main characteristics of the Products;
  - c. the price, inclusive of VAT, of the Products;
  - d. any delivery costs;
  - e. the method of payment, delivery and execution;
  - f. whether or not the reflection period of 7 business days shall apply to the Distance Agreement;
  - g. the period for acceptance of the offer.
2. In addition to article 5 paragraph 2, the Consumer may terminate the Distance Agreement, as long as the receipt of an electronic acceptance has not been confirmed by the Entrepreneur.
3. The Entrepreneur has a maximum delivery period of 30 days, counting from the day following the day on which the Consumer has placed his order. If this term is exceeded, the Consumer shall have the right to terminate the Distance Agreement without further notice of default, unless the delay cannot be attributed to the Entrepreneur. The Consumer and the Entrepreneur may agree on a different period.
4. If the reflection period applies to this Distance Agreement, the Consumer shall have the right to terminate the Distance Agreement for a period of 7 business days without stating his reasons.
5. If the Products are not available, the Entrepreneur shall inform the Consumer as soon as possible and refund any (down) payment made

within 30 days, without prejudice to any rights to compensation.

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If the Consumer and the Entrepreneur have agreed that a Product of equal quality and price may be delivered, the costs of returning the Product shall be borne by the Entrepreneur. This shall only apply in the event that the Consumer exercises his right of termination during the reflection period. The Entrepreneur shall inform the Consumer thereof in a clear and comprehensible manner.

6. Upon performance and no later than upon delivery, the Entrepreneur shall provide the Consumer with the following information:

a. the details stated under a) to g) in paragraph 1 of this article;

b. in writing, the requirements for the exercise of the right to terminate the Distance Agreement and any associated financing during the reflection period of 7 business days, which shall in any case include:

I the starting date and duration of the reflection period that may be available to the Consumer;

II that in case the right of termination is exercised, the costs of return shipment and delivery costs shall be borne by the Consumer;

III the information about the termination of the loan contract if the Consumer finances the purchase price with a loan from the Entrepreneur or from a third party pursuant to an Agreement between the Entrepreneur and said third party;

IV the visiting address of the Entrepreneur's office;

V the details of any warranty and after-sales service;

VI the requirements for denunciation of the Agreement if the Agreement is of more than one year's duration or of indefinite duration.

7. If the Entrepreneur has failed to comply with his obligation to inform or has not provided data in the correct form, the maximum reflection period shall be 3 months and 7 business days. If the Entrepreneur still complies with the obligation to inform within these 3 months, the period of 7 business days will start the day after he has fulfilled this obligation.

8. Return shipping shall be at the expense and risk of the Consumer. The Entrepreneur may not charge any other costs in the event of termination of the Agreement.

#### REPAIR, MAINTENANCE, DESIGN AND MANUFACTURE

##### ARTICLE 15 - Additional provisions to repair, maintenance, design and manufacture

If there is an Agreement for repair, maintenance, design and manufacture of Products, the following shall apply:

The Consumer may require a statement of the target price of the work prior to or upon the conclusion of the Agreement, as well as of the period within which the work will be carried out. The price and period stated are guidelines, unless the Consumer and the Entrepreneur have agreed on a fixed price and/or period.

2. The Entrepreneur is responsible for recording the telephone number and address details of the Consumer.

3. The Entrepreneur shall contact the Consumer in order to discuss any additional costs if:

- a. the target price of a Product is higher than €100 and is exceeded or at risk of being exceeded by more than 10%, or
- b. the target price of a Product is less than €100 and is exceeded or at risk of being exceeded by more than €20.

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4. In such case, if this price increase occurs within three months of the conclusion of the Agreement, the Consumer shall be entitled to terminate the Agreement and shall compensate the Entrepreneur for the work already reasonably performed by him.

5. A detailed invoice of the work performed shall be issued upon request.

#### ARTICLE 16 - Intellectual property

The designs, drawings, calculations, descriptions, models and other supplied and relevant goods and services produced or provided by an Entrepreneur shall remain the intellectual property of the Entrepreneur and/or the designer. Reproduction or publication of the aforementioned goods and/or Products, without prior consent from the Entrepreneur, is not permitted.

#### COMPLAINTS AND DISPUTES

##### ARTICLE 17 - Complaints and mediation procedure

1. Complaints regarding performance of the Agreement must be submitted to the Entrepreneur in writing, fully and clearly described, in good time after the Consumer has discovered the defects. Failure to submit the complaint in good time may result in the Consumer losing his rights in this respect.
2. If the complaint handling by the Entrepreneur has not led to a satisfactory result for the Consumer, the Consumer may, at his discretion, submit his complaint to the Mediation Agency Bemiddelingsbureau Sieraden en Uurwerken, Postbus 904, 2270 AX Voorburg, the Netherlands Phone +31 (0)70 386 62 48 for a mediation attempt or submit his dispute to the Disputes Committee (see Article 18). If the complaint has been submitted to the Mediation Agency and the mediation attempt has not led to a satisfactory result for the Consumer, the Consumer may still submit his dispute to the Disputes Committee within 6 weeks of becoming apparent that the mediation attempt has not led to a solution.

##### ARTICLE 18 - Dispute settlement

1. Disputes between Consumer and Entrepreneur regarding the formation or performance of Agreements in relation to services and/or Products supplied or to be supplied by the Entrepreneur, may be submitted by both the Consumer and the Entrepreneur to the Disputes Committee Geschillencommissie Sieraden en Uurwerken, Bordewijklaan 46, Postbus 90600, 2509 LP The Hague, the Netherlands ([www.degeschillencommissie.nl](http://www.degeschillencommissie.nl)).
2. The Disputes Committee will consider a dispute only if the Consumer has first submitted his complaint to the Entrepreneur and subsequently possibly with the mediation agency. A dispute is deemed to have arisen if the Consumer's complaint has not been satisfactorily dealt with by the Entrepreneur and/or through the mediation attempt of the mediation agency Bemiddelingsbureau Sieraden en Uurwerken.
3. If no mediation occurs, the dispute must be submitted to the Disputes Committee no later than three months of its inception.
4. If the Consumer brings a dispute before the Disputes Committee, the Entrepreneur is bound to this decision. If the Entrepreneur wishes to



bring a dispute before the Disputes Committee, he must ask the Consumer to state within five weeks whether he agrees to the submission of the dispute. The Entrepreneur must also inform the Consumer that the Entrepreneur is free to submit the dispute to any court if the said period has lapsed.

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5. The Disputes Committee shall pronounce judgement with due observance of the provisions of the regulations it is subject to. The judgements of the Disputes Committee shall be affected pursuant to those regulations by way of a binding advice. A copy of the regulations is available on request. A fee is payable for the handling of a dispute.

6. Only the courts or the above-mentioned Disputes Committee is authorized to take cognizance of disputes.

#### ARTICLE 19A - Performance Guarantee NJU

1. The NJU guarantees that the Entrepreneur, a member of the NJU, complies with the binding advice within two months of its pronouncement, unless the Entrepreneur decides at that time to submit the binding advice to a competent court for review. The guarantee of the NJU revives if the binding advice has been upheld after a review by the court and the judgement that demonstrates this has become final.

2. The NJU pays the Consumer per binding advice a maximum amount of €10,000. In case of amounts exceeding €10,000 per binding advice, the maximum amount will be paid and the NJU shall offer the Consumer to transfer his claim in respect of the excess to the NJU. The NJU will then pursue payment of the claim in court on its own title.

3. The NJU does not provide any performance guarantee if, before the Consumer has met the intake requirements necessary for the handling of the dispute (payment of the complaint-filing fee, receipt of the completed and signed questionnaire and possible payment of deposit), one of the following situations occurs:

- the member has been granted a suspension of payments;
- the member has been declared bankrupt or insolvent;
- the member's business activities have effectively ceased. The date on which cessation of company operations is entered into the Trade Register is the determining factor, or an earlier date for which NJU can make a plausible case for demonstrating that business activities were effectively terminated.

#### ARTICLE 19B - Performance Guarantee VGZ

The members of the VGZ must, at the first request and to the satisfaction of the Foundation, provide a guarantee in the form of a sum of money in respect of each dispute to be handled, either by providing a bank guarantee in accordance with the Foundation's model or by paying the Foundation such an amount that, to the satisfaction of the Foundation, may serve as security for the performance of the Committee's judgement(s). In the event of failure to do so, the VGZ will, at the first request of the Foundation, proceed to terminate the Entrepreneur's membership of the VGZ with immediate effect. The handling of the dispute may be discontinued if the Entrepreneur fails to furnish a security for the performance of the judgements.

## FINAL PROVISIONS

### ARTICLE 20 - Derogation

Individual derogations from these General Terms and Conditions must be recorded in writing or electronically between the Entrepreneur and the Consumer.

### ARTICLE 21 - Amendment

The trade associations NJU/VGZ will amend these General Terms and Conditions in consultation with the Consumers' Association only.

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### ARTICLE 22 - Application by analogy to non-Consumers

1. All provisions contained in these General Terms and Conditions shall apply by analogy to natural and/or legal persons acting in the exercise of a profession or business and entering into an Agreement with the Entrepreneur relating to a Product, subject to articles 4 paragraphs 2, 17, 18 and 19.

2. The provisions contained in these General Terms and Conditions do not apply to business counterparties. A business counterparty is understood to mean a natural or legal person who, acting in the exercise of a profession or business, and in that capacity supplies and/or delivers Products to the Entrepreneur and/or purchases Products for the purpose of reselling and/or supplying (business to business).

These General Terms and Conditions of the NJU/VGZ have been drawn up in consultation with the Consumers' Association within the scope of the Self-Regulation Coordination Group of the Sociaal-Economische Raad (Social Economic Council) and enter into force on 1 January 2011.