

## Terms of Sale

### 1. Introduction

1.1 These terms and conditions shall govern the sale and purchase of products through our website.

1.2 You will be giving your express agreement to these terms and conditions when you place an order on our website.

1.3 This document does not affect any statutory rights you may have as a consumer (such as rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 or the Consumer Rights Act 2015).

### 2. Interpretation

2.1 In these terms and conditions:

(a) "we" means Smith & Co Enterprise Ltd t/as Vivian May; and

(b) "you" means our customer or prospective customer, and "us", "our" and "your" should be construed accordingly.

### 3. Order process

3.1 The advertising of products on our website constitutes an "invitation to treat" rather than a contractual offer.

3.2 No contract will come into force between you and us unless and until we accept your order in accordance with the procedure set out in this Section 3.

3.3 To enter into a contract through our website to purchase products from us, the following steps must be taken: you must add the products you wish to purchase to your shopping cart, and then proceed to the checkout; if you are a new customer, you will have the option to create an account with us and log in; if you are an existing customer, you must enter your login details; once you are logged in, you must select your preferred method of delivery and confirm your order and your consent to the terms of this document; you will be transferred to our payment service provider's website, and our payment service provider will handle your payment; we will then send you an initial acknowledgement; and once we have checked whether we are able to meet your order, we will either send you an order confirmation (at which point your order will become a binding contract) or we will confirm by email that we are unable to meet your order.

3.4 You will have the opportunity to identify and correct input errors prior to making your order by using the contact form on our website.

### 4. Products

4.1 We may periodically change the products available on our website, and we do not undertake to continue to supply any particular product or type of product.

### 5. Prices

5.1 Our prices are stated on our website.

5.2 We will from time to time change the prices stated on our website, but this will not affect contracts that have previously come into force.

5.3 All amounts stated in these terms and conditions or on our website are stated inclusive of VAT.

5.4 It is possible that prices on the website may be incorrectly quoted; accordingly, we will verify prices as part of our sale procedures so that the correct price will be notified to you before the contract comes into force.

5.5 In addition to the price of the products, you may have to pay a delivery charge, which will be notified to you before the contract of sale comes into force.

## 6. Payments

6.1 You must, during the checkout process, pay the prices of the products you order.

6.2 Payments may be made by any of the permitted methods specified on our website from time to time.

6.3 If you fail to pay to us any amount due under these terms and conditions in accordance with the provisions of these terms and conditions, then we may withhold the products ordered and/or by written notice to you at any time cancel the contract of sale for the products.

6.4 If you make an unjustified credit card, debit card or other charge-back then you will be liable to pay us, within 7 days following the date of our written request:

- (a) an amount equal to the amount of the charge-back;
- (b) all third party expenses incurred by us in relation to the charge-back (including charges made by our or your bank or payment processor or card issuer);
- (c) all our reasonable costs, losses and expenses incurred in recovering the amounts referred to in this Section 6.4 (including without limitation legal fees and debt collection fees), and for the avoidance of doubt, if you fail to recognise or fail to remember the source of an entry on your card statement or other financial statement, and make a charge-back as a result, this will constitute an unjustified charge-back for the purposes of this Section 6.4.

## 7. Deliveries

7.1 Our policies and procedures relating to the delivery of products are set out in our delivery policy <https://www.smith-co-jewellers.co.uk/delivery-policy>.

7.2 We will arrange for the products you purchase to be delivered to the delivery address you specify during the checkout process.

7.3 We will use reasonable endeavours to deliver your products on or before the date for delivery set out in the order confirmation or, if no date is set out in the order confirmation, within 7 days following the date of the order confirmation; however, we do not guarantee delivery by this date.

7.4 We do guarantee that unless there are exceptional circumstances all deliveries of products will be dispatched within 30 days following the later of receipt of payment and the date of the order confirmation.

7.5 We will only deliver products to addresses on the UK mainland.

## 8. Distance contracts: cancellation right

8.1 This Section 8 applies if and only if you offer to contract with us, or contract with us, as a consumer - that is, as an individual acting wholly or mainly outside your trade, business, craft or profession.

8.2 You may withdraw an offer to enter into a contract with us through our website or cancel a contract entered into with us through our website (without giving any reason for your withdrawal or cancellation) at any time within the period:

- (a) beginning upon the submission of your offer; and

(b) ending at the end of 30 days after the day on which the products come into your physical possession or the physical possession of a person identified by you to take possession of them (or, if the contract is for delivery of multiple products, lots or pieces of something, 30 days after the day on which the last of those products, lots or pieces comes into your physical possession or the physical possession of a person identified by you to take possession of them).

8.3 In order to withdraw an offer to contract or cancel a contract on the basis described in this Section 8, you must inform us of your decision to withdraw or cancel (as the case may be). You may inform us by means of any clear statement setting out the decision. In the case of cancellation, you may inform us using the cancellation form that we will make available to you. To meet the cancellation deadline, it is sufficient for you to send your communication concerning the exercise of the right to cancel before the cancellation period has expired.

8.4 If you cancel a contract on the basis described in this Section 8, you must send the products back to us to a returns address that will be communicated to you. You must comply with your obligations referred to in this Section 8 without undue delay and in any event not later than 14 days after the day on which you inform us of your decision to cancel the contract.

8.5 If you cancel an order in accordance with this Section 8, you will receive a full refund of the amount you paid to us in respect of the order including the costs of delivery to you if the goods were faulty, except:

- (a) if you chose a kind of delivery costing more than the least expensive kind of delivery that we offer, we reserve the right to retain the difference in cost between the kind of delivery you chose and the least expensive kind of delivery that we offer; and
- (b) as otherwise provided in this Section 8.

8.6 If the value of the products returned by you is diminished by any amount as a result of the handling of those products by you beyond what is necessary to establish the nature, characteristics and functioning of the products, we may recover that amount from you up to the contract price. We may recover that amount by deducting it from any refund due to you or require you to pay that amount direct to us. Handling which goes beyond the sort of handling that might reasonably be allowed in a shop will be "beyond what is necessary to establish the nature, characteristics and functioning of the products" for these purposes.

8.7 We will refund money using the same method used to make the payment, unless you have expressly agreed otherwise. In any case, you will not incur any fees as a result of the refund.

8.8 Unless we have offered to collect the products, we will process a refund due to you as a result of a cancellation on the basis described in this Section 8 within the period of 14 days after the day on which we receive the returned products or (if earlier) after the day on which you supply to us evidence of having sent the products back. If we have not sent the products to you at the time of withdrawal or cancellation or have offered to collect the products, we will process a refund due to you without undue delay and, in any case, within the period of 14 days after the day on which we are informed of the withdrawal or cancellation.

8.9 You will not have any right to cancel a contract as described in this Section 8 insofar as the contract relates to:

- (a) Personalised items
- (b) Pierced jewellery, earrings, nose studs. the supply of these goods which are not suitable for return due to health protection or hygiene reasons.

## 9. Warranties and representations

9.1 You warrant and represent to us that:

- (a) you are legally capable of entering into binding contracts;
- (b) you have full authority, power and capacity to agree to these terms and conditions;

- (c) all the information that you provide to us in connection with your order is true, accurate, complete and non-misleading; and
- (d) you will be able to take delivery of the products in accordance with these terms and conditions and our delivery policy.

9.2 We warrant to you that:

- (a) we have the right to sell the products that you buy;
- (b) the products we sell to you are sold free from any charge or encumbrance, except as specified in these terms and conditions;
- (c) you shall enjoy quiet possession of the products you buy, except as specified in these terms and conditions;
- (d) the products you buy will correspond to any description published on our website; and
- (e) the products you buy will be of satisfactory quality.

9.3 All of our warranties and representations relating to the supply of products are set out in these terms and conditions. To the maximum extent permitted by applicable law and subject to Section 10.1, all other warranties and representations are expressly excluded.

## 10. Limitations and exclusions of liability

10.1 Nothing in these terms and conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law, and, if you are a consumer, your statutory rights will not be excluded or limited by these terms and conditions, except to the extent permitted by law.

10.2 The limitations and exclusions of liability set out in this Section 10 and elsewhere in these terms and conditions:

- (a) are subject to Section 10.1; and
- (b) govern all liabilities arising under these terms and conditions or relating to the subject matter of these terms and conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these terms and conditions.

10.3 We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.

10.4 We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

10.5 You accept that we have an interest in limiting the personal liability of our officers and employees and, having regard to that interest, you acknowledge that we are a limited liability entity; you agree that you will not bring any claim personally against our officers or employees in respect of any losses you suffer in connection with the website or these terms and conditions (this will not, of course, limit or exclude the liability of the limited liability entity itself for the acts and omissions of our officers and employees).

## 11. Order cancellation

11.1 We may cancel a contract under these terms and conditions immediately, by giving you written notice of termination, if:

- (a) you fail to pay, on time and in full, any amount due to us under that contract; or
- (b) you commit any material breach of that contract.

11.2 You may cancel a contract under these terms and conditions immediately, by giving us written notice of termination, if we commit any material breach of that contract.

11.3 We may cancel a contract under these terms and conditions by written notice to you if we are prevented from fulfilling that contract by any event beyond our reasonable control, including without limitation any unavailability of raw materials, components or products, or any power failure, industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, riot, terrorist attack or war.

## 12. Consequences of order cancellation

12.1 If a contract under these terms and conditions is cancelled in accordance with Section 11:

(a) we will cease to have any obligation to deliver products which are undelivered at the date of cancellation;  
(b) you will continue to have an obligation where applicable to pay for products which have been delivered at the date of cancellation (without prejudice to any right we may have to recover the products)

## 13. Scope

13.1 These terms and conditions shall not constitute or effect any assignment or licence of any intellectual property rights.

13.2 These terms and conditions shall not govern the licensing of works (including software and literary works) comprised or stored in products.

13.3 These terms and conditions shall not govern the provision of any services by us or any third party in relation to the products (other than delivery services).

## 14. Variation

14.1 We may revise these terms and conditions from time to time by publishing a new version on our website.

14.2 A revision of these terms and conditions will apply to contracts entered into at any time following the time of the revision, but will not affect contracts made before the time of the revision.

## 15. Assignment

15.1 You hereby agree that we may assign, transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms and conditions - providing, if you are a consumer, that such action does not serve to reduce the guarantees benefiting you under these terms and conditions.

15.2 You may not without our prior written consent assign, transfer, sub-contract or otherwise deal with any of your rights and/or obligations under these terms and conditions.

## 16. No waivers

16.1 No breach of any provision of a contract under these terms and conditions will be waived except with the express written consent of the party not in breach.

16.2 No waiver of any breach of any provision of a contract under these terms and conditions shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of that contract.

## 17. Severability

17.1 If a provision of these terms and conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

17.2 If any unlawful and/or unenforceable provision of these terms and conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

## 18. Third party rights

18.1 A contract under these terms and conditions is for our benefit and your benefit, and is not intended to benefit or be enforceable by any third party.

18.2 The exercise of the parties' rights under a contract under these terms and conditions is not subject to the consent of any third party.

## 19. Entire agreement

19.1 Subject to Section 10.1, these terms and conditions, together with our delivery policy and our returns policy, shall constitute the entire agreement between you and us in relation to the sale and purchase of our products and shall supersede all previous agreements between you and us in relation to the sale and purchase of our products.

## 20. Law and jurisdiction

20.1 These terms and conditions shall be governed by and construed in accordance with English law.

20.2 Any disputes relating to these terms and conditions shall be subject to the exclusive & non-exclusive jurisdiction of the courts of England.

## 21. Statutory and regulatory disclosures

21.1 We will not file a copy of these terms and conditions specifically in relation to each user or customer and, if we update these terms and conditions, the version to which you originally agreed will no longer be available on our website. We recommend that you consider saving a copy of these terms and conditions for future reference.

21.2 These terms and conditions are available in the English language only.

21.3 Our VAT number is 329729858.

21.4 The website of the European Union's online dispute resolution platform is available at <http://ec.europa.eu/odr>. The online dispute resolution platform may be used for resolving disputes.

## 22. Our details

22.1 This website is owned and operated by smith & Co Enterprise Ltd t/as Vivian May

22.2 We are registered in England and Wales under registration number 11212129, and our registered office is at 19/21 Swan Street, West Malling, Kent, ME19 6JU.

22.3 Our principal place of business is 31 Queen Street, Bude, Cornwall, EX23 8AY

22.4 You can contact us:

(a) using our website contact form

(b) in writing to Vivian May, 31 Queen Street, Bude, Cornwall, EX23 8AY

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