

## De Beers Auction Sales Singapore PTE. Limited

### Terms and Conditions for Registered Buyers & Registered Sellers for Auction Sales

#### 1 Applicability

- 1.1 Unless otherwise expressly agreed, these terms and conditions and the schedules hereto (together referred to as the “**Terms and Conditions**” or “**T&Cs**”) shall apply to all contracts for the sale and purchase of Rough Diamonds and/or Polished Diamonds by DBGA (including on behalf of a Registered Seller).
- 1.2 These T&Cs apply to the following types of DBGA customers (as applicable to the relevant status): (i) a Registered Buyer, (ii) a Registered Seller, and (iii) Registered Traders. The T&Cs provide important information related specifically to our online Auction arrangements.
- 1.3 The T&Cs are intended to be supplemented by a Sales Confirmation which, together with the T&Cs comprise a contract referred to as the “**Auction Contract**”.
- 1.4 The Auction Rules, which will be notified by us to Registered Buyers and Registered Sellers before the commencement of any Auction, set out the process of how we will Auction Diamonds. The Auction Participation Pack, which will be notified by us to Registered Buyers before the commencement of an Auction, sets out the detail and content of an Auction and the Product and/or Lots to be Auctioned. All Registered Buyers and Registered Sellers should make themselves aware of the Auction Rules and the Participation Pack (as applicable) as implemented by us from time to time.
- 1.5 In the case of any conflict, discrepancy, inconsistency or ambiguity between the provisions of these T&Cs and a Sales Confirmation, the provisions of the Sales Confirmation will prevail. In particular, but without limitation, where a Sales Confirmation supplementing these T&Cs contains special conditions amending these T&Cs, the Auction Contract shall be deemed to incorporate the T&Cs as amended by the special conditions.
- 1.6 From time to time before, during or between any particular Auction, we may make amendments to any and/or all of the Auction Contract Documentation including the T&Cs and/or Auction Rules. We will provide as much written notice as is reasonably practicable regarding any such changes, including the effective date from which any amendments will be implemented. Notwithstanding the foregoing, we reserve the right, in our sole discretion, to amend any and/or all of the Auction Contract Documentation without notice as we see fit at any time to address any legal and/or regulatory requirements applicable to us.

#### 2 Definitions & Interpretation

- 2.1 The definitions and interpretative provisions set out in Schedule 1 shall apply to these T&Cs.
- 2.2 References in these T&Cs to a Registered Buyer or a Registered Seller shall also be deemed to apply to a Registered Trader (where applicable).

#### 3 Commencement

The T&Cs shall come into effect, in respect of a particular DBGA customer, from the date of acceptance by us of a Registered Buyer and/or a Registered Seller’s application and shall apply at all times such status is held with us, including participation at our Auctions.

#### 4 Registration

- 4.1 Only Registered Buyers shall have access to our Auctions and be eligible to place Bids and only Registered Sellers shall have access to our Services, as set out in Schedule 2 to these T&Cs, and be eligible to submit Auction Requests.
- 4.2 Any applicant that would like to (i) Bid on a Lot or Lots or Units within a Lot as a Registered Buyer at an Auction, or (ii) promote a Lot or Lots or Units within a Lot as a Registered Seller at an Auction or (iii) apply for both of the above as a Registered Trader must first submit an application by completing the procedures as set out on our Website including confirmation that an applicant will comply in full with the Auction Contract Documentation. Acceptance of an application by us for an applicant to become a Registered Buyer, a Registered Seller or a Registered Trader is at our sole and absolute discretion.
- 4.3 In respect of a Registered Seller applicant only, each Registered Seller acknowledges that it has independently of DBGA expressed an interest in utilising our Services including the promotion for sale of Diamonds through our Auctions.
- 4.4 An applicant shall be notified if an application to become a Registered Buyer, a Registered Seller or a Registered Trader is accepted, following which, a Registered Buyer will be provided with its account information, including if applicable, a reasonable number of individual user ID’s and passwords. We cannot guarantee that an application to become a Registered Buyer, a Registered Seller or a Registered Trader can be processed in time for any specific Auction and an applicant accepts that it may only participate once registration has been processed, approved and communicated by us.

**4.5** Neither ourselves, nor our management or employees shall register as a Registered Buyer and/or a Registered Seller, nor place any Bid of any kind on any Lot, Lots or Units within a Lot. Furthermore, we shall ensure that no De Beers Group company, their employees or management, shall do the same (save with the exception of De Beers Diamond Jewellers Limited).

**4.6** Registration shall be open at all times, though we reserve our right to not accept, suspend or cease accepting new applications for registration at our sole discretion including (but not limited to) where such acceptance, suspension or cessation is considered appropriate to manage our legal and/or commercial risk.

## **5 Participation and Access**

**5.1** It is expected that Registered Buyers shall actively participate in Auctions. If we consider that a Registered Buyer is not actively participating, including, but not limited to, not placing any Bid within a two year continuous period, we reserve the right to suspend or terminate Registered Buyer status with immediate effect with notice of such suspension or termination, as the case may be, provided as promptly as is reasonably practical.

**5.2** All Auctions are run through the Website and access to the Website is by individual user ID and password only. A user ID and password must be kept confidential at all times and a Registered Buyer and Registered Seller shall be responsible for ensuring that effective security measures are in place to protect access to this information.

**5.3** A Registered Buyer acknowledges that all Bids submitted through its user ID and password shall be treated by us as having the full authority and consent of a Registered Buyer and will be treated by us as binding. We accept no responsibility if a user ID and/or password is used by any person not authorised by a Registered Buyer to do so or for the security or confidentiality of a user ID and/or password.

## **6 Products Auctioned**

**6.1** We will determine, in our sole and absolute discretion, the type, quantity and format of Diamonds to be offered for sale at an Auction. Subject to a Registered Buyer noting an interest to us and/or its historic interest in a particular Lot or Lots or Units within a Lot, we may notify a Registered Buyer via the Website and/or e-mail of Product which we intend to offer for sale to Registered Buyers in accordance with the applicable Auction Participation Pack. For the avoidance of doubt, an Auction of a Registered Seller Product on behalf of a Registered Seller will be clearly identified as such to a Registered Buyer and where possible, the Auction shall take place on

different dates and/or times from Auctions of a DBGA Product.

**6.2** Without prejudice to Clause 18.4, we shall be under no obligation at any time to offer any Lot or Lots or Units within a Lot for Auction and shall be entitled upon written notice to a Registered Buyer (and a Registered Seller, if any Lot or Lots or Units within a Lot for Auction includes a Registered Seller Product), to cancel any Auction, reschedule an Auction, withdraw any Lot or Units within a Lot from Auction or change the Lot or Units within a Lot available at Auction at any time in our sole discretion and without liability. Subject to the preceding sentence, we shall take reasonable steps not to cancel any Auction or withdraw any Lot or Lots or Units within a Lot from Auction that has commenced pursuant to this Clause 6.2.

**6.3** We offer no assurance and/or guarantee that the Product offered at Auction is fit for purpose for inclusion in any specific diamond jewellery manufacturer and/or retailer marketing programme. It is the sole responsibility of a Registered Buyer to undertake its own due diligence prior to submitting a Bid, including viewing the Product pursuant to Clause 8 below and to ensure the Product offered at Auction is suitable for its own requirements.

## **7 Auction Requests**

**7.1** Subject to the on-going compliance with the De Beers Group Auctions' Diamond Trading Standard, the Statement of Compliance, Integrity and Probity, and our acceptance of an Auction Request, a Registered Seller agrees to appoint us as its agent to offer a Registered Seller Product to Registered Buyers on its behalf through our Auctions. Further and as applicable, a Registered Seller grants us authority to enter into an Auction Contract with a Winner subject to these T&Cs.

**7.2** We will determine, in our sole and absolute discretion, the type, quantity and quality of Diamonds for which we are inviting Auction Requests. We will notify a Registered Seller in advance of the type, quantity, quality of Diamonds and the schedule of future Auctions open to Registered Sellers in which we will promote such Diamonds to Registered Buyers in accordance with the applicable Auction Rules.

**7.3** In accordance with Clause 7.2, a Registered Seller can submit through its account manager, an Auction Request in a format notified by us from time to time. An Auction Request should include a description of the Registered Seller Product, all relevant supporting documentation including a signed Auction Request Statement of Confirmation, a Registered Seller Product Estimated Value and the preferred Viewing Locations (all of which must be in accordance with local legal and regulatory

requirements, as applicable, including pursuant to Clause 29 of these T&Cs). If necessary, we reserve the right to request a Registered Seller to submit additional information required by us prior to an Auction in addition to that submitted under this Clause 7.3.

- 7.4** On receiving an Auction Request, including all relevant supporting documentation as requested by us, including planning files, a Registered Seller shall arrange at its cost for the Registered Seller Product to be shipped to us in Singapore (or any other such location as notified by us from time to time).
- 7.5** In the event we accept an Auction Request, we will notify a Registered Seller of the same. A Registered Seller may thereafter set a Reserve Price by communicating this solely to the Auction Provider and our DBGA third-party polished representative (as notified to a Registered Seller from time to time) and in accordance with Clause 19.3.8. In the event a Registered Seller elects not to set a Reserve Price, DBGA reserves its right to Auction the relevant Registered Seller Product with a minimum value at or above the Registered Seller Product Estimated Value set by a Registered Seller, save where a Registered Seller informs DBGA in writing that no minimum value shall be attributed to the relevant Registered Seller Product.
- 7.6** On receipt of an individual Unit of Registered Seller Product of 2.5 (two and a half) carats and above or Registered Seller Product of fancy colour of any size (or such other characteristics as notified by us from time to time), we will undertake an inspection of the Unit and/or Registered Seller Product and for Polished Diamonds we will compile a report for the purposes of identifying any visible surface damage (the "**Condition Report**"). We will share the Condition Report with a Registered Seller following our inspection for its independent review and acceptance. Failure by a Registered Seller to counter sign and return a Condition Report in full will result in us automatically declining an Auction Request and therefore the relevant Unit and/or Registered Seller Product will not be presented by us for Auction. It is further a requirement that Units of Registered Seller Product of 2.5 (two and a half) carats and above or fancy colour Registered Seller Product of any size (or such other characteristics as notified by us from time to time) shall be screened by us or IIDGR prior to being presented for Auction, the process and cost of which will be borne by us.
- 7.7** We reserve the right to refuse to accept an Auction Request at our absolute discretion and without explanation to a Registered Seller. In the event an Auction Request is not accepted per this Clause 7, the Lot or Lots or Units within a Lot will be returned to a Registered Seller within a reasonable period of

time at the Registered Seller's cost and no Service Fee will be payable.

- 7.8** A Registered Seller may only withdraw an Auction Request up to the time a Registered Seller has shipped the Registered Seller Product to us. Following shipment, a Registered Seller will not be able to withdraw an Auction Request and as such the component Lot or Lots or Units within a Lot for Auction by us, save in exceptional circumstances, at the sole discretion of DBGA and subject to the payment of a Service Fee. In the event a Registered Seller withdraws a Lot and/or Units within a Lot prior to an Auction with our consent, we will return the Lot and/or Units within a Lot to a Registered Seller within a reasonable period of time by means of an Approved Carrier.

## **8 Auction Viewings**

- 8.1** We will make available viewing opportunities at Viewing Locations for Registered Buyers on reasonable notice and availability.
- 8.2** A Registered Buyer may view a Lot or Lots or Units within a Lot or a sample Lot in person prior to the Auction and only by arranging an appointment with us. We shall advise when, where and for how long a viewing slot will be at a specific Viewing Location. A Registered Buyer acknowledges that demand for viewing appointments may exceed availability at any given point in time. Accordingly, we reserve the right to allocate such appointments in consideration of a Registered Buyers' interest in purchasing the Product(s) in question, which interest may be demonstrated through (amongst other things) the extent of their participation in recent Auctions for the same Product(s). We further reserve the right to use such criteria, methodologies and mechanisms as we see fit to determine such interest and/or participation levels. We will use reasonable endeavours to make available a reasonable proportion of available viewing appointments to other Registered Buyers for the Product(s) in question, but are under no obligation to do so.
- 8.3** A Registered Buyer agrees not to bring any Diamonds into a viewing room while viewing any Lot or Lots or Units within a Lot or a sample Lot. During a viewing, we reserve the right to monitor a Registered Buyer with video surveillance.
- 8.4** If a Registered Buyer chooses not to view a Lot or Lots or Units within a Lot or a sample Lot prior to bidding at Auction for whatever reason, a Registered Buyer will still be bound to buy the Lot or Lots or Units within a Lot if it is a Winner in relation to that Lot or Lots or Units within a Lot.
- 8.5** A Registered Seller acknowledges that demand for viewing opportunities for a specific Auction may exceed availability, however, we will use

reasonable endeavours to make available a reasonable proportion of a Registered Seller Product at a Viewing Location, but are under no obligation to do so.

## **9 Auction Bidding**

- 9.1** Each Lot or Lots or Units within a Lot shall be Auctioned by us in accordance with its corresponding Auction Rules and Auction Participation Pack. A Registered Buyer may bid for all or some Units comprised in a Lot. We reserve the right at our discretion to accept or refuse Bids in accordance with the Auction Rules.
- 9.2** Registered Buyers may only place Bids following the commencement of the relevant Auction.
- 9.3** All Bids must be made:
- 9.3.1** in respect of a Spot Auction and a Fixed Price Forward Contract Bid, in United States dollars, exclusive of any and all (i) applicable value added, withholding or other sales or similar, tax, (ii) transport, delivery and insurance charges, (iii) customs, export or import duties or levies, and (iv) banking/financing fees, for each of which a Registered Buyer shall be additionally and solely liable; and
- 9.3.2** in respect of a Floating Price Forward Contract Bid, as a percentage above or below a future Spot Price at a specified future Spot Auction, exclusive of any and all (i) applicable value added, withholding or other sales or similar, tax, (ii) transport, delivery and insurance charges, (iii) customs, export or import duties or levies, and (iv) banking/financing fees, for each of which a Registered Buyer shall be additionally and solely liable.
- 9.4** A Registered Buyer acknowledges that in submitting a Bid or Bids, details of the Bid or Bids may be disclosed to other Registered Buyers actively engaged in the Auction but that the identity of each Registered Buyer shall not be disclosed and shall remain confidential.
- 9.5** A Registered Buyer's Bid or Bids will be treated by us as a binding offer to purchase a Lot or Lots or Units within a Lot in accordance with these T&Cs, the applicable Auction Rules, the Auction Participation Pack and any other relevant Auction Contract Documentation issued by us.
- 9.6** A Registered Seller acknowledges that in the event we receive a Bid above a Registered Seller's Reserve Price, this will be treated by us as binding on a Registered Seller to sell the relevant Lot or Lots or Units within a Lot to the Winner in accordance with these T&Cs, the applicable

Auction Rules, the Auction Participation Pack and any other relevant Auction Contract Documentation issued by us.

- 9.7** We reserve the right to monitor all Bidding activity on the Website and to edit, bar or remove access to any Lot or Lots or Units within a Lot or Auction, at any time as we consider necessary in order to prevent, or deal with, any breach of these T&Cs, the Auction Rules and any other Auction Contract Documentation related to online Bidding, or any potential breach of any applicable laws or regulations.

## **10 Winning an Auction**

- 10.1** The Winner or Winners of an Auction will be a Registered Buyer who submits the Winning Bid. Following acceptance by us of a Winning Bid, a binding Auction Contract is created and the Winner is bound to comply with the process as set out in Clauses 11, 12.5, 14 and 15 of these T&Cs.
- 10.2** The Winner or Winners shall be notified by us of a Winning Bid on completion of the Auction by telephone, in writing or by email. As applicable, a Registered Seller shall also be notified by us of a Winning Bid on completion of the Auction by telephone, in writing or by email.
- 10.3** The notification of a Winning Bid to a Winner shall constitute acceptance by us of a Registered Buyer's offer and shall create a binding Auction Contract and oblige a Winner to purchase the Winning Lot from us according to the Auction Rules and these T&Cs. Subject to statutory rights, which remain in force, such sale and purchase is binding upon, and may not be cancelled by, a Winner.

## **11 Auction Payments – Registered Buyer**

- 11.1** A Sales Confirmation containing an invoice shall be sent to a Winner. Payment terms for the Winner will be set out in the Sales Confirmation, and the Winners shall comply with these in full. We will only issue a Sales Confirmation to the Winner and shall only accept payment of an invoice by the Winner from its authorised bank account and by no other means (including not from another company within a Registered Buyer Group). DBGA is the invoicing party for all Winning Bids. For the avoidance of doubt, no credit facilities shall be made available to a Winner.
- 11.2** Winners are liable to pay for and complete the purchase of a Winning Lot as invoiced, at the price determined by the Winning Bid, applied in accordance with the Auction Rules (subject to Clause 13.3 of these T&Cs (as applicable)). Unless the Winning Lot does not comply with its relevant description on delivery pursuant to Clause 16.1 (as the result of there being a material difference with the majority of Diamonds within a Winning Lot

and/or the applicable Product listing set out in the Auction Participation Pack), under no circumstances shall a Winner be able to withdraw from purchasing the Winning Lot.

- 11.3** If a Winner of a Spot Auction fails to pay the invoiced price for a Winning Lot owned at the time of Auction by DBGA in full within 5 (five) business days from the date of invoice in respect of the Winning Bid or, in the case of a Winner of a Forward Auction, within 5 (five) business days following the Forward Contract Maturity Date (in each case, save where notice is served by a Registered Buyer pursuant to Clause 16.1 of these T&Cs), we shall be entitled by written notice, but without prejudice to any other rights or remedies we may have, to cancel or suspend delivery of the Winning Lot to a Winner. In our discretion, we may then decide to offer the Winning Lot to the next highest Bid from a Registered Buyer (if applicable) on our terms (in which case such Registered Buyer is under no obligation to accept the same) or may withdraw the Winning Lot from Auction or offer it for sale at another Auction. We will also be entitled to suspend or terminate the Winner's Registered Buyer status for future Auctions pursuant to Clause 26 of these T&Cs.
- 11.4** Where notified in advance of an Auction within the Auction Participation Pack, we may at our sole discretion levy a Service Fee on a Registered Buyer in respect of certain Product, in addition to the value of a Winning Bid. Payment of the Service Fee will be added to the invoice and is payable on the terms as set out in Clauses 11.2 and 11.3 of these T&Cs.
- 11.5** Without prejudice to the aforementioned rights, we shall be entitled to charge interest on the invoiced amount at a rate of 3% per annum above United States Dollar Overnight London Interbank Offered Rate at the time with interest accruing on a compound basis from the invoice date until the date of settlement in full.

## **12 Auction Payments – Registered Seller**

- 12.1** In the event we enter into an Auction Contract with a Registered Buyer pursuant to an Auction on behalf of a Registered Seller, a Registered Seller shall be notified of the same and requested to issue an invoice to us for settlement, less the applicable Service Fee (which may include the addition of a Sales Levy (as applicable)). On receipt of an invoice from a Registered Seller, we will use our reasonable endeavours to transfer payment of the Winning Bid value (less a Service Fee) to a Registered Seller within 5 (five) business days from the date we receive cleared funds in full of the Winner in accordance with Clause 11.3. All payments will be made in United States dollars.

- 12.2** If a Winner fails to pay the invoiced price for any Winning Lot owned at the time of the Auction by a Registered Seller in full within 5 (five) business days after the date of our acceptance of the Winning Bid (save where notice is served by a Registered Buyer pursuant to Clause 16.1 of these T&Cs), we shall be entitled by written notice, and without prejudice to any other rights or remedies we may have, to cancel or suspend delivery of the Winning Lot to a Winner. In such an occurrence, we will seek written instructions from a Registered Seller as to whether it would like to:

**12.2.1** offer the relevant Lot or Lots or Units within a Lot to next highest Bid from a Registered Buyer (if applicable) that would have otherwise been the Winner (in which case such Registered Buyer is under no obligation to accept the same); or

**12.2.2** submit a revised Auction Request in accordance with the terms set out in Clause 7.2 (including confirmation of a Reserve Price to the Auction Provider, if applicable) for offer as a Lot or Lots or Units within a Lot at a future Auction; or

**12.2.3** have the relevant Lot or Lots or Units within a Lot returned at our expense.

- 12.3** In the event a Registered Seller elects the option pursuant to Clause 12.2.1, we will re-issue the invoice accordingly to the Registered Buyer which will be subject to the provisions of Clause 11 in respect of payment. In the event a Registered Seller elects an option pursuant to Clause 12.2.2 or Clause 12.2.3, the Registered Buyer's invoice will be cancelled and no payment will be remitted by us to the Registered Seller.

- 12.4** In the event we are notified by a Winner of an alleged non-compliance in respect of the delivered Registered Seller Product to a Registered Buyer pursuant to Clause 16.1, we reserve our right to launch a review in accordance with Clause 16.2 and will suspend settlement of a Registered Seller's invoice until such time as our review of a Registered Buyer's claim concludes.

- 12.5** In the event an Auction does not result in any Bids for a Registered Seller's Lot or Lots or Units with a Lot, no Service Fee will be payable. In the event Bids are received but no Auction Contract is entered into with a Registered Buyer for whatever reason and including a Reserve Price not being achieved (if applicable), a Registered Seller acknowledges that we reserve the right to invoice a Service Fee to be settled by a Registered Seller on the terms set out on our Website. In both of the above scenarios, we will contact a Registered Seller to confirm if the unsold Lot or Lots or Units with a Lot should be returned to a Registered Seller

or alternatively a Registered Seller may decide to submit a new Auction Request in accordance with the terms set out in Clause 7.2 of these T&Cs.

### **13 Taxation, Deductions & Sales Levy**

**13.1** Unless otherwise stated in the T&Cs, all payments made by a Registered Buyer and/or Registered Seller under the T&Cs shall be free and clear of (i) transport, delivery and insurance charges and (ii) without deductions or withholdings for any taxes, levies, imposts, duties, charges or fees imposed by any governmental authority ("**Tax Deduction**"). In the event a Registered Buyer and/or Registered Seller is required by law to make any Tax Deduction from any of the sums payable hereunder, the sums payable hereunder by a Registered Buyer and/or Registered Seller shall be increased to an amount which ensures that the net amount received by us (after the relevant Tax Deduction is made) is equal to the full amount we would have received under the T&Cs in the absence of any such Tax Deduction.

**13.2** In the event we enter into an Auction Contract with a Registered Buyer further to Clause 10.1, and the sale proceeds are remitted to a Registered Seller as per Clause 12.1, a Registered Seller is solely responsible for accounting and the settlement of any income and/or any other taxes payable in respect of the sale proceeds received from us.

**13.3** In the event DBGA is required by law to pay a Sales Levy on any Winning Bid, Service Fee and/or Default Fee (as applicable) under the T&C's, the sums payable by the Registered Buyer and/or Registered Seller (as applicable) shall be increased to an amount which ensures that the net amount received by us (after the relevant Sales Levy is applied) is equal to the full amount we would have received under the T&Cs in the absence of such a Sales Levy.

### **14 Export & Import Formalities**

#### ***De Beers Group Auctions***

**14.1** DBGA (including on behalf of a Registered Seller) shall at its own risk and expense, obtain and maintain any and all necessary export and import licences or other authorisations relating to the delivery of the Diamonds and carry out all customs formalities necessary for the export of the Diamonds (where applicable).

#### ***Registered Buyer***

**14.2** A Registered Buyer shall at its own risk and expense obtain and maintain any and all necessary import licences and permits and/or other authorisations as may be required in respect of a Winning Bid and shall be liable for all import duties, levies, tax and any other charges on the Diamonds

and other charges arising from the delivery, clearance and importation of the Diamonds and shall carry out all customs formalities necessary for the import of Diamonds. A Registered Buyer shall co-operate with, and provide all necessary assistance to, us in relation to the above matters of this Clause 14.2.

**14.3** Should there be a delay in a Registered Buyer complying with Clause 14.2, a Registered Buyer shall remain liable to us in respect of payment of the invoice in full. Further, if additional costs are incurred by us as a result of any non-compliance, a Registered Buyer shall also be liable for such costs.

#### ***Registered Seller***

**14.4** A Registered Seller is solely responsible for ensuring that all export requirements are satisfied in full, including the payment of any applicable taxes and/or duties in the country of export prior to the shipment of the Lot or Lots or Units within a Lot pursuant to Clause 7.3.

### **15 Title, Risk & Delivery**

#### ***Registered Buyers***

**15.1** A Winner shall be entitled to take delivery of a Winning Lot after we have received cleared payment in full.

**15.2** A Winner shall be responsible for arranging and paying for transportation (with an Approved Carrier). A Winner shall also be responsible for arranging and paying for insurance (on a door to door basis, commencing from the time we hand a Winning Lot to an Approved Carrier) in respect of a Winning Lot.

**15.3** Delivery and the passing of legal title from us to a Winner shall be deemed to take place:

**15.3.1** if cleared payment in full for a Winning Lot has been received by us prior to our handing the Winning Lot to an Approved Carrier for onward despatch to a Winner, when DBGA hands the Winning Lot to the Approved Carrier and the Approved Carrier has accepted delivery of the same in writing; or

**15.3.2** if cleared payment in full for a Winning Lot has not been received by us prior to DBGA handing the Winning Lot to an Approved Carrier for onward despatch to a Winner, when DBGA delivers confirmation in writing (including by email) to the Approved Carrier that payment in full for the Winning Lot has been received by DBGA from the Winner.

**15.4** For the avoidance of doubt, a Winning Lot shall only be delivered by the Approved Carrier to a Winner

on receipt of written (including email) confirmation to the Approved Carrier from us that the payment has been received and cleared in full. The Approved Carrier shall receive the written (including email) confirmation of payment from us within a reasonable period of time after receipt of payment.

- 15.5** Subject to Clause 15.6 below, all risk of loss of, or damage to, each Winning Lot shall pass to the Winner or Winners upon delivery by us to the Approved Carrier.
- 15.6** Where cleared payment in full for a Winning Lot has not been received by us prior to DBGA handing the Winning Lot to an Approved Carrier for onward despatch to a Winner, all risk of loss of, or damage to, each Winning Lot shall pass to the Approved Carrier. Once cleared payment in full for a Winning Lot has been received by us and communicated to the Approved Carrier in writing (including email), all risk of loss of, or damage to, a Winning Lot shall pass to the Winner or Winners (or as agreed between the Winner or Winners and the Approved Carrier).

#### ***Registered Sellers***

- 15.7** Unless stated otherwise in the Auction Participation Pack, DBGA is the legal owner of all DBGA Products auctioned by us. A Registered Seller Product will be clearly identified as such in viewings and in Auctions.
- 15.8** In respect of a Registered Seller Product, the relevant Registered Seller holds the legal title to a Lot or Lots or Units within a Lot of a Registered Seller Product submitted by means of an Auction Request up to the point in time in the relevant Auction whereby such Registered Seller's Lot or Lots or Units within a Lot is subject to a Winning Bid, at which point legal title passes to us. For the avoidance of doubt, if there is no Winning Bid for a Lot or Lots or Units within a Lot of a Registered Seller Product, legal title remains with a Registered Seller.
- 15.9** In the event a Winner does not fulfil its obligations in accordance with Clause 12, if a Registered Seller elects the option set out in Clause 12.2.1, and a Registered Buyer accepts the applicable Lot or Lots or Units within a Lot of a Registered Seller Product, the legal title will remain with us until such time as a Registered Buyer has settled the reissued invoice in full at which point in time legal title will transfer to a Registered Buyer. If a Registered Seller elects an option set out in Clause 12.2.2 or Clause 12.2.3, legal title will revert to a Registered Seller as at the date a Registered Seller notifies us in writing and which is accepted and notified by us in writing.

## **16 Allegations of Non-Compliance for Registered Seller Product**

- 16.1** If following delivery, a Winner is not satisfied with the Registered Seller Product for the sole reasons it does not comply with either (i) its relevant description as the result of there being a material difference with the majority of Diamonds within a Winning Lot; and/or (ii) the applicable Registered Seller Product listing set out in the Auction Participation Pack, the Winner must inform us in writing, including detail of the alleged non-compliance within 3 (three) business days from the date of delivery. If a Winner fails to do so, the Winning Lot shall be irrevocably deemed to be in accordance with the Auction Contract.
- 16.2** In the event we receive a notification pursuant to Clause 16.1, we reserve the right to launch a review of the notification in the first instance with the Winner to attempt to resolve the alleged notification. If after an investigation we determine (acting reasonably) that an allegation of non-compliance is unfounded, the Winner will be notified in writing by us to comply with the provisions of Clause 11 of these T&Cs. If after an investigation we determine (acting reasonably) that an allegation of non-compliance, including non-compliance by a Registered Seller, is substantiated, this will constitute a Material Breach and we will terminate the Auction Contract pursuant to Clause 26, and inform a Registered Seller (if applicable) of the same in writing, in addition to reserving the right to apply any other sanctions available to us as set out in Clause 26 to these T&Cs.
- 16.3** If we terminate an Auction Contract pursuant to Clause 16.2, we will return the Lot or Lots or Units within a Lot of a Registered Seller Product to a Registered Seller within a reasonable period of time on receipt of such Lot or Lots or Units within a Lot from a Registered Buyer and no payment will be remitted to a Registered Seller in respect of its invoice for such Lot or Lots or Units within a Lot.

## **17 Insurance**

- 17.1** Pursuant to Clause 15.2 of these T&Cs, a Registered Buyer is solely responsible for organising at its cost the provision of insurance, including with the Approved Carrier, in respect of the delivery of a Winning Lot.
- 17.2** A Registered Seller is solely responsible for organising at its cost the provision of insurance in respect of shipping the Registered Seller Product including the period of time up to our acceptance of the Registered Seller Product following delivery by the Approved Carrier and if applicable, the return of Registered Seller Product to a Registered Seller pursuant to Clause 7.8 or Clause 12.2.3. At all other

times whilst the Registered Seller Product is in our possession, including viewings, and up to and including delivery to an Approved Carrier following a Winning Bid (where applicable) for shipment to a Registered Buyer, we will insure the Registered Seller Product at our cost.

## **18 Liability**

### **General Limitations**

- 18.1** Except as expressly stated herein, all conditions, warranties, representations and other terms, express or implied by (i) statute, (ii) common-law or (iii) otherwise, in relation to an Auction, a Lot, Lots or Units within a Lot, an Auction Contract and/or the Website are excluded, in each case to the extent permitted by applicable law.
- 18.2** Notwithstanding Clause 18.1, but subject to applicable law, our entire liability to (i) a Registered Buyer Winner hereunder, whether for breach of contract, negligence, misrepresentation or otherwise, is limited at our discretion to refunding a Winner for the price of the relevant Diamond or Winning Lot or replacing the relevant Diamond or Winning Lot or making good any shortage and shall not in any circumstances exceed the price paid, or to be paid, for the relevant Winning Lot, or (ii) a Registered Seller hereunder, whether for breach of contract, negligence, misrepresentation or otherwise, is limited at our discretion to the insured value of a Registered Seller's Registered Seller Product, as attributed to such Registered Seller Product in the relevant Auction Request, for a Lot or Lots or Units within a Lot.
- 18.3** For the purposes of this Clause 18, references to "we" or "us" includes our officers, directors, agents, Affiliates, and employees, and anyone else involved in creating, producing or delivering any Auction.

### **Registered Buyers**

- 18.4** In the event of a dispute, error or any other possible issues with any Auction, Lot or Lots or Units within a Lot, or the application of the Auction Rules, or the Auction Participation Pack, or an Auction Contract, we reserve the right to provide a refund or compensation to any Registered Buyer, or to terminate, reverse or cancel an Auction at our reasonable discretion. If we withdraw a Lot or Lots or Units within a Lot once an Auction has commenced, for whatever reason, a Registered Buyer agrees to waive any claim on the Lot or Lots or Units within a Lot and not to institute any legal action against us for doing so.
- 18.5** A Registered Buyer acknowledges that in respect of an Auction on behalf of a Registered Seller, we are acting as agent on behalf of a Registered Seller. We undertake to conduct reasonable due

diligence in respect of a Registered Seller's Registered Seller Product, including any supporting documentation provided pursuant to an Auction Request prior to an Auction, in addition to our requirement that a Registered Seller must comply at all times with these T&Cs and the De Beers Group Auctions' Diamond Trading Standard.

- 18.6** Notwithstanding Clause 18.5, we contractually exclude all our liability to a Registered Buyer to the fullest extent permitted by applicable law in contract or tort (including in negligence or for breach of statutory duty) or otherwise, for any special, indirect or consequential loss or damage of any nature or loss of profit, revenue, business, or contracts arising from an Auction Contract we enter into with a Registered Buyer on behalf of a Registered Seller.
- 18.7** In relation to a certain Lot or Lots or Units within a Lot comprising individual Rough Diamonds, we may, for illustrative purposes only, engage a third party to provide predictions and images as to the potential polished outcome(s) for such diamonds. Neither we nor any such third party accept any responsibility whatsoever for the actual outcomes of the Rough Diamonds purchased being different to the predicted outcomes based on the prediction and/or images provided. Neither we nor such third party accept any liability for the consequences of any actions taken on the basis of the information provided. Reliance on such information shall be at a Registered Buyer's sole risk and neither we nor such third party assume any responsibility for any errors, omissions, or damages arising therefrom.

### **Registered Seller**

- 18.8** Due to the nature of Auctions, we offer no assurance that an Auction Request will be accepted by us and further, under no circumstances do we offer any guarantee that an Auction will result in the sale of a Registered Seller's Lot or Lots or Units within a Lot of Registered Seller Product and/or the entering into an Auction Contract with a Registered Buyer in respect of such a Lot or Lots or Units within a Lot.
- 18.9** We contractually exclude all our liability to a Registered Seller to the fullest extent permitted by applicable law in respect of an Auction Request and/or the Auction Contract that we enter into on its behalf. As such, we shall not be liable to a Registered Buyer or a Registered Seller in contract or tort (including in negligence or for breach of statutory duty) or otherwise, for any special, indirect or consequential loss or damage of any nature, including the breakage and/or other damage to any Rough Diamonds and/or Polished Diamonds forming part or all of the Registered Seller Product, or loss of profit, revenue, business, or contracts arising from an Auction Request and/or the Auction



Contract.

- 18.10** In respect of Clause 16.3 of these T&Cs, a Registered Seller shall have no claim against us for the reimbursement of any costs, losses or damages incurred, including but not limited to loss of actual or potential profits.

#### **Website**

- 18.11** We are under no obligation to offer online Auctions to a Registered Buyer and/or a Registered Seller, and we will not be responsible for errors, failures or delays in the use of the Website and submitting Bids or executing Bids thereon including, without limitation, errors, failures or delays caused by (i) a loss of connection, (ii) breakdown or problems with the online bidding software and/or, (iii) a breakdown or problems with an internet connection, computer or system.

- 18.12** Whilst we will use our reasonable endeavours to ensure that information on our Website is accurate, complete and up-to-date, we do not warrant, and will not be responsible for, any damage, liability, loss, costs or expenses of whatever nature which might arise from use or reliance on the content of the Website to the fullest extent permitted by applicable law, save to the extent such liability arises from our fraud or fraudulent misrepresentation or our negligence.

- 18.13** In addition, we give no warranty or representations and accept no liability in respect of the security or otherwise of the Website or that it will meet user's requirements. No responsibility is accepted in respect of any viruses that may infect a user's computer equipment or other equipment on account of access to or use of the Website or downloading of any content, materials or software therefrom. We accept no responsibility for any third party website linked to from the Website.

### **19 Warranties**

- 19.1** A Registered Buyer and/or Registered Seller acknowledges that it has obligations to us acting (i) as a provider of an Auction; (ii) in respect of a Registered Seller only, as an agent on its behalf to provide the Services including the promotion of its Registered Seller Product(s); and (iii) as a diamantaire operating within the industry to maintain the integrity of Diamonds. A failure of a Registered Buyer and/or Registered Seller to comply with this Clause 19 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Buyer and/or Registered Seller status with immediate effect pursuant to Clause 26 and without notice.

#### **Registered Buyer**

- 19.2** A Registered Buyer acknowledges and warrants that:

**19.2.1** it will comply always with our requirements in respect of our intellectual property rights pursuant to Clause 21 of these T&Cs;

**19.2.2** its participation in any Auction is not for the purposes of, or connected with (either directly or indirectly) terrorism, money laundering or any other illegal act;

**19.2.3** its participation in our Auctions will at all times be on an independent basis and it will act with the utmost integrity such that it will comply (and will continue to comply) with all applicable national and/or international civil and criminal competition laws;

**19.2.4** it will not directly or indirectly collaborate, co-ordinate or co-operate in any way with any other third party, including a Registered Seller (if known), in any way that influences or may influence the outcome of an Auction;

**19.2.5** it will not enter into any discussions, arrangements or agreements with any third party, including any other Registered Buyer and/or Registered Seller or any other third party entitled to place a Bid, to try to affect the outcome of any Auction;

**19.2.6** it will not fix or adjust any Bid in accordance with any agreement or arrangement with any third party;

**19.2.7** it will place Bids in (i) good faith and (ii) wholly independently of and not on behalf of any other Registered Buyer and/or Registered Seller or third party; and

**19.2.8** it will not interfere with or disrupt networks connected to the Website or conduct any other unauthorised activity on or in connection with the Website.

#### **Registered Seller**

- 19.3** A Registered Seller acknowledges and warrants that:

**19.3.1** it will comply always with our requirements in respect of our intellectual property rights pursuant to Clause 21 of these T&Cs;

**19.3.2** its participation in any Auction is not for the purposes of, or connected with (either directly or indirectly) terrorism, money laundering or any other illegal act;

**19.3.3** its participation in our Auctions will at all

times be on an independent basis and it will act with the utmost integrity such that it will comply (and will continue to comply) with all applicable national and/or international civil and criminal competition laws;

- 19.3.4** it will not directly or indirectly collaborate, co-ordinate or co-operate in any way with any other third party in any way that influences or may influence the outcome of an Auction;
- 19.3.5** it will not enter into any discussions, arrangements or agreements with any third party, including any other Registered Seller and/or Registered Buyer or any other third party entitled to place a Bid, to try to affect the outcome of any Auction;
- 19.3.6** it will submit Auction Requests in (i) good faith and (ii) wholly independently of and not on behalf of any other Registered Seller or third party;
- 19.3.7** it will determine a Reserve Price independently and will not fix or adjust a Reserve Price in accordance with any agreement or arrangement with any third party or disclose a Reserve Price to any Registered Buyer;
- 19.3.8** it will submit a Reserve Price (if applicable) solely to the Auction Provider and our DBGA third-party polished representative (as notified to a Registered Seller from time to time) by means of a written or verbal communication but will not under any circumstances disclose the same to our Sales team including your Account Manager;
- 19.3.9** it will not Bid or facilitate a Bid in respect of a Lot or Lots or Units within a Lot of a Registered Seller Product that is owned or submitted by it to us for Auction;
- 19.3.10** it will comply with all applicable laws in respect of entering into and maintaining the agency relationship with us;
- 19.3.11** it agrees that its Lot or Lots or Units within a Lot of a Registered Seller Product will be offered for sale by us in accordance with these T&Cs, the content of which a Registered Seller hereby acknowledges to have had a reasonable opportunity to review, notwithstanding the fact such Lot or Lots are offered for sale by us acting as an agent for a Registered Seller; and
- 19.3.12** it will not interfere with or disrupt networks connected to the Website or conduct any

other unauthorised activity on or in connection with the Website.

## **20 Indemnities**

- 20.1** A Registered Buyer hereby agrees to indemnify DBGA to the fullest extent possible in law for any costs, damages and/or losses incurred, including but not limited to the loss of actual or potential loss in the realisable value of a Polished Diamond where a Registered Buyer has acted in a manner which is negligent, careless, unauthorised and/or contrary to guidance provided by DBGA in respect of the viewing of Polished Diamonds for auction by DBGA.
- 20.2** A Registered Seller hereby agrees to indemnify, and keep us indemnified against all costs and liabilities arising in connection with (i) any liability that we incur as a result of acting within the scope of our authority acting as agent for a Registered Seller under these T&Cs, and/or (ii) any Material Breach by a Registered Seller of its obligations under these T&Cs. Nothing contained in this Clause 20.2 shall be construed as prohibiting us from pursuing any other remedies available to us, either at law or in equity, for such Material Breach, including specific performance and the recovery of monetary damages.

## **21 Proprietary Rights & Intellectual Property**

- 21.1** All trademarks, logos, service marks and trade names (collectively the “**Trademarks**”) displayed on or through the Website are registered or unregistered Trademarks of us or members of the De Beers Group or the Website operator and may not be used save as otherwise expressly authorised. Nothing contained on the Website or on or through the Auction Services should be construed as granting any license or right to use any Trademark displayed on the Website without our express prior written consent.
- 21.2** A Registered Buyer that placed a Winning Bid at an Auction shall not (amongst other things) use, pass off, misrepresent or in any way infringe any Trademarks of the De Beers Group, including (but not limited to) DE BEERS and/or A DIAMOND IS FOREVER, and including in connection with the sale and/or marketing of (i) Auction Diamonds; and/or (ii) any jewellery or other product incorporating such Auction Diamonds. For the avoidance of doubt, a Registered Buyer must not pass off (in any form) that Auction Diamonds and/or any jewellery or other product incorporating such Auction Diamonds are DE BEERS Diamonds and/or DE BEERS jewellery and/or is being sold or marketed on behalf of DE BEERS or any member of the De Beers Group.
- 21.3** Where indicated, DBGA Product Polished Diamonds promoted for Auction may be eligible for

inclusion in the Forevermark diamond brand, in that they fulfil the Forevermark product criteria and pipeline integrity requirements.

- 21.4** A Registered Buyer that purchases eligible Forevermark Polished Diamonds from us must be an authorised Forevermark diamantaire, jeweller and/or manufacturer to market and/or sell the eligible Polished Diamonds as Forevermark and further must procure grading, certification and inscription services from Forevermark at the request, processing and cost of the Registered Buyer.
- 21.5** A Registered Seller that submits an Auction Request to DBGA shall not (amongst other things) use, pass off, misrepresent or in any way infringe any Trademarks of the De Beers Group, including (but not limited to) DE BEERS and/or A DIAMOND IS FOREVER, and including in connection with the sale and/or marketing of (i) Registered Seller Product; and/or (ii) any jewellery or other product incorporating such Registered Seller Product. For the avoidance of doubt, a Registered Seller must not pass off (in any form) that Registered Seller Products, and/or any jewellery or other product incorporating such Registered Seller Products are DE BEERS Diamonds and/or DE BEERS jewellery and/or is being sold or marketed on behalf of DE BEERS or any member of the De Beers Group.
- 21.6** We may use at our sole discretion for promotional and marketing purposes, any images filmed or recorded by us of any Registered Seller Product (including Rough Diamonds and/or Polished Diamonds) submitted by a Registered Seller for Auction.
- 21.7** Where deemed appropriate by us and in compliance with applicable laws, we may use certain Auction data (including, but not limited to, Bidding data) in order to better understand prevailing demand for Rough Diamonds and/or Polished Diamonds. For the avoidance of doubt, such Auction data shall not include a Registered Seller's Reserve Price (which Reserve Price shall in any event be disclosed to the Auction Provider, only) or whether any Bid is a Winning Bid (save that Winning Bid data will necessarily be used by us to enter into an Auction Contract and determine the Service Fee).
- 21.8** As between a Registered Buyer and/or a Registered Seller and us, we (or our appointed Website operator) own, solely and exclusively, all rights, title and interest in and to the Website, all the content, software, data and materials thereon, including but not limited to copyrights, Trademark rights, patent rights, database rights and other intellectual property and proprietary rights (whether registered or unregistered in any jurisdiction) therein. The use of the Website by a Registered

Buyer and/or a Registered Seller does not grant any ownership of any content, software, data or materials accessed on the Website.

- 21.9** A Registered Buyer and/or a Registered Seller agrees to comply with all applicable law, statutes and regulations regarding use of the Website.

## **22 Confidentiality**

- 22.1** As part of registration requirements, or otherwise in connection with use of the Website or participation in any Auction, a Registered Buyer and/or a Registered Seller may be asked to provide certain Confidential Information. The provider of such Confidential Information is solely responsible for its accuracy and content and for ensuring that it is kept up-to-date. Confidential Information transmitted to us by online users may be held on file for future transactions and the provider expressly consents to the use by us of such Confidential Information pursuant to the application of the Auction Contract Documentation.
- 22.2** Except as otherwise agreed in writing, we and a Registered Buyer and/or a Registered Seller agree to hold all disclosed Confidential Information in confidence under these T&Cs, the Auction Rules and other applicable documentation related to online bidding and will not disclose such information to any other person or use it for any purpose save as required for fulfilling their obligations hereunder.
- 22.3** Confidential Information may be disclosed within the Anglo American Group, or, if required by mandatory provision of law, to a governmental or other authority or regulatory body or to the Website operator (if required in order for it to properly comply with its obligations to operate the Website) and to consultants and professional advisers provided that (i) where a request for disclosure is received from a governmental or other authority or regulatory body, the recipient of the request will use all reasonable endeavours to consult with the other party in a timely manner in relation to such request, and consider such other party's reasonable requests in relation thereto, and (ii) a confidentiality undertaking is obtained from such consultants, professional advisers or brokers on terms no less restrictive than this Clause 22.

## **23 Force Majeure**

- 23.1** If a Force Majeure Event interrupts or prevents the performance of a party's obligations to the other in respect of any aspect of these T&Cs, the obligations of the parties under the Auction Contract (other than an obligation to pay money) shall be suspended for the duration of the Force Majeure Event. The affected party will not be in default of its obligations (except obligations to pay money) under the Auction Contract if a failure or

delay in the observance or performance of those obligations by the affected party is caused by a Force Majeure Event and the other party will not be in default of its obligations (except obligations to pay money) under the Auction Contract if a failure or delay in the observance or performance of those obligations by that party occurs during a Force Majeure Event.

- 23.2** Should a Force Majeure Event or its effects last for a period in excess of 90 (ninety) continuous days, a party may, on giving 5 (five) business days' written notice to the other party/parties, terminate the Auction Contract without liability, save that such termination shall be without prejudice to any rights or obligations of the parties which have accrued prior to the occurrence of that Force Majeure Event, including without prejudice to any outstanding rights to payment we may have hereunder in respect of the period prior to termination or our rights under Clause 11.
- 23.3** Provided that no party has given notice to terminate the Auction Contract in accordance with Clause 23.2, as soon as reasonably practical after the occurrence of the Force Majeure Event, together we will discuss how best to continue any Auction Contract that has commenced or delivery of a Winning Lot (as relevant) so far as possible in accordance with these T&Cs.

## **24 Events of Default**

- 24.1** Each of the following events, acts, occurrences or conditions shall be an event of default (an "**Event of Default**") with respect to the party specified:

### ***Insolvency***

- 24.1.1** The occurrence with respect to a Registered Buyer and/or a Registered Seller or us of any Insolvency Event shall be an Event of Default with respect to that party.

### ***Material Breach***

- 24.1.2** The occurrence of a Material Breach where that breach is either not capable of remedy or not remedied on or before the 5th (fifth) business day following the day on which notice to remedy is given to the party in Material Breach shall be an Event of Default with respect to that party.

### ***Failure to Accept Delivery***

- 24.1.3** Failure by a Winner (including, for the avoidance of doubt, the Winner of a Forward Auction) to accept delivery of or, if relevant, to nominate a carrier for transportation, shall be an Event of Default with respect to the relevant Winner

("Failure to Accept Delivery").

### ***Non-Payment of a Winning Lot***

- 24.1.4** Failure by a Winner to pay for any Winning Lot (including a Sales Levy (as applicable)), or to pay any amount due and payable by it in accordance with Clause 11 of these T&Cs shall be an Event of Default with respect to the Winner ("**Non-Payment of a Winning Lot**").

## **24.2 Consequences of an Event of Default**

### ***Insolvency (24.1.1) and Material Breach (24.1.2)***

- 24.2.1** In the event that an Insolvency Event or a Material Breach Event of Default occurs with respect to a party (the "**Defaulting Party**") the other party (the "**Non-Defaulting Party**") may, without prejudice to its other rights and remedies under the Auction Contract or in law, take any or all of the following actions:

- (a) terminate the Auction Contract pursuant to Clause 26.1 of these T&Cs; and/or
- (b) claim damages against the Defaulting Party.

### ***Failure to Accept Delivery (24.1.3) and Non-Payment of a Winning Lot (24.1.4)***

- 24.2.2** In the event there is a Failure to Accept Delivery or Non-Payment of a Winning Lot (including a Sales Levy (as applicable)) Event of Default in respect of an Auction by a Registered Buyer, we will notify a Registered Buyer in writing of the same and a Registered Buyer shall pay us within 5 (five) business days of receipt of an invoice:

- (a) a sum equivalent to the total invoice amount of the Winning Lot(s) (plus a Sales Levy (as applicable)) of:
  - (i) 2% where the value of the Winning Lot is equal to, or greater than US \$500,000; or
  - (ii) 2.5% where the value of the Winning Lot is equal to, or greater than US\$100,001, but less than US\$500,000; or
  - (iii) 3% where the value of the Winning Lot is equal to, or less than US\$100,000; and
- (b) any applicable shipping charges incurred by us as a result of a Failure to Accept Delivery,

together the “**Default Fee**”. For the avoidance of doubt, non-payment by a Registered Buyer of the Default Fee shall be a Material Breach Event of Default for the purposes of Clause 24.1.2.

**24.3** In the event there is an occurrence of 2 (two) Events of Default by means of either a Failure to Accept Delivery and/or Non-Payment of a Winning Lot (including a Sales Levy (as applicable)), within any 12 (twelve) month period by a Registered Buyer, we will notify the Registered Buyer in writing and without prejudice to our other rights and remedies under the Auction Contract or in law, take any or all of the following actions:

- (a) suspend a Registered Buyer for 3 (three) months from placing Bids following the date of the second Event of Default or for so long as the Event of Default is continuing in accordance with Clause 26.1 of these T&Cs; and/or
- (b) propose to a Registered Buyer any revised terms under which we are prepared to continue the performance of the Auction Contract and if such terms are not agreed, terminate the Auction Contract upon written notice; and/or
- (c) terminate an Auction Contract pursuant to Clause 26.1 of these T&Cs; and/or
- (d) claim damages against a Registered Buyer.

## **25 Material Adverse Change**

**25.1** The provisions of this Clause 25 apply only in respect of Registered Buyers and Forward Sales Contracts.

### ***Occurrence of a Material Adverse Change***

**25.2** If, at any time and from time to time, a Material Adverse Change occurs, we shall give notice in writing to a Registered Buyer as soon as reasonably practical and the provisions of this Clause 25 shall apply.

### ***Consequences of Material Adverse Change***

**25.3** From and including the date of the notice given by us to a Registered Buyer in accordance with Clause 25.2, we shall be entitled to suspend performance of our obligations under the Auction Contract and, in particular, we shall be under no obligation to commence or continue the sale of any Lot or Lots, or Units within a Lot. In the event we exercise our rights under this Clause 25 we shall not be liable for any loss suffered by a Registered Buyer and a Registered Buyer releases us from all liability, howsoever incurred.

**25.4** Notwithstanding Clause 25.3, upon the occurrence

of a Material Adverse Change, we have the express authority to source Rough Diamonds for inclusion in a Lot or Lots or Units within a Lot from alternate providers and may undertake such other actions as we deem necessary, in our sole and absolute discretion, to rectify the Material Adverse Change.

## **26 Suspension & Termination**

**26.1** If a Registered Buyer or a Registered Seller is suspected of or commits a breach, including a Material Breach, of these T&Cs at any point in time it holds such status, we reserve the right to suspend or terminate a Registered Buyer or Registered Seller’s status or an Auction Contract (as applicable and at our discretion) with immediate effect and without notice.

**26.2** Suspension of a Registered Buyer or a Registered Seller’s status and/or termination of an Auction Contract pursuant to these T&Cs shall be without prejudice to any rights and remedies accruing to us before such suspension or termination.

**26.3** In the event we suspend a Registered Buyer or a Registered Seller’s status (if applicable) as a result of an extraordinary audit in accordance with Clause 27 of these T&Cs, we reserve the right to impose a suspension until such time as the extraordinary audit process has concluded.

**26.4** In the event a Registered Buyer that also holds Registered Seller status has its Registered Buyer status (or vice versa) suspended or terminated, its Registered Seller status (or vice versa) may also be suspended or terminated (as applicable) at our discretion and as such, it will be unable to participate in our Auctions.

**26.5** In the event a Registered Buyer and/or a Registered Seller has its status as a Sightholder and/or Accredited Buyer Customer suspended or terminated for reason of a material breach of the terms of the Supply Agreement, we reserve our right to suspend or terminate your status as a Registered Buyer and/or Registered Seller with immediate effect (as applicable).

**26.6** In the event we enforce Clause 26.5, we reserve our right to cancel any pending sales in respect of a Forward Sales Contract for a Registered Buyer or return Registered Seller Product to a Registered Seller within a reasonable timeframe.

**26.7** A Registered Buyer or a Registered Seller is entitled to terminate its registration at any time by writing to us at our registered address, however, (i) termination by a Registered Buyer shall not in any event affect any unsatisfied obligations of a Registered Buyer to us in respect of any Spot Sales Contract and/or Forward Sales Contract, and (ii) termination by a Registered Seller shall not in any event affect any unsatisfied obligations of a

Registered Seller to us in respect of any Auction.

## **27 De Beers Best Practice Principles**

- 27.1** A Registered Buyer Group and/or a Registered Seller Group that is also a Sightholder and/or Accredited Buyer Customer shall comply in full always with the De Beers Best Practice Principles (as applicable) incorporating the De Beers Best Practice Principles Assurance Programme Requirements as set out in Schedule 3 to these T&Cs.
- 27.2** A Registered Buyer Group and/or a Registered Seller Group that is not a Sightholder and/or Accredited Buyer Customer shall use its best endeavours to comply always with the De Beers Best Practice Principles (as applicable) incorporating the De Beers Best Practice Principles Assurance Programme Requirements as set out in Schedule 3 to these T&Cs.
- 27.3** In the event a Registered Buyer Group and/or a Registered Seller Group (that is also a Sightholder and/or Accredited Buyer Customer is not in full compliance with the De Beers Best Practice Principles, it must immediately notify us in writing days setting out the detail of the non-compliance (in addition to any notification required as a result of holding Sightholder and/or Accredited Buyer Customer status).
- 27.4** Where we believe there are reasonable grounds to suspect that a “major infringement” or a “material breach” (as such expressions are defined in the De Beers Best Practice Principles Assurance Programme Manual) has or have occurred or is or are occurring or may occur in relation to a Registered Buyer Group or a Registered Seller Group (where applicable), we reserve the right to conduct spot check audits also known as extraordinary audits in accordance with Clause 27.5 of these T&Cs, through independent third party auditors which may include a visit to the operations of a Registered Buyer or Registered Seller.
- 27.5** The procedures and requirements of an extraordinary audit are set out in further detail in the De Beers Best Practice Principles Assurance Programme Manual. The costs associated with such visits shall be covered by: (i) us should these concerns be unfounded; or (ii) a Registered Buyer or Registered Seller should these concerns be confirmed in full or in part or in the event an unrelated “major infringement” or a “material breach” is subsequently identified during the extraordinary audit. A Registered Buyer or Registered Seller hereby consents to such spot check audits taking place and for our third party auditor to enter operations for such purpose and that a Registered Buyer or Registered Seller

will co-operate in all respects with such spot check audits.

- 27.6** Failure to comply with this Clause 27 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Buyer and/or Registered Seller status in accordance with Clause 26 of these T&Cs.

## **28 Statement of Compliance, Integrity & Probity**

- 28.1** A Registered Buyer Group and/or a Registered Seller Group shall at all times it holds Registered Buyer and/or a Registered Seller status, comply in full with the terms of the Statement of Compliance, Integrity and Probity, an integral part of these T&Cs and set out in Schedule 4 to these T&Cs.
- 28.2** In the event a Registered Buyer Group and/or a Registered Seller Group is not in full compliance with the Statement of Compliance, Integrity and Probity, it must notify us in writing within 5 (five) business days setting out the detail of the non-compliance.
- 28.3** Failure to comply with this Clause 28 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Buyer and/or Registered Seller status in accordance with Clause 26 of these T&Cs.

## **29 De Beers Group Auctions’ Diamond Trading Standard**

- 29.1** A Registered Seller and its Registered Seller Group shall comply at all times with the De Beers Group Auctions’ Diamond Trading Standard in force from time to time.
- 29.2** In the event a Registered Seller Group is not in full compliance with the De Beers Group Auctions’ Diamond Trading Standard, including if there is a material change to its Responsible Jewellery Council status, including for the avoidance of doubt, the suspension or termination of such status, it must notify us in writing within 5 (five) business days setting out the detail of the non-compliance.
- 29.3** Failure to comply with this Clause 29 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Seller status in accordance with Clause 26 of these T&Cs.

## **30 Kimberley Process Compliance**

- 30.1** A Registered Buyer Group and/or a Registered Seller Group and each of their respective Key Individuals confirm that since the inception of the KPCS in January 2003, as applicable, it has not purchased, sold, exported, imported or otherwise traded in Rough Diamonds without the full authority of, and in compliance with, the KPCS. For the avoidance of doubt, Rough Diamonds sourced from the Marange region of Zimbabwe without the

approval of the Kimberley Process Certification Scheme-appointed monitor (acting under the direction of the relevant KPCS working group) do not have the full authority of, and are not in compliance with, the KPCS.

- 30.2** Failure to comply with this Clause 30 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Buyer and/or Registered Seller status in accordance with Clause 26 of these T&Cs.

### **31 Statement of Principles for Laboratory-Grown Diamond Business Activities Compliance**

- 31.1** A Registered Buyer Group and/or a Registered Seller Group and each of their respective Key Individuals shall comply with the provisions of the Statement of Principles for Laboratory-Grown Diamond Business Activities as applicable from time to time.

- 31.2** In the event a Registered Buyer Group and/or a Registered Seller Group is not in full compliance with the Statement of Principles for Laboratory-Grown Diamonds, we will issue a letter of non-compliance. In the event we issue 2 (two) letters of non-compliance over a rolling 6 (six) month period, we reserve our right to review your continued status as a Registered Buyer or a Registered Seller with immediate effect.

### **32 Sanctions Compliance**

- 32.1** A Registered Buyer Group and/or a Registered Seller Group and each of its Representatives shall:

- (a)** comply with any Sanction and ensure that a Registered Buyer Group and/or a Registered Seller Group or Representative does not become a Sanctioned Entity;
- (b)** promptly notify us upon becoming aware that any company in a Registered Buyer Group and/or a Registered Seller Group has become a Sanctioned Entity or is in violation of any Sanction;
- (c)** promptly notify us upon becoming aware of any Representative becoming a Sanctioned Entity or having violated any Sanction;
- (d)** use reasonable endeavours to provide us with information that we may require from time to time in order for us to determine whether any of the Representatives or any company of a Registered Buyer and/or a Registered Seller Group has become or is reasonably likely to become a Sanctioned Entity;
- (e)** subject to applicable laws and confidentiality requirements, provide all information to us which is requested by a regulatory authority that oversees Sanctions; and

- (f)** use reasonable endeavours to assist us in managing the risk of Sanctions being imposed on any party in connection with an Auction Contract.

- 32.2** The obligations in relation to notification and the provision of information as set out above shall only apply to the extent the parties can lawfully comply with such obligations.

- 32.3** Failure to comply with this Clause 32 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Buyer and/or Registered Seller status in accordance with Clause 26 of these T&Cs.

### **33 Bribery & Anti-Corruption Compliance**

- 33.1** DBGA and a Registered Buyer and/or Registered Seller shall, and shall procure that each company in a Registered Buyer Group and/or Registered Seller Group and their Representatives shall, in the performance of their respective obligations under the Auction Contract, comply at all times and act in a manner consistent with all applicable Anti-Corruption Laws (the “**Anti-Corruption and Bribery Undertakings**”).

- 33.2** Should we have a reasonable suspicion of any breach (actual or potential) and/or any conduct which may give rise to any breach of the Anti-Corruption and Bribery Undertakings, a Registered Buyer or a Registered Seller shall promptly provide any further information requested in connection with such suspicion.

- 33.3** A Registered Buyer or a Registered Seller shall notify us immediately in writing upon becoming aware of any potential or actual breach (including any potential or actual breach by any company in a Registered Buyer Group and/or Registered Seller Group, or any of their Representatives) of the Anti-Corruption and Bribery Undertakings and/or any conduct which may give rise to a breach of the Anti-Corruption and Bribery Undertakings, providing full particulars.

- 33.4** We may, upon receipt of any notice under the Anti-Corruption and Bribery Undertakings and/or should a Registered Buyer or a Registered Seller fail to comply with the Anti-Corruption and Bribery Undertakings and/or should a Registered Buyer or a Registered Seller otherwise become aware of any breach and/or conduct which may give rise to any breach of the Anti-Corruption and Bribery Undertakings (the “**Misconduct**”), at our sole option:

- 33.4.1** request a Registered Buyer or a Registered Seller to provide any further information which it is reasonable to request in relation to the Misconduct; and/or

33.4.2 require a Registered Buyer or a Registered Seller to forthwith implement such remedial measures as may be necessary to address and/or mitigate the risk and/or damage or potential damage arising from the Misconduct and to confirm to the requesting party in writing that such measures have been implemented.

33.5 A Registered Buyer and/or Registered Seller warrants that it has no Foreign Public Officials as officers, employees or direct or indirect owners at the date of becoming a Registered Buyer and/or Registered Seller. Further, a Registered Buyer and/or a Registered Seller warrants that it shall immediately notify us if a foreign public official becomes an officer or employee of and/or a member of a Registered Buyer and/or Registered Seller or acquires a direct or indirect interest in it at any time it holds such a status with us.

33.6 Failure to comply with this Clause 33 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Buyer and/or Registered Seller status in accordance with Clause 26 of these T&Cs.

#### 34 Anti-Money Laundering Compliance

34.1 A Registered Buyer or a Registered Seller is required to comply at all times with our policies on anti-money laundering and combating the financing of terrorism as notified by us.

34.2 We reserve our right to (i) conduct on-going monitoring of your compliance with anti-money laundering legislation and regulations and (ii) conduct random data verification compliance reviews of a Registered Buyer or Registered Seller in accordance with our policies on anti-money laundering and the combating the financing of terrorism, including under the instruction of an independent third-party verifier at our sole discretion. A Registered Buyer or a Registered Seller's full co-operation and compliance is required by us in respect of this Clause 34.2.

34.3 Failure to comply with this Clause 34 shall be a Material Breach of these T&Cs which may lead to the suspension or termination of Registered Buyer and/or Registered Seller status in accordance with Clause 26 of these T&Cs.

#### 35 Data Protection

A Registered Buyer and/or a Registered Seller acknowledges that in using our Auctions, Website and/or Services, we may process personal data that we collect from you. We will process and hold all data in accordance with our Privacy Policy which is set out at:

<https://secure.debeersgroup.com/auctionsales/en/site-services/privacy.html>

### 36 Dispute Resolution & Governing Law

36.1 The Auction Contract Documentation, incorporating these T&Cs, the Auction Rules and the Auction Participation Pack and all matters relating to them shall be governed by and construed in accordance with English law. Neither De Beers Group Auctions nor a Registered Buyer and/or a Registered Seller will initiate any of the procedures listed below unless senior representatives of De Beers Group Auctions and a Registered Buyer and/or a Registered Seller have first discussed the subject matter of the dispute in good faith with a view to finding an amicable resolution to the dispute. In the event no resolution has been reached within 14 (fourteen) business days of either De Beers Group Auctions or a Registered Buyer and/or a Registered Seller being duly notified of a dispute and notwithstanding Clause 18.4, De Beers Group Auctions and a Registered Buyer and/or a Registered Seller agree that:

36.1.1 subject to Clause 36.1.3 below, a dispute howsoever arising out of or in connection with these T&Cs or the Auction Rules shall be referred to and resolved by arbitration with its seat or legal place in London in accordance with the LCIA Arbitration Rules (the "**LCIA Rules**") in force at the time of the referral to arbitration, which LCIA Rules are deemed to be incorporated into the Auction Contract;

36.1.2 the arbitration shall be conducted in London, in the English language, by a single arbitrator who shall be familiar with, and have experience of the diamond industry. Prior to a party referring any dispute to arbitration, that party shall serve upon the other party a notice in writing giving 21 (twenty-one) clear business days' notice of its intention to refer a dispute to arbitration (the "**Arbitration Notice**");

36.1.3 notwithstanding Clauses 36.1.1 to 36.1.2 above, we may, by giving written notice, elect to have a dispute determined by the Commercial Court of the High Court of England and Wales. If a Registered Buyer or a Registered Seller is the claiming party in a dispute, then we shall give written notice to elect to refer a dispute commenced by a Registered Buyer or a Registered Seller to the Commercial Court of the High Court of England and Wales no later than the 14th (fourteenth) day following the date of receipt of an



Arbitration Notice given pursuant to Clause 36.1.2. If we make such an election, each party shall appoint a solicitor admitted and located in England and Wales to accept service of proceedings relating to the dispute by the 14th (fourteenth) day following receipt of a written request to do so;

**36.1.4** where we elect to have a dispute determined by the Commercial Court of the High Court of England and Wales in accordance with Clause 36.1.3, the parties shall take any and all steps necessary to discontinue any arbitration proceedings commenced and any costs incurred in relation to such arbitration proceedings shall become costs incurred in relation to the proceedings before the Commercial Court of the High Court of England and Wales; and

**36.1.5** nothing in this Clause 36.1.5 shall prevent either party from seeking interim, provisional or conservatory measures from any court or other judicial authority of competent jurisdiction at any time whether before or after the formation of the arbitral tribunal or the commencement of proceedings in the Commercial Court of the High Court of England and Wales.

**36.2** For the avoidance of any doubt, the Ombudsman Terms of Reference shall not apply to Auctions.

## **37 General Provisions**

**37.1** The Auction Contract shall apply in place of, and prevail over, any terms or conditions (whether or not in conflict or inconsistent with these T&Cs) contained or referred to in any documentation submitted by a Registered Buyer and/or a Registered Seller or in correspondence or elsewhere or implied by trade, custom, practice or a course of dealings. The signing by De Beers Group Auctions of any documentation of a Registered Buyer and/or a Registered Seller shall not imply any modification of these T&Cs. On submitting an Auction Request, a Registered Seller confirms that it agrees to be bound by these T&Cs and the Auction Contract Documentation.

**37.2** If any provision in these T&Cs or the Auction Contract Documentation shall be held to be illegal, invalid or unenforceable, in whole or in part in any jurisdiction, under any enactment or rule of law, such provision shall to that extent, in such jurisdiction, be deemed not to form part of these T&Cs or the Auction Contract Documentation and the legality, validity and enforceability of the remainder of these T&Cs or the Auction Rules shall

not be affected.

**37.3** The Auction Contract Documentation, including but not limited to these T&Cs, the Auction Contract and the Auction Rules comprise the entire agreement between us and a Registered Buyer and/or a Registered Seller in relation to any Auction.

**37.4** No rights or obligations conferred on a Registered Buyer or a Registered Seller hereunder may be assigned, transferred, sub-contracted or delegated. We may, in our absolute discretion and without giving notice to a Registered Buyer and/or a Registered Seller, sub-contract the operation of any Auction to a member of the De Beers Group.

**37.5** Nothing in these T&Cs (or arrangements entered into under them) shall constitute a partnership or franchise arrangement between us and a Registered Buyer or a Registered Seller (or any member of our respective groups).

**37.6** To the extent that a Registered Buyer and/or a Registered Seller are a partnership, the liability of the partners under these T&Cs shall be joint and several.

**37.7** Save for us and members of the De Beers Group, no third party (including, for the avoidance of doubt, members of any Registered Buyer Group) has rights (including under the Contracts (Rights of Third Parties) Act 1999) to enforce these T&Cs (or arrangements entered into under them). For the avoidance of doubt, Clause 21 and Clause 22 are for the benefit of us and a Registered Buyer and/or a Registered Seller and may be relied on, and enforced directly by, us and a Registered Buyer and/or a Registered Seller against any and all third parties.

## Schedule 1

### Interpretation & Definitions

#### Interpretation:

When we refer to “us”, “we”, “our” or “De Beers Group Auctions” it means De Beers Auction Sales Singapore PTE. Limited, a company incorporated under the laws of Singapore located at 10 Collyer Quay, #03-04 Ocean Financial Centre, Singapore 049315. When we refer to a Registered Buyer and/or a Registered Seller (as applicable) we are referring to you as a customer of De Beers Group Auctions. When we refer to a party or the parties, we mean one or both parties.

#### Definitions:

In these Terms and Conditions, words with initial capitals have defined meanings which are set out below:

**Account Manager** means a designated point of contact at DBGA to assist Registered Buyers and/or Registered Sellers in Auction process.

**Affiliates** means in relation to the Anglo American Group, De Beers Group Auctions, a Registered Buyer or a Registered Seller, a Subsidiary of that company, a Holding Company of that company, any other Subsidiary of that Holding Company or in respect of De Beers Group Auctions only, a Branch of that company.

**Anglo American Group** means any company or division directly or indirectly controlled by Anglo American Plc, a company incorporated at 20 Carlton House Terrace, London SW1Y 5AN.

**Anti-Corruption and Bribery Undertakings** has the meaning given to it at Clause 33.1.

**Anti-Corruption Laws** means:

- (i) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (“**OECD Convention**”);
- (ii) the Foreign Corrupt Practices Act (“**FCPA**”) of 1977 of the United States of America (as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998);
- (iii) the Bribery Act 2010 of the United Kingdom;
- (iv) the Prevention of Corruption Act, the Penal Code and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act of Singapore;
- (v) the United Nations Convention against Corruption 2003; and/or
- (vi) any other applicable law which:
  - (a) prohibits the offering of any gift, payment or other benefit to any person or any

officer, employee, agent or advisor of such person; and/or

- (b) is broadly equivalent to the FCPA and/or the Bribery Act 2010, or was intended to enact the provisions of the OECD Convention, or which has as its objective the prevention of corruption, and which is applicable in the jurisdiction in which we and a Registered Buyer or a Registered Seller are registered, conduct business and/or in which any aspect of the Auction Contract is to be performed.

**Approved Carrier** means Brinks or Malca-Amit or another secure transport carrier approved by us for the delivery of Rough Diamonds and/or Polished Diamonds under an Auction Contract.

**Auction** means the process of us (including on behalf of a Registered Seller) offering, including the pre-Bid process (as applicable), a Lot, Lots or Units within a Lot to Registered Buyers for sale to a Winner determined through the application of the Auction Rules, all of which is facilitated through the Website. For the avoidance of doubt, the format of an Auction will be determined solely by us from time to time, and includes but is not limited to (i) a Spot Auction and/or (ii) a Forward Auction, as the context so requires. Auctioned shall have a corresponding meaning.

**Auction Contract** means these T&Cs and a Sales Confirmation with a Registered Buyer for either a Forward Sales Contract or a Spot Sales Contract.

**Auction Contract Documentation** means (i) the Auction Contract, (ii) the Auction Rules, (iii) the De Beers Best Practice Principles, (iv) the Statement of Compliance, Integrity and Probity, (v) the De Beers Group Auctions Diamond Trading Standard, (vi) the Auction Participation Pack and (vii) the Website Terms and Conditions, and any other such documentation notified by us to a Registered Buyer or a Registered Seller from time to time which governs and is incorporated in every Auction Contract made by us with a Registered Buyer.

**Auction Participation Pack** means the detail and content of the Product and/or Lots to be Auctioned at a specific Auction as provided to Registered Buyers.

**Auction Provider** means the owner and operator of the auction software and platform who, as at the date of these T&Cs, is Curtis Fitch.

**Auction Request** means a request by a Registered Seller to offer for sale a Lot, Lots or Units within a Lot to Registered Buyers and accepted by us for inclusion in an Auction.

**Auction Request Statement of Confirmation** means a declaration by a Registered Seller in accordance with the submission of an Auction Request confirming a Registered Seller's acceptance of the Auction Contract Documentation, incorporating these T&Cs.

**Auction Rules** means the rules and methodology by which a Winner or Winners and the corresponding Winning Bid is determined in any particular Auction. Such rules and methods will be notified by us to Registered Buyers before the commencement of any Auction. For the avoidance of any doubt, the Auction Rules contain rules relating to both Spot Auctions and Forward Auctions.

**Beneficiary/Beneficial Owner** means a natural person(s) who ultimately enjoys 50% or more in percentage terms (or such other percentage as may be communicated by DBGA from time to time for any applicable purpose or purposes) of the benefits of ownership of a Registered Buyer and/or Registered Seller (as applicable) either directly or indirectly, meaning either legally and/or through a beneficial interest, including through a trust structure.

**Bid** means an offer submitted by a Registered Buyer to us (i) in respect of an Auction pre-Bid or (ii) for the purchase of a Lot or Lots or Units within a Lot at Auction in accordance with the Auction Rules. **Bidding** shall have a corresponding meaning.

**Branch** means in respect of De Beers Group Auctions, a branch office of the company (as applicable).

**Confidential Information** means the terms of the Auction Contract, any Auction (including its existence) and all information, documentation, data or know-how disclosed by De Beers Group Auctions or a Registered Buyer and/or a Registered Seller pursuant to any Auction whether oral or written or in any other form including without limitation, information relating to a Registered Buyer and/or a Registered Seller's identity, our or a Registered Buyer or a Registered Seller's products, operations, current or historic Auction results, Bidding information or practices, processes, plans or intentions, know-how, design rights, trade secrets, market opportunities and business affairs.

**DBGA Product** means a Product which is made available for sale by way of Auction by DBGA and which is not a Registered Seller Product.

**De Beers Group Auctions** or **DBGA** means De Beers Auction Sales Singapore PTE. Limited, a company incorporated under the laws of Singapore located at 10 Collyer Quay, #03-04 Ocean Financial Centre, Singapore 049315.

**De Beers Group Auctions' Diamond Trading Standard** means our compliance standard which sets out our commitment to establishing a

transparent and accountable trading platform for responsible selling and sourcing incorporating compliance requirements of Registered Seller integrity, a source of origin provenance claim and product disclosure. All Registered Sellers are obliged to comply with the De Beers Group Auctions' Diamond Trading Standard.

**De Beers Best Practice Principles Assurance Programme Manual** and the **De Beers Best Practice Principles Assurance Programme Requirements** means the documentation which sets out the monitoring, measuring, verifying and reporting requirements of the De Beers Best Practice Principles as set out in Schedule 3 to these Terms and Conditions.

**De Beers Best Practice Principles** or **BPP** means the "De Beers Best Practice Principles" and the associated assurance programme, incorporating the De Beers Best Practice Principles Assurance Programme Manual and De Beers Best Practice Principles Assurance Programme Requirements, to be complied with by the De Beers Group and a Registered Buyer and/or Registered Seller (that is also a Sightholder and/or Accredited Buyer Customer), and as published from time to time and able to be viewed at <http://www.debeersgroup.com>

**De Beers Group** means any company or division directly or indirectly controlled by De Beers Plc, a company incorporated at 44 Esplanade, St Helier, Jersey JE4 9WG.

**Defaulting Party** has the meaning given to it at Clause 24.2.1.

**Diamond** means a mineral consisting essentially of carbon crystallised in the isometric (cubic) crystal system, with a hardness on the Mohs' scale of 10, a specific gravity of approximately 3,52 and a refractive index of approximately 2,42, created by nature meaning formed completely without human intervention during the formation.

**Diamond Related Business** means (i) a Subsidiary deriving any revenue from the sale of Rough Diamonds, Polished Diamonds or Diamond-based products or (ii) a Holding Company whose holdings are in businesses of this nature BUT excludes entities solely involved in Diamond mining.

**Event of Default** has the meaning given to it at Clause 24.

**Failure to Accept Delivery** has the meaning given to it at Clause 24.1.3.

**Force Majeure Event** means the occurrence or effect of any event or circumstance (or any combination of events and/or circumstance) that: (i) is beyond the reasonable control of a party to the Auction Contract; and (ii) partly or wholly prevents, hinders or delays due performance by that party of

its obligations under the Auction Contract (other than the obligation to pay money) and, provided that the above conditions are satisfied, includes but is not limited to:

- (i) fire, flood, washout, storm, lightening, windstorm, hurricane or other acts of God; or
- (ii) acts of public enemies, war (whether declared or undeclared), civil war, piracy, terrorist activities, embargo, blockage, revolution, political disturbance, sabotage, explosion, riot, insurrection, mobilisation, civil commotion; or
- (iii) strikes, lockout, labour disputes or other form of industrial action or industrial disturbances, stoppages of workmen; or
- (iv) acts, orders or restrictions of governmental or local authorities (including interruptions occurring as a result of such acts, orders or restrictions of governmental or local authorities) or of any court, or controls on exports; and/or
- (v) in the case of DBGA, any circumstance or event which affects our ability or that of any De Beers Group company to produce, transport, deliver or sell Rough Diamonds and/or Polished Diamonds including mining events (including a roof collapse or slope failure as relevant), other production, facility or transport infrastructure damage failure or breakdown, or technical damage, failure or breakdown of our IT/software systems, including our Website.

**Forevermark** means the Forevermark diamond brand promoting the trade of Forevermark diamonds by entities authorised and accredited by Forevermark to trade Forevermark diamonds and to use intellectual property rights relating to this, including the Forevermark brands.

**Foreign Public Official** means an individual holding legislative, administrative or judicial posts or anyone carrying out a public function for a foreign country or the country's public agencies or an official or agent of a public international organisation.

**Forward Auction** means the process of us offering a Lot or Lots or Units within a Lot to Registered Buyers for sale to a Winner or Winners determined through the application of the Auction Rules, all of which is facilitated through the Website in advance and in respect of the purchase of a Winning Lot in the future.

**Forward Contract Bid** means a Bid placed by a Registered Buyer at a Forward Auction in accordance with the applicable Auction Rules and which shall include (but not be limited to) (i) a Bid expressed as a fixed price (a "**Fixed Price Forward Contract Bid**") or (ii) a Bid expressed as a percentage above or below a future Spot Price accepted by us at a specified future Spot Auction in respect of a Forward Sales Contract (a "**Floating Price Forward Contract Bid**").

**Forward Contract Maturity Date** means the date on which payment becomes due and payable by a Winner or Winners of a Forward Auction.

**Forward Sales Contract** means any single contract for sale by us and purchase by a Registered Buyer of a Lot or Lots or Units within a Lot in respect of a Forward Auction pursuant to the Auction Rules.

**Holding Company** means in relation to a Registered Buyer Group and/or a Registered Seller Group, any other company in respect of which a Registered Buyer Group is a Subsidiary.

**IIDGR** means the International Institute of Diamond Grading and Research.

**Insolvency Event** means, with respect to a party, that party:

- (i) is dissolved; or
- (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as it becomes due; or
- (iii) makes a general assignment or arrangement or composition with or for the benefit of its creditors; or
- (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding, action or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation, or (ii) is not dismissed, discharged, stayed or restrained in each case on or before the 30th (thirtieth) day following the institution or presentation thereof; or
- (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); or
- (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; or
- (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case on or before the 30th (thirtieth) day thereafter; or
- (viii) causes or is subject to any event with respect to it which, under the applicable laws of any

- jurisdiction, has an analogous effect to any of the events specified in paragraphs (i) to (vii) (inclusive) of this definition; or
- (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**Key Individual** means an individual in respect of a Registered Buyer and/or a Registered Seller who is (i) a Beneficiary/Beneficial Owner, (ii) a Partner, and/or (iii) an individual who is a director or a shadow director (in each case, in either an executive or non-executive capacity, including any analogous roles as recognised by applicable local law).

**Kimberley Process Certification Scheme or KPCS** means the certification process to remove conflict diamonds from the global supply chain.

**Laboratory-Grown Diamond** (or Synthetic Diamond or Laboratory-created Diamond) means an artificial product that has essentially the same chemical composition, crystal structure and physical properties as a Diamond.

**Laboratory-Grown Diamond Business Activities** means including, but not limited to, the creation, manufacturing, polishing, processing, and/or trading (sale or purchase) of Laboratory-Grown Diamonds and/or jewellery incorporating Laboratory-Grown Diamonds, as applicable.

**LCIA** means the London Court of International Arbitration.

**Lot** means one or more numbered Units made available by us (including on behalf of a Registered Seller) for sale to Registered Buyers by way of Auction, including Spot Auctions and/or Forward Auctions.

**Material Adverse Change** means any event or occurrence which has the direct or indirect effect of materially affecting our capacity to conduct an Auction including, but not limited to, (i) our capacity to source Rough Diamonds and/or Polished Diamonds for inclusion in a Lot or Lots or Units within a Lot or (ii) our ability to produce Spot Auction base prices.

**Material Breach** means any breach of an Auction Contract by a party which is a breach of a condition and acts to deprive the other party of a substantial part of the benefit of the whole of the Auction Contract.

**Non-Defaulting Party** has the meaning given to it in Clause 24.2.1.

**Non-Payment of a Winning Lot** has the meaning given to it at Clause 24.1.4.

**Partner** means a person who participates in a partnership arrangement in which two or more

individuals share the profits and liabilities of a business venture which is carried on in common between the relevant partners with a view to profit.

**Polished Diamond** means a Diamond that has been manufactured from a rough form through a process of cutting and polishing.

**Product** means a unique presentation comprising one or more Rough Diamonds and/or Polished Diamonds for sale by way of Auction as shall be determined by us and notified to a Registered Buyer from time to time and includes both DBGA Product and Registered Seller Product.

**Registered Buyer** means an independent company which has applied for and been accepted by us to participate in Auctions to Bid on a Lot, Lots or Units within a Lot of Rough Diamonds and/or Polished Diamonds.

**Registered Buyer Group** means together with a Registered Buyer, its Holding Company and any Subsidiary Undertakings that are Diamond Related Businesses.

**Registered Seller** means an independent company which has applied for and been accepted by us to promote a Lot, Lots or Units within a Lot of Rough Diamonds and/or Polished Diamonds by appointing us as its agent and to access our Auction platform. A Registered Seller is subject to the De Beers Group Auctions' Diamond Trading Standard which a Registered Seller must comply with at all times it maintains Registered Seller status.

**Registered Seller Group** means together with a Registered Seller, its Holding Company and any Subsidiary Undertakings that are Diamond Related Businesses.

**Registered Seller Product** means a Product which is made available for sale by way of Auction by DBGA on behalf of a Registered Seller pursuant to an Auction Request submitted by a Registered Seller.

**Registered Seller Product Estimated Value** means a value attributed by a Registered Seller to Registered Seller Product for (i) viewings by Registered Buyers, (ii) inclusion in an Auction Participation Pack, and/or (iii) DBGA setting a minimum value for Registered Seller Product at an Auction (as applicable).

**Registered Trader** means a DBGA customer that holds both Registered Buyer and Registered Seller status at the same point in time.

**Representatives** means in relation to a person (or group of persons), its Key Individuals, its (or their representatives) employees, officers, directors, agents, advisers, consultants, contractors and sub-contractors (and includes in the case of a party, any

person performing that party's obligations under a contract).

**Reserve Price** means where applicable, the minimum acceptable price attributable by us or by a Registered Seller to the proposed sale of a Lot or Units within a Lot in respect of an Auction. Such Reserve Price will apply to a Spot Auction or an Auction in respect of a Fixed Price Forward Contract Bid (in each case, in accordance with the applicable Auction Rules), but not to an Auction in respect of a Floating Price Forward Contract Bid. For the avoidance of doubt, a Registered Seller's Reserve Price (if any) is only communicated to the Auction Provider and shall not be directly or indirectly disclosed, or made available to us.

**Responsible Jewellery Council** means the trading name of the Council for Responsible Jewellery Practices Ltd

**Rough Diamond** means a Diamond that has not been manufactured and remains in an uncut form.

**Sales Confirmation** means an invoice and any supplemental written notification or documentation from us to a Winner following a Winning Bid in respect of a Forward Sales Contract and/or a Spot Sales Contract.

**Sales Levy** means a financial levy imposed by a government and/or a regulatory authority on digital transactions undertaken in connection with the relevant jurisdiction, that following an Auction is (i) added to a Registered Buyer's Winning Bid, and incorporated into a Sales Confirmation, and/or (ii) added to a Service Fee, payable by a Registered Buyer and/or a Registered Seller (as applicable), and/or (iii) added to a Default Fee, payable by a Registered Buyer (as applicable). For the avoidance of doubt, the Sales Levy does not refer to any income or withholding taxes that may be imposed on digital transactions by a government or regulatory authority.

**Sanction Authority** means any of the United Nations, the European Union, Her Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the United States State Department, the governments of the Commonwealth of Australia, Switzerland, South Africa or any replacement of other regulatory body enforcing economic and trade sanctions legislation in such countries.

**Sanctioned Entity** means any person, being an individual corporation, company, association or other company which:

- (i) is the subject or target of a SDN Sanction or in respect of which a SDN Sanction has been imposed or targeted; or
- (ii) is owned, operated, controlled by any person who is the subject or target of a SDN Sanction

or in respect of which a SDN Sanction has been imposed or targeted; or

- (iii) is the subject or target of a State Sanction or in respect of which a State Sanction has been imposed or targeted.

**Sanctions** means any SDN Sanction, State Sanction and any other similar sanctions, regulations, statutes, prohibitions and official embargo measures that relate to the enforcement of economic and trade sanctions which are maintained, amended and imposed by any Sanction Authority (each a Sanction).

**SDN Sanction** means any Sanction used as a basis for listing a person on specially designated nationals or blocked person's lists and or any replacement lists which are maintained and imposed by any Sanction Authority.

**Service Fee** means a percentage fee payable by a Registered Buyer and/or a Registered Seller following an Auction or the withdrawal of an Auction Request (as applicable) as communicated by DBGA from time to time. For the avoidance of doubt, a Service Fee shall be subject to a Sales Levy in accordance to Clause 13.3 of these T&Cs (as applicable).

**Services** means the services offered by us to a Registered Seller in respect of an Auction as set out in Schedule 2 to these Terms and Conditions.

**Sightholder and/or Accredited Buyer Customer** means a customer holding Sightholder or Accredited Buyer status with De Beers Global Sightholder Sales (Pty) Limited, Sightholder Sales South Africa (Pty) Limited, Namibia Diamond Trading Company (Pty) Limited and/or De Beers Canada.

**Spot Auction** means the process of us offering a Lot or Lots or Units within a Lot to Registered Buyers for sale to a Winner determined through the application of the Auction Rules, all of which is facilitated through the Website in real time.

**Spot Sales Contract** means any single contract for sale by us and purchase by a Registered Buyer of a Lot or Lots or Units within a Lot in respect of a Spot Auction pursuant to the Auction Rules.

**Spot Price** means the price attributable to the sale of at least one Unit in a Winning Bid in respect of a Spot Auction.

**State Sanction** means any program that prohibits/and or restricts (i) trade with or investment in, or the transfer of property or assets to or from, a specified country, including its government, government subdivisions, agencies and other entities under the control or acting on behalf of government or (ii) engaging in transactions that relate to investing in and/or provision of advice or assistance in relation to a specified country which, in

each case, is maintained, amended and imposed by any Sanction Authority.

**Statement of Compliance, Integrity and Probity** means the compliance statement that all Registered Buyers and Registered Sellers must comply with all times it holds the respective status and as set out in Schedule 4 to these T&Cs.

**Statement of Principles for Laboratory-Grown Diamond Business Activities** means a set of principles applicable to the De Beers Group and all relevant customers, including Registered Buyers and Registered Sellers, in respect of their Laboratory-Grown Diamond Business Activities to protect and maintain consumer confidence in both natural diamonds and Laboratory-Grown Diamonds.

**Subsidiary** means an undertaking (the "Subsidiary Undertaking") in respect of which another undertaking:

- (i) holds a majority of the voting rights in the Subsidiary Undertaking;
- (ii) holds a membership interest and has the right to appoint or remove the majority of the board of directors of the Subsidiary Undertaking;
- (iii) has a right to exercise a dominant influence over the undertaking, by virtue of provisions contained in the Subsidiary Undertaking's constitutional documents or in any contract dealing with control or management of the Subsidiary Undertaking; or
- (iv) is a member of the Subsidiary Undertaking and controls alone, or pursuant to an agreement with the other members, a majority of the voting rights in the Subsidiary Undertaking; and
- (v) an undertaking is a Subsidiary of another undertaking if the undertaking is a Subsidiary of an undertaking that is itself a Subsidiary of that other undertaking.

**Supply Agreement** means the contractual agreement between De Beers Global Sightholder Sales (Pty) Ltd, Namibia Diamond Trading Company (Pty) Ltd, De Beers Sightholder Sales South Africa (Pty) Ltd or De Beers Canada Inc (as the case may be) and a Sightholder and/or Accredited Buyer for the supply of rough Diamonds over a relevant supply period.

**Unit** means a defined carat volume of Product made available by us (or on behalf of a Registered Seller) for sale to Registered Buyers as a Lot or a component part of a Lot.

**Viewing Location** means a De Beers Group Auctions office located in Antwerp, Hong Kong, New York or Tel Aviv or any other such location as notified by us from time to time.

**Website** means [www.debeersauctionsales.com](http://www.debeersauctionsales.com) incorporating the Auction Provider auction platform.

**Winner** means a Registered Buyer who has placed the Winning Bid for a Lot or Lots or Units within a Lot.

**Winning Bid** means the Bid placed by a Registered Buyer which is at or above a Reserve Price (if applicable) and which according to the Auction Rules, identifies the offer accepted by us (or on behalf of a Registered Seller) for the purchase of a Lot or Lots or Units within a Lot.

**Winning Lot** means all or part of a Lot or Lots or Units within a Lot that a Registered Buyer has won at Auction.

## Schedule 2

### Registered Seller Services

DBGA will maximise their Auction capabilities, expertise and related know-how to plan, manage and execute the auction of the Product. Auctions will be planned, managed and executed on behalf of a Registered Seller using the market-leading Auction practices developed and utilised by DBGA in the course of its own business. This includes:

- ◆ **Event management** – the planning and management of online sales events inclusive of all supporting activities.
- ◆ **Demand management** – DBGA will determine the range of customers who usually show the highest demand for the type of diamonds being offered and who will be prioritised for viewings in order to maximise the sale opportunity for those diamonds.
- ◆ **Viewings** – prior to each auction event, DBGA will hold viewings for the Registered Seller Product in the relevant jurisdictions, via its viewing office network in Antwerp, Hong Kong, New York, and/or Tel Aviv at the request of a Registered Seller. DBGA will bear the cost of shipping and insurance while the Registered Seller Product is in and between DBGA offices, including viewings.
- ◆ **Auction design** – DBGA will select and configure the appropriate auction design<sup>1</sup>, ensuring the best opportunity to sell a Lot or Lots or Units within a Lot of a Registered Seller Product at an optimum price. Note that a Registered Seller is responsible for determining the Reserve Price for the Registered Seller Products.
- ◆ **Marketing and participation** – through its global sales team, DBGA will market the Auction and drive the invitation, attendance and participation of customers at the events.
- ◆ **Event execution** – DBGA, together with its auction partner, the Auction Provider, will manage the live, real-time execution of the auction events.
- ◆ **Invoicing and collection** – DBGA will issue invoices and receive payment from Auction Winners and will remit the same to a Registered Seller. Payment terms will be in line with the DBGA T&Cs.
- ◆ **Delivery** – upon receipt of payment, DBGA will dispatch the Winning Lot to the Winner and return any unsold Lot or Lots or Units within a Lot of a Registered Seller Product to a Registered Seller.
- ◆ **Reporting and sales analysis** – DBGA will prepare appropriate reports of key sales, bidding and demand data in respect of the Registered Seller Product.

Note that DBGA offers no guarantee to the price at which a Lot or Lots or Units within a Lot of a Registered Seller Product sold through an Auction will sell, nor that all such Lot or Lots or Units within a Lot will sell.

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<sup>1</sup> This includes auction methods such as Japanese, Take-lead, Open Rank and Multi-unit, as currently used by DBGA.



## Schedule 3

### The Best Practice Principles<sup>2</sup>

These principles are designed to ensure that best practice is observed in the gem diamond industry

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#### **1 Consumer Confidence**

We are committed to operating our businesses with a view to ensuring that consumers buying diamond jewellery are able to rely with confidence on the professional and ethical standards and technical skills of the gem diamond industry, taking account of the following:

- (i) natural diamonds are object of prestige, a luxury good, generally acquired for sentimental reasons and are regarded as items of value by the consumer;
- (ii) diamonds are a unique item about which the consumer has limited expertise and consequently, in order to make an informed choice, the consumer is reliant on (i) the standards and integrity of the diamond industry, and (ii) information from the diamond industry as to cut, colour, clarity and carat weight and other attributes, including the application of any treatment;
- (iii) the highest professional and ethical standards and technical skills are necessary to ensure that consumer trust is not misplaced and that the reputation of the gem diamond industry is maintained and enhanced;
- (iv) consumers expect to purchase diamonds in their natural state, without any treatment, beyond the accepted skills of craftsmanship associated with their cutting and polishing and therefore the danger of non-disclosure of treatment of natural diamonds, and the passing off of partly or wholly synthetic diamonds and simulants as natural diamonds, is contrary to the interests of consumers; and
- (v) the injury and hardship suffered by local populations (and the potential for it) when conflicts arise in diamond producing areas are unacceptable, as is seeking to profit from such conflicts.

#### **2 Business Practices**

We are committed to operating our businesses in such a way that we neither engage in, nor encourage in any manner, the following practices which are regarded as unacceptable and against the public interest and that of the diamond industry.

- (i) buying and trading rough diamonds from areas where this would encourage or support conflict and human suffering;
- (ii) the use of child labour;
- (iii) practices which intentionally or recklessly endanger or harm the health or welfare of individuals; and
- (iv) conduct which conflicts with the principles set out in (1) above, thereby bringing the diamond industry into serious disrepute.

#### **3 Commitment**

We are committed to the highest industry ethics including the following:

- (i) action to address concerns arising out of the misuse of rough diamonds in support of conflict and regular discussions on other issues relevant to the gem diamond industry to enable appropriate and timely industry responses;
- (ii) the provision of proper working conditions (including the health, safety and well-being of workers);
- (iii) the dignity of individuals and best practices to ensure the fair treatment of individuals;

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<sup>2</sup> Version as published on 31 March 2015.

- (iv) full compliance with international best practice and the related regulatory framework with respect to the environment; and
- (v) full disclosure at all levels of the diamond distribution chain and, most importantly, to consumers, of all treatments to natural diamonds and with respect to wholly or partly synthetic stones and compliance with the rules, regulations and guidelines published from time to time by the diamond industry's governing bodies.

The De Beers Group is taking the lead in introducing best practice principles to ensure the diamond industry is run in an ethical and professional way.

De Beers is committed to abiding by these principles and is making it a condition of supplying all clients that they too agree to comply with them. Moreover the principles are formulated to ensure that De Beers and its customers encourage adherence to them at all levels of the supply chain down to the consumer. De Beers will also encourage industry organisations in the major diamond cutting centres to adopt these principles.

The implementation and monitoring of these Best Practice Principles will ensure consumers buying diamond jewellery will be able to rely with confidence on the ethical standards of the industry.

## Schedule 4

### A Registered Buyer Group/Registered Seller Group Statement of Compliance, Integrity & Probity

**Part A** – A Registered Buyer Group and/or a Registered Seller Group<sup>3</sup> must at all times it holds the respective status be able to confirm that since **7 July 2011**, it:

- (i) has not been charged with, reached a settlement in relation to, or been convicted of in any jurisdiction in relation to any illegal activity, including, but not limited to, any offence of fraud (including for the avoidance of any doubt, money laundering), theft, dishonesty or for causing any damage to the health or welfare of any individual or individuals;
- (ii) has not been declared (a) bankrupt, (b) has not had an encumbrancer take possession or a receiver or administrative receiver been appointed over all or any of its property or assets, (c) has not entered into a voluntary arrangement with its creditors or an administration order having been made (including, for the avoidance of doubt, Chapter 11 arrangements in the US or any equivalent arrangements in any other jurisdiction), (d) has not been made or had a resolution passed for its liquidation and/or winding-up or it having been wound-up (except for the purposes of solvent reconstruction), (e) has not entered into a scheme of arrangement (except for the purposes of amalgamation or merger), (f) has not had a bank or other relevant financial institution or representative declare that any of the assets and/or members of a Registered Buyer Group and/or Registered Seller Group constitute a non-performing asset, and/or (g) anything analogous to the above which has occurred in any jurisdiction or where any proceedings or other action has been commenced in respect of the above;
- (iii) has not been expelled from a Diamond Bourse, or similar such industry organisation, whether pursuant to a judgement of the Bestuur or otherwise;
- (iv) has disclosed all treatments to natural diamonds, as defined in the De Beers Best Practice Principles;
- (v) has not misrepresented simulants and/or synthetics as natural diamonds;
- (vi) has not been involved in or associated with conflict diamonds;
- (vii) has not been involved in or associated with the refusal by any grading laboratory to grade any diamond or diamonds or the contravention of any code of ethics or conduct operated by a grading laboratory;
- (viii) has not been turned away or had its status as a customer terminated by any supplier of diamonds on the basis of a failure to comply with any code of conduct or ethical code operated by such a supplier; and
- (ix) has not been turned away or had its status as a member of any diamond industry body or trade association terminated or suspended on the basis of a failure to comply with any code of conduct or ethical code operated by such diamond industry body or trade association.

**Part B** – A Key Individual<sup>4</sup> of a Registered Buyer and/or a Registered Seller must at all times it holds the respective status be able to confirm that since **7 July 2011**, it:

- (i) has not been disqualified as a director;
- (ii) has not been convicted in any jurisdiction of any offence of fraud, theft or dishonesty;
- (iii) has not been expelled from a diamond bourse or any similar such industry organisation;
- (iv) has not been declared bankrupt; and
- (v) has no past conduct that in any way casts doubt upon their personal probity or integrity.

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<sup>3</sup> As defined in Schedule 1 (Interpretation & Definitions) to the T&Cs.

<sup>4</sup> As defined in Schedule 1 (Interpretation & Definitions) to the T&Cs.