



## OKAVANGO DIAMOND COMPANY TERMS AND CONDITIONS OF SALE VERSION: JANUARY 2022

### 1. Introduction

- 1.1 This document sets out the terms and conditions (the "**Terms and Conditions**") on which Okavango Diamond Company (Proprietary) Limited ("**ODC**") will sell rough diamonds by "**Spot Auction**" and "**Term Auction**" (each, an "**Auction**"). The Terms and Conditions are to be read together with the **Spot Auction** rules and **Term Auction** rules (the "**Auction Rules**") which set out the procedures to be adopted for the conduct of each relevant Auction.
- 1.2 Words used in the Terms and Conditions shall have the same meaning as in the Auction Rules (in the context of a Term Auction or Spot Auction, as appropriate) unless otherwise defined or the context otherwise requires. In the event of any inconsistency between the Terms and Conditions and the Auction Rules, the Terms and Conditions shall prevail.
- 1.3 Except as otherwise expressly here provided, the Terms and Conditions constitute all the terms pursuant to which ODC sells diamonds at Auctions. All parties agree that any diamond sale contract entered into is not entered into in reliance upon any representation, term or undertaking other than as expressly provided in the Terms and Conditions.
- 1.4 The Terms and Conditions are available online on the ODC website and Auction platform and must be accepted by a Bidding Customer on the online Auction platform prior to bidding in an Auction. By participating at any stage in an Auction (including the booking of and/or the attendance at any viewing appointment at a Spot Auction pursuant to clause 4), each Customer confirms that it has read the Terms and Conditions and agrees to be bound by them.

### 2. Registration

- 2.1 Any person or entity who wants to participate in an Auction (the "**Applicant**") must apply to ODC. An Applicant must first register with ODC by completing the registration form supplied by ODC (the "**Registration Form**") and providing ODC with all the documentation requested therein. All registration information provided to ODC shall be current, complete and accurate.
- 2.2 Any Applicant deemed by ODC, in its absolute discretion, to have successfully completed the above registration process shall be a "**Customer**" and where a Registration Form is successfully completed for one or more Applicants in a Group, each Applicant in that Group shall be a Customer. Successful registration shall be confirmed by ODC in writing and ODC reserves the right to review and/or revoke this confirmation as, in its absolute discretion, it sees fit. ODC may review a Customer's registration at any time and shall be entitled to request further registration information from a Customer at its sole discretion at any time. By registering as a Customer, each Customer shall be deemed to have represented and warranted that it and any person in its employ or acting on its behalf is (or will be at the appropriate time) sufficiently proficient in and knowledgeable regarding auction systems and the operation of ODC's auctions, and shall sign a disclaimer in the form that may be prescribed by ODC from time to time to confirm this.

- 2.3 Following successful registration a Customer shall be required to provide further registration information in respect of any future Auctions in which it participates if: (i) the information provided in the Registration Form is no longer accurate, in which case the Customer shall update such information by written notice to ODC; or (ii) ODC otherwise requires the Customer to re-register. ODC must be in possession of accurate registration information at least ten working days prior to an Auction unless ODC otherwise agrees.
- 2.4 ODC agrees not to disclose or to process any registration information provided by the Customer (either as part of the initial registration process or subsequently) except in accordance with ODC's Privacy Policy (as provided on ODC's website at <https://www.odc.co.bw/privacy-policy> and as may be amended or updated from time to time).
- 2.5 More than one Customer in a Group is entitled to participate in an Auction, though only the Bidding Customer is entitled to place bids in an Auction. The Bidding Customer shall be ODC's primary contact in respect of any other Customers in that Group.
- 2.6 Under no circumstances shall a Bidding Customer be entitled to participate in an Auction on behalf of an entity that is not a registered ODC Customer.
- 2.7 "**Group**" shall mean the Customer's ultimate parent company, together with all of its direct and indirect subsidiary companies that are involved in any way in the diamond supply chain. A "**subsidiary company**" shall mean any company in which a parent directly or indirectly: (i) holds or controls a majority of the voting rights (either by means of equity shareholding or by way of written agreement with the other members); or (ii) can appoint or remove a majority of the board of directors; or (iii) exerts day to day management control.
- 2.8 "**Bidding Customer**" shall mean the Customer identified as such in the Registration Form, only one Bidding Customer to be permitted for each Group. The Bidding Customer shall bid in the Auction and, following the Auction, shall notify ODC in accordance with clause 10.2 as to which Customers are to be invoiced in respect of any Lots won.

### 3. Lot descriptions

- 3.1 A "**Lot**" in a Spot Auction shall mean a single diamond or set of diamonds offered in an Auction and traded as a single whole. A "**Lot**" in a Term Auction shall mean a contract (the "**Term Contract**") to purchase a series of Lots similar to those offered in each prevailing Spot Auction during the course of the Term Contract (the "**Term**"), the specifics of which will be described in the Lot Breakdown for the relevant Term Auction (such Lots being allocated to Term Auction Lot winners at the time of the relevant Spot Auctions). A "**Lot Group**" shall mean one or more Lots with the same description which are treated as identical for the purposes of the auction process.
- 3.2 For all Lot Groups to be offered at a Spot Auction, ODC will select one or more Lots to be the "viewing lot(s)", which will be made available for viewing during the viewing period. For Lot Groups containing more than one Lot, ODC shall select one or more Lots to be "viewing lot(s)" which will be representative of all Lots within that Lot Group. All other Lots within that Lot Group will also be representative of all Lots in that Lot Group but, save where requested by a Customer in accordance



with clause 7.1, shall not be available for viewing. For the purposes of the Terms and Conditions, a “**Viewing Lot**” shall mean, for a Lot Group containing one Lot, the Lot, and for a Lot Group containing more than one Lot, a representative Lot that is made available to Customers for viewing prior to the Spot Auction.

- 3.3 Prior to any Auction, ODC shall publish on its website (or by way of any other method of notification it deems appropriate) descriptions of the Lots to be offered for sale at that Auction. Such descriptions shall be indicative only and ODC makes no representations as to either the quality or quantity of diamonds which will be available at any Spot Auction and by inference any goods being supplied through a Term Contract.
- 3.4 By making a bid in respect of a Lot, the Bidding Customer (together with any other Customer on whose behalf the Bidding Customer is bidding) confirms that it has satisfied itself as to the characteristics of the Lot Group of which that Lot is part.
- 3.5 For a Lot offered in a Term Auction, each winner shall be bound by a Term Contract, being a contract to purchase a series of Lots similar to those offered in each prevailing Spot Auction during the Term (such Lots being allocated to Term Auction Lot winners at the time of each relevant Spot Auction). Such Lots shall be priced at a percentage of the “Reference Price” typically equal to the Spot Auction “**Selling Price**” (see paragraph 3.8 below).
- 3.6 At the time of each Spot Auction, ODC shall determine at its absolute discretion which of the Lots under each Lot Description will be allocated to customers participating in the relevant Spot Auction to bid on, and which will be allocated to Term Auction Lot winners. If, in the opinion of ODC (at its absolute discretion), there are insufficient Lots for both the Spot Auction and the Term Auction Lot winners, then the relevant Term Auction Lot winners will be notified before the Spot Auction (and may participate in the Spot Auction), but all Lots with that particular Lot Description will be included in the Spot Auction.
- 3.7 If no Lots of the type described in a relevant Term Contract are allocated to a Term Auction Lot winner at the time of a particular Spot Auction, then such Term Auction Lot winner acknowledges and agrees that they shall receive no such Lots at the time of such Spot Auction under the relevant Term Contract.
- 3.8 For a particular Lot Description, the “**Reference Price**” for Term Auctions shall be equal to the Spot Auction Selling Price. If, for a particular Lot Description, a Spot Auction does not produce a Selling Price, ODC may at its absolute discretion set the Reference Price for Term Auction Lot winners to the corresponding Spot Auction Round 1 Continue Price or Reserve Price for the relevant Lot. Term Auction Lot winners shall be notified where the Spot Auction does not produce a Selling Price and may decline to purchase the relevant Lot for such Lot Description without penalty within 24 hours of receiving such notice.
- 3.9 If, for a particular Lot Description, fewer Lots sell in a Spot Auction than were offered to participants in the relevant Spot Auction, Term Auction Lot winners shall be notified of this fact and may without penalty decline to take the Lots that were allocated to them under such Lot Description within 24 hours of receiving such notice.
- 3.10 A Term Auction Lot winner who has declined a Lot in accordance with clauses 3.8 and 3.9 will not



have a future claim on or recourse to that specific Lot or its value thereafter.

- 3.11 For the avoidance of doubt, the Term in respect of a Term Auction Lot winner's contract will not be extended as a result of any of the situations described in clauses 3.6 to 3.9.
- 3.12 Notwithstanding clause 3.5, a Term Contract holder may (to the extent specified in the description of that Term Contract at the relevant Term Auction) be permitted to opt out without penalty from purchasing a Lot or Lots during the Term.
- 3.13 Any Term Contract holder who wishes to opt out of purchasing a Lot or Lots available to them through the Term Contract, must notify ODC in writing of its intention to opt out of purchasing the relevant Lot or Lots no later than three working days (being Monday to Friday, with the exception of any public holiday in Botswana) prior to the commencement of the scheduled Spot Auction viewing period. Such notification, once given, is irrevocable (and shall be deemed to have been an opt-out for the purposes of the relevant Term Contract, including (without limitation) if the circumstances described in clauses 3.8 and 3.9 arise at the relevant Spot Auction).
- 3.14 In the event that a Term Contract holder opts out of the purchase of any Lots in accordance with clauses 3.12 and 3.13, ODC is free to dispose of such Lots through any means it wishes, and such Term Contract holder will not have a future claim on or recourse to that specific Lot or Lots or their value thereafter.

#### **4. Spot Auction Viewings**

- 4.1 ODC will invite Customers to make an appointment to view the Viewing Lots to be offered for sale at a Spot Auction, though such invitation shall not amount to an offer by ODC to sell any diamonds. Customers are encouraged, but not required, to attend a viewing appointment prior to bidding in the relevant Spot Auction. All Customers bidding in a Spot Auction, including Customers who do not attend a viewing appointment, must first arrange with ODC to have bidder training in Gaborone (or such other location as agreed with ODC). Once a Customer has received such training, it shall remain eligible to bid in future Spot Auctions unless ODC otherwise determines.
- 4.2 A Customer may request a viewing appointment on any of the dates specified by ODC in the invitation and shall specify, on making such a request, the Customer's preferred duration for that appointment. Confirmation of any appointment, and the time and duration of such appointment, shall be at the sole discretion of ODC. Viewings shall take place at ODC's premises (or as otherwise notified by ODC, in which case references to ODC's premises in the Terms and Conditions shall be deemed to refer to such alternative location).
- 4.3 An appointment must be made in the name of the Bidding Customer. Where two or more Customers participating in a Spot Auction are members of the same Group, representatives from each of these Customers must attend the same viewing appointment.
- 4.4 ODC shall have absolute discretion as it sees fit in relation to the conduct of viewings, including without limitation:
  - (A) the right to cancel or change the time or location of any appointment (having given



reasonable notice of any cancellation or change to the Customer);

(B) whether an individual can attend a viewing; and

(C) the duration of any viewing, including the viewing of an individual Viewing Lot.

4.5 If a Customer fails to attend a viewing at the appointed time (being more than one hour late for an appointment shall constitute failure to attend) ODC may, in its absolute discretion, refuse to allow that Customer to attend a viewing at any later time, and may reassign the appointment to a different Customer.

## 5. **Authorised Representatives**

5.1 Subject to clause 5.2, at least five working days in advance of any viewing appointment in respect of Spot Auction Viewing Lots, the Bidding Customer shall provide the names of all representatives which the Bidding Customer wishes to attend the viewing on the Bidding Customer's behalf, such representatives to be limited to directors, employees, shareholders or partners of the Bidding Customer or another Customer within the Bidding Customer's Group (a "**Customer Representative**").

5.2 If a Bidding Customer wishes to bring an individual to a viewing appointment who is not a Customer Representative (a "**Third Party Representative**"), the Bidding Customer shall notify ODC of the identity of any such Third Party Representative at least five working days in advance of any viewing appointment. Any Third Party Representative must be a director, employee, shareholder or partner of another ODC registered Customer. ODC reserves the right, in its absolute discretion, to refuse a Third Party Representative to attend a viewing appointment.

5.3 A Customer may not bring to an ODC viewing appointment any representative of any company that has not successfully completed the ODC registration process set out in clause 2. If a Customer attempts to bring an unregistered representative to a viewing appointment, ODC may, in its absolute discretion, refuse to allow that Customer to attend that viewing appointment and may exclude the Customer from participating in future Auctions.

5.4 Unless ODC agrees otherwise, the Customer shall provide proof acceptable to ODC of the identity of each representative notified to ODC under clause 5.1 or clause 5.2 (all such individuals to be that Customer's "**Authorised Representatives**"). Such proof must include a copy of each Authorised Representative's passport, the nature of the relationship between the Authorised Representative and the Customer and any other document or information that ODC may reasonably require to comply with any legal requirements (including, but not limited to, any money laundering regulations or their equivalent). The Customer shall inform ODC in writing of any changes to the information provided under this clause 5.4.

5.5 If, in respect of any Authorised Representative, the required proof of identity, documents and/or information acceptable to ODC are not provided at least five working days prior to the appointment, ODC may, in its absolute discretion, refuse to allow that Authorised Representative to attend the appointment and/or cancel the Bidding Customer's appointment entirely.

5.6 The Customer agrees that any passport copies provided to ODC, either during the registration

process, or under clause 5.4, may be retained by ODC for its records. Updated passport copies in respect of any Authorised Representative may be requested by ODC from time to time. ODC agrees not to disclose any identification information it may hold in relation to an Authorised Representative except for: (i) when facilitating visa applications or access to ODC's premises; or (ii) where required by law or by any regulation having the force of law; or (iii) where such information is required to be disclosed to the Ministry of Minerals, Energy and Water Resources.

- 5.7 ODC may at any time and without prior notice, limit the number of Authorised Representatives of any Customer attending a viewing to such number as ODC, in its absolute discretion, sees fit.
- 5.8 **"Working days"** shall mean any day in Botswana that is not a weekend or a public holiday.

## **6. Security**

- 6.1 Whilst on ODC's premises, the Customer agrees (on behalf of itself and its Authorised Representatives) to respect and comply with ODC's processes and procedures as regards security and operations. ODC shall not be liable for any loss or damage suffered by the Customer whilst on ODC's premises provided that this clause 6.1 shall not exclude or limit ODC's liability for death or personal injury caused by ODC's negligence.
- 6.2 Whilst on ODC's premises, Customers (including their Authorised Representatives) may not, except where viewing a Lot in accordance with clause 7, be in possession of any diamonds whether rough or polished (or any similar material that may be deemed a substitute for diamond). Any Authorised Representative of a Customer found in possession of such material during a viewing appointment in contravention of this clause 6.2 will be asked to leave and the Customer may be restricted, at ODC's absolute discretion, from participating in any future Auction.
- 6.3 ODC shall be entitled to investigate the behaviour of any person which ODC deems to be suspicious and ODC may take further criminal action in respect of any such behaviour. ODC reserves the right to refuse entry into its premises to any person and to remove any person from its premises.

## **7. Spot Auction Viewing Process**

- 7.1 During an appointment, the Customer (including its Authorised Representatives) may view as many Viewing Lots as the timing of the appointment allows, but may only view one Viewing Lot in each size range at any given time and may only view any individual Viewing Lot once, unless otherwise authorised at ODC's sole discretion. Customers may request to view other Lots within Lot Groups and the foregoing restrictions in relation to Viewing Lots shall apply.
- 7.2 The weight of each Lot (and of the constituent parcels that may make up that Lot) shall be recorded by an employee of ODC before and after the viewing by the Customer of that Lot.
- 7.3 The Customer is entitled and encouraged to weigh a Lot itself prior to viewing it. Any failure to do so and the Customer shall waive the right to claim that the Lot weight specified by ODC when issued to that Customer was incorrect. Any discrepancy should be reported to ODC immediately.
- 7.4 Where there is a discrepancy between the weight recorded after the viewing and the weight recorded before that viewing, ODC shall be entitled to search the area in which the viewing took place, and



the Customer (including its Authorised Representatives) shall not be entitled to leave ODC's premises until such time as the discrepancy has been resolved (unless ODC otherwise allows).

- 7.5 Each Customer agrees that, and shall procure that each of its Authorised Representatives agrees that, ODC may carry out such security measures as, in its absolute discretion, it sees fit before any Authorised Representative may enter or leave ODC's premises, including, but not limited to, weighing the diamonds in accordance with clause 7.2.

## 8. Auction Procedure

- 8.1 The Auction shall be conducted in accordance with the procedure set out in the Auction Rules. The Bidding Customer agrees not to use the online Auction platform for any other purpose other than participation in Auctions in which that Bidding Customer is entitled to participate.
- 8.2 Bidding Customers must nominate "**Authorised Bidders**" to participate in the Auction according to the Auction Rules.
- 8.3 ODC shall have absolute discretion in relation to the conduct of an Auction, including without limitation:
- (A) the time and location at which any Auction takes place (ODC shall not be obliged to commence the Auction or make any sales at that Auction at any particular time or at all);
  - (B) the bidding quantity limit to which a Bidding Customer is subject (any such limit to apply, unless otherwise notified by ODC, to the Bidding Customer together with all Customers on whose behalf the Bidding Customer is bidding);
  - (C) the right to change the schedule of any Auction;
  - (D) the right to withdraw from the Auction any Lot or Lot Group at any stage prior to the ending time of the Auction;
  - (E) the right to prevent any Customer from accessing the online Auction platform; and
  - (F) the right to reject any bid that is not made in accordance with the Terms and Conditions at any stage prior to the existence of a binding contract in accordance with clause 8.6.
- 8.4 Each Lot is sold as a whole and shall not be mixed or split, unless ODC otherwise determines.
- 8.5 Where a Bidding Customer is unable to submit a bid through the online Auction platform (whether due to a failure of equipment either of ODC or of the Bidding Customer, or of any other person or due to difficulties in internet connection or otherwise howsoever) ODC shall, in its absolute discretion, be entitled to accept bids from that Bidding Customer by telephone but if ODC declines to do so, that Bidding Customer shall not be able to place bids in the Auction except through the online Auction platform. For the avoidance of doubt, ODC's discretion shall not be limited by ODC accepting bids by facsimile or telephone from any other Bidding Customer, nor by ODC having accepted such





bids from the Bidding Customer on any previous occasion

- 8.6 For participants in a Spot Auction, a binding contract of sale is concluded between ODC and a Bidding Customer in respect of any Lot "won" by that Customer in a Spot Auction only where the Customer has been given notice by ODC that it is the winning Customer in respect of that Lot (which may be through any means of communication used by ODC, including via the "Won Lots" screen on the auction system). A Term Auction Lot winner shall be bound by the Term Contract to purchase Lots allocated to such Term Auction Lot winner that are similar to Lots (if any) offered at a particular Spot Auction once the Reference Price has been set by that Spot Auction and, if applicable, the relevant Term Auction Lot winner has not notified ODC within the relevant timeframes that it has declined the goods in the situations described in clauses 3.8 and 3.9, or opted out in the situation described in clauses 3.12 and 3.13. Term Auction Lot winners shall be given notice by ODC in respect of Lots that have been allocated to them (which may be through any means of communication used by ODC, including via the invoice sent to Term Auction Lot winners once the Reference Price has been set by the applicable Spot Auction).
- 8.7 A Bidding Customer shall not be entitled to amend or withdraw a bid except as provided in the Auction Rules. The Customer acknowledges and agrees that every bid submitted by the Bidding Customer in an Auction, whether on its own behalf or on behalf of another Customer, unless and until it is withdrawn in accordance with the Auction Rules, is a binding offer to purchase the Lot (in the case of a Spot Auction) and enter into a Term Contract (in the case of a Term Auction) in respect of which the bid was made and which may become an obligation to purchase that Lot or enter into that Term Contract, pursuant to the Auction Rules.
- 8.8 Where two or more Customers have bid the same winning price for a Lot, the winning Customer shall be determined in accordance with the Auction Rules.
- 8.9 In the event of any occurrence which, in the absolute discretion of ODC, impairs the proper functioning of the Auction, ODC may cancel, stop or suspend that Auction and, where applicable, restart the Auction either from the beginning or from any such point that, in the opinion of ODC, the Auction has reached, in a manner compliant with the Terms and Conditions and the Auction Rules. In exercising this discretion, ODC may deem the whole, or any part, of the Auction that has taken place prior to such time to be cancelled, and the effect of such cancellation will be as though such part or whole of the Auction had not taken place.
- 8.10 ODC and its contractors shall have no liability whatsoever to any Customer for any losses whatsoever and howsoever arising out of or in connection with the partial or total inability of the Bidding Customer to submit or modify a bid through the online Auction platform or by any alternative means or any exercise by ODC of its discretion under the Terms and Conditions.

## 9. Reserve Price

- 9.1 ODC may at any time before the commencement of the relevant Auction and, in its absolute discretion, set a lowest price at which it is willing to sell each Lot (its "**Reserve Price**").
- 9.2 ODC shall not be obliged to disclose the Reserve Price to any Customer.
- 9.3 ODC may at any time waive the Reserve Price in respect of a particular Lot or Lots in a particular Lot





Group according to the Auction Rules.

- 9.4 ODC may at any time before the commencement of the relevant Auction, in its absolute discretion announce that it will not have any Reserve Price for the Auction. In such a case, no Lot will be sold for less than the Round 1 Continue Price.

## 10. Invoicing and Payment

- 10.1 ODC will not accept payment from, issue invoices or dispatch shipments to, anyone other than the Bidding Customer in either the Spot or Term Auction (unless the invoice is to be split and/or redirected in accordance with the procedure set out in clause 10.2). ODC will only issue invoices to the correspondence address given by the relevant Customer in the Registration Form and will only dispatch shipments to the physical delivery address given by the relevant Customer in the Registration Form.

- 10.2 Subject to clause 10.4, where:

- (A) a Bidding Customer in a Spot Auction has placed bids on behalf of any other Customer(s) (whether or not any such Customers are within the Bidding Customer's Group); or
- (B) a Bidding Customer in a Term Auction wishes any other Customer(s) to be invoiced and receive a Lot allocated under the Term Contract to such Bidding Customer at the time of a Spot Auction (whether or not any such Customers are within the Bidding Customer's Group),

the Bidding Customer shall, within 24 hours of receipt of the notice in clause 8.6, confirm to ODC which Customers are to be invoiced in respect of the Lot or Lots specified in that notice as being won by or allocated to that Bidding Customer, provided that, where any such Customer is not within the Bidding Customer's Group, the Bidding Customer must first comply with the procedure set out in clause 10.3 below.

- 10.3 Where (i) a Bidding Customer intends to place bids in a Spot Auction on behalf of any Customer that is not within the Bidding Customer's Group or (ii) a Bidding Customer in respect of a Term Auction wishes any Customer that is not within that Bidding Customer's Group to be invoiced and receive a Lot allocated to such Bidding Customer (in each case, such Customer being a "**Non-Group Customer**"), the Bidding Customer shall, at least twenty four (24) hours prior to the start of Round 1 of the relevant Spot Auction, issue a written request to ODC (including by email) specifying any such Non-Group Customer that the Bidding Customer wishes to be invoiced in respect of any Lot or Lots won by or allocated to that Bidding Customer in connection with that Spot Auction. Where a Bidding Customer intends to place bids on behalf of the same Non-Group Customer in more than one Auction, the Bidding Customer shall notify ODC of such intention by written request. ODC reserves the right, in its sole discretion, to refuse any request made by a Bidding Customer pursuant to this clause 10.3, and to approve any such request on a one-off or on an ongoing basis. ODC also reserves the right, in its sole discretion, to revoke, at any time, any approval given pursuant to this clause 10.3.
- 10.4 The relevant Bidding Customer shall only be able to split and/or redirect invoices in respect of Customers specified in the invoicing options provided through the online Auction platform, being:



(i) Customers within the Bidding Customer's Group; or (ii) Customers who have been notified to ODC by the Bidding Customer pursuant to clause 10.3, and for whom approval has been given to the Bidding Customer by ODC (and where that approval has not been revoked). The Bidding Customer shall be invoiced in respect of any Lot or Lots for which it has not specified a different entity to be invoiced in accordance with the procedure specified in clause 10.2.

- 10.5 In the event that an invoice is split and/or redirected in accordance with clause 10.2, the purchasing history shall be allocated to the Customer ultimately invoiced for any Lot or Lots won.
- 10.6 Within two working days of the ending of a Spot Auction, ODC will issue an invoice to each relevant Customer in respect of the Lot or Lots to be purchased by that Customer in connection with that Spot Auction and any related Term Contract. Such invoice will set out the relevant Lot number or numbers, the description and carats of the Lot or Lots, and the total amount payable in United States Dollars ("**US Dollars**"). ODC will not separate invoices in respect of individual Lots and, other than in accordance with the process set out at clause 10.2, will not split invoices between Customers.
- 10.7 Each Customer shall, within five working days of the date that ODC issues its invoice in accordance with clause 10.6, pay the full amount due, in US Dollars, by electronic bank transfer to the ODC bank account designated in that invoice.
- 10.8 ODC will only accept payment from the relevant Customer, and only from the bank account(s) specified in the Registration Form. In the event that a Customer is unable to pay the invoice from the bank account(s) specified in the Registration Form, the Customer shall inform ODC in writing of the details of any different bank account that it intends to use to pay the invoice. ODC is under no obligation to accept payment from an alternate bank account to that specified in the Registration Form and may carry out whatever "know your customer" checks it considers necessary in respect of such bank account.
- 10.9 If a Customer fails to pay the invoice amount within the time period specified in clause 10.7, ODC may, without prejudice to any of ODC's other rights, either:
- (A) charge a daily interest on such amount at the prevailing Botswana Central Bank interest rate plus 2% for a period agreed between the parties but not to exceed a further 10 working days; or
  - (B) by written notice to the Customer, terminate any or all contracts it may have concluded with the Customer, in which case ODC shall be entitled to recover all of its losses, damages or expenses arising out of such termination (including, but not limited to, the difference between the price of a Lot and price or prices at which ODC is subsequently able to sell the diamonds in that Lot).
- 10.10 Where (i) a Bidding Customer has placed bids in a Spot Auction on behalf of any other Customer(s) or (ii) a Bidding Customer in respect of a Term Auction has notified ODC that any other Customer(s) should receive the Lot(s) that have been allocated to that Bidding Customer (whether or not any such Customers are within that Bidding Customer's Group), the relevant Bidding Customer accepts ultimate liability for the non-payment of such Customer(s).
- 10.11 Unless otherwise determined by ODC, non-payment of an invoice shall result in the relevant Bidding



Customer (and any other Customer on whose behalf the Bidding Customer is acting) being excluded from participation in any future Auction.

## **11. Collection or Shipment**

- 11.1 Following confirmation of receipt of the funds payable under clause 10, and unless clause 11.3 applies, the Customer shall collect the diamonds within the Lot or Lots which it has purchased from ODC's premises (or such other location as may be notified to the Customer in writing). Clause 6.1 shall apply to any such collection.
- 11.2 A Customer whose registered business address in the Registration Form is in Botswana must collect the diamonds within three working days following confirmation of receipt of the funds payable under clause 10, after which time ODC may charge the Customer for any insurance or storage costs incurred in respect of those diamonds. A Customer whose registered business address in the Registration Form is not in Botswana may either collect the diamonds within the same time period or request shipment in accordance with clause 11.3.
- 11.3 If so requested by a Customer, ODC will, on behalf of that Customer, arrange shipment to the registered business address of that Customer given in the Registration Form and shall inform the Customer of the date of such shipment. The Customer shall nominate the courier to be used for such shipment by sending written notification to ODC. Any request under this clause 11.3 must have been received by ODC by the time of the confirmation of receipt of the funds payable in respect of the relevant invoice. This clause 11.3 shall only apply to Customers whose registered business address in the Registration Form is not in Botswana.
- 11.4 Upon collection of the diamonds, the Customer (or, where the diamonds are to be delivered under clause 11.3, the Customer's nominated courier) shall sign ODC's form of receipt. The Customer agrees that title and risk in the diamonds shall pass to the Customer on signature of such receipt.
- 11.5 A Customer (or, where the diamonds are to be delivered under clause 11.3, the Customer's nominated courier) shall not be permitted to collect any diamonds within a Lot won by that Customer in a Spot Auction (if a Spot Auction participant) or allocated to that Customer at the time of a Spot Auction (if a Term Auction Lot winner) until ODC has received confirmation of payment in respect of all Lots won by or allocated to that Customer in connection with that Spot Auction.
- 11.6 All collection (or, where applicable, shipment) costs, Kimberly Process Certification, Botswana Diamond Office costs and any local taxes or sundry costs that may be applicable in the relevant country of destination, shall be borne by the Customer. Where applicable, any Botswana fees payable by ODC on behalf of the Customer will be invoiced, such invoice to be subject to the relevant provisions of clause 10. Details of fees and disbursements will be made available upon request.
- 11.7 Shipment on-Hold – In order to expedite delivery, ODC may elect to send (at its sole discretion) shipments 'on-hold' to selected diamond centers with one or more couriers pending receipt of payment. Delivery of all 'on-hold' shipments will be effected only after payment has been received by ODC for all lots won and invoiced in line with clause 11.5.

## **12. Collusion and Confidentiality**



12.1 No Customer shall disclose to any other person (including other Customers, but excluding other Customers within that Customer's Group or any other Customers on whose behalf a Bidding Customer is bidding) any information relating to the Auction, such information to include, without limitation:

- (A) identification of the Lot or Lots for which a Customer intends to bid, or is considering bidding, or has bid, and the price that a Customer intends to bid, or is considering bidding or has bid, on any Lot or Lots. In particular, no Customer shall agree with any other Customer the Lot or Lots for which any of them will or will not bid and/or the level of any bid that any of them may make; and
- (B) any and all information concerning the Auction platform, including but not limited to the web address that is used for accessing the Auction platform and the username and password associated with any Customer.

12.2 If any Customer does not comply with clause 12.1 (or if ODC has reasonable grounds for believing that any Customer is not complying with clause 12.1) then, without prejudice to any of ODC's other rights (including but not limited to terminating or recovering damages for breach of contract), ODC may:

- (A) terminate any of ODC's obligations to sell or deliver any diamonds (whether pursuant to the Terms and Conditions or otherwise) to that Customer;
- (B) exclude that Customer from participation in any Auction held by ODC;
- (C) recover from the Customer any losses or damages arising out of the Customer's non compliance with clause 12.1; or
- (D) recover from the Customer any benefit accruing to the Customer by reason of the Customer's non-compliance with clause 12.1. The Customer shall hold such benefit on trust for ODC.

### **13. Notice**

13.1 Except as otherwise expressly provided in the Terms and Conditions, ODC may give any notice under the Terms and Conditions (including, where applicable, by way of an invoice) to any Customer by such means as, in its absolute discretion, it sees fit.

13.2 ODC will use the address details provided by the Customer in the Registration Form (unless revised details have been provided to ODC in accordance with clause 2.3) for the purposes of giving notice and these will be deemed the correct contact details of the Customer.

13.3 Any notice (including an invoice) shall be effective upon receipt and shall be deemed to have been received by the Customer:

- (A) at 9.00 am on the third working day after posting, if sent by registered post;
- (B) at the time of transmission in legible form, if delivered by e-mail; or

(C) on receipt of a facsimile confirmation report, if delivered by facsimile.

#### **14. Governing law and arbitration**

- 14.1 The governing law of the Terms and Conditions including this arbitration agreement and any contract pursuant to them shall be the substantive law of Botswana.
- 14.2 Any dispute arising out of or in connection with the Terms and Conditions and any contract pursuant to them, including any question regarding its existence, validity or termination, shall be referred to and finally settled under the Rules of Arbitration of the International Chamber of Commerce ("ICC").
- 14.3 The number of arbitrators shall be three, to be appointed in accordance with the ICC Rules.
- 14.4 The place of arbitration shall be Gaborone, Botswana, or at such other place as the arbitral tribunal may decide, if it shall determine that there are exceptional circumstances which justify the holding of the arbitration outside Botswana.
- 14.5 The arbitration and all proceedings pertaining or incidental thereto shall be treated by all parties to the arbitration, their legal representatives, witnesses and advisers and the members of the arbitral tribunal as highly confidential. The parties shall take all reasonable steps to ensure that their witnesses, advisers and legal representatives sign suitable confidentiality undertakings and/or are bound to maintain the secrecy of the proceedings by the Botswana National Security Act 1986 and/or any amendment or replacement legislation.
- 14.6 Insofar as any provision contained in the ICC Rules is incompatible with the substantive law of Botswana, that provision or the relevant part of that provision is to be excluded.
- 14.7 The language to be used in arbitral proceedings shall be English.

#### **15. Customer undertakings**

Each Customer undertakes that neither it, nor any member of its Group, nor any directors, partners, nor employees of the foregoing, engage in any unlawful, criminal or, in ODC's unfettered opinion, unethical activities.

Such activities may include, without limitation:

- (A) forced or child labour;
- (B) abuse of human rights;
- (C) any offences under applicable anti-bribery legislation including, without limitation, the bribery or attempted bribery of an ODC officer or employee;
- (D) trading in diamonds used to fund conflict;
- (E) non-disclosure of diamond synthetics, treated diamonds or diamond simulants;



(F) money laundering or terrorist financing activities;

(G) fraud,

and any other activity that might result in criminal conviction.

- 15.2 If a Customer is in breach of clause 15.1 (or if ODC has reasonable grounds to believe that a Customer is in breach of clause 15.1) ODC shall be entitled to terminate any contract with that Customer without notice and with immediate effect.
- 15.3 ODC may terminate any contract with a Customer without notice and with immediate effect when ODC considers, in its unfettered opinion, that the Customer is bringing ODC or the Botswana diamond industry into disrepute.
- 15.4 ODC shall have no liability whatsoever in respect of any termination carried out in accordance with this clause 15.

## **16. Amendments to the Terms and Conditions**

- 16.1 ODC shall be entitled to amend the Terms and Conditions at any time.
- 16.2 ODC shall notify all Customers of any amendment to the Terms and Conditions at such time, and by any such method, as ODC deems appropriate, but in any event prior to any Customer's participation in the Auction to which the revised Terms and Conditions apply (or, where the Terms and Conditions are amended during an Auction process, prior to the Bidding Customer accessing the online Auction platform).