

# Terms and Conditions for online bidding sales

**Dated August 25, 2019**

## 1. Introduction

1.1. These terms and conditions (the 'Terms and Conditions') set out the terms on which SODIAM E.P. ('SODIAM') shall present diamonds for pre-sale inspection and subsequent sale via its online bidding platform.

1.2. Any customer and all its representatives wishing to purchase diamonds from SODIAM pursuant to a diamond sale are bound by these Terms and Conditions.

1.3. The Terms and Conditions are available via the online bidding platform, and each customer confirms that they have read, understood and accepted them without limitation or reservation and agrees to be bound by them as of its registration as a customer. Notwithstanding anything to the contrary contained herein, if a customer's initial registration has been completed and the Terms and Conditions are subsequently amended, the customer agrees that they shall abide by the amended Terms and Conditions that are available on the online bidding platform at the time of its participation in a sale.

1.4. The customer agrees that when their representative selects the 'Accept' button or submits an electronic bid on the online bidding platform, they confirm their acceptance of the Terms and Conditions electronically in effect at the time of the sale, as further proof that they agree to be legally bound by them. Each customer further agrees that an electronic signature is the legal equivalent to a manual signature, which has the full force and effect of a signature affixed by hand to a paper document, and which does not require the validation from any certification authority or other third-party verification.

1.5. The Terms and Conditions apply to the pre-sale inspection of the offered diamond lots, the use of the online bidding platform, the post-sale procedure, and to any other services offered by SODIAM in the context of current or future sales.

1.6. Bidding occurs via a secure and encrypted connection on the online bidding platform, which prevents SODIAM or the diamond producer from being able to see the value of any customer bids before the closing of the submission period, except during the live stage of auction sales when applicable.

1.7. It is SODIAM's corporate policy not to work with any broker, intermediary, lobbyist or so-called "fixer" of any kind. Diamond companies that are approached by individuals or consulting firms claiming to be able to build relationships and promote their profile with SODIAM should disregard these offers and consider them as fraudulent.

## 2. Customer registration

2.1. Any company wishing to participate in a sale must first apply to become a customer by completing a registration form supplied online by SODIAM for this purpose and providing all such documentation as may be required from time to time, including: copies of the company's constitutional documents and business licence; company's organogram; the company bank account(s) details together with bank reference letter(s); and a proof of the identity of its partners, directors, representatives and shareholders.

2.2. The minimum required annual turnover in diamond trading to be registered as a SODIAM customer for companies, which are incorporated outside Angola is US\$10 million, including group consolidation if applicable. The minimum required annual turnover in diamond trading to be registered as a SODIAM customer for Angola-registered companies is US\$2 million, including group consolidation if applicable. The applying company may be requested to provide SODIAM with audited financial statements to confirm that this minimum threshold is met.

2.3. When submitting its registration form, the applying company shall certify to SODIAM that no ultimate beneficiaries, directors, representatives or valuers of the applying company, or of its holding company, or of its subsidiaries, is an ultimate beneficiary, director, representative or valuator of a diamond company, which has been previously refused or had their customer registration withdrawn from SODIAM. Failure to do so will be considered a breach of the Terms and Conditions in its entirety.

2.4. All information and documentation supplied shall be authentic, current and accurate in all respects, and customers who are already registered are required to keep such information and documentation updated at all times, including, but not limited to customer key individuals' and representatives' passport copies or renewed trade licence.

2.5. In order to be approved as a customer, every applicant company must have met all of SODIAM's security, compliance and other 'know-your-customer' requirements. A registered and approved company is hereinafter referred to as a 'customer'.

2.6. The customer warrants that they or their representatives and valuers have the legal capacity to perform the obligations under these Terms and Conditions.

2.7. Once the registration is successfully completed, the customer shall be given up to two (2) accounts each with a unique

username and password to access the online bidding platform. The customer shall be responsible for maintaining the security and confidentiality of its login details and shall immediately notify SODIAM in case of their loss or theft. SODIAM is not responsible at any point for the misplacement, loss or any misuse of the username or password.

2.8. The customer shall implement and enforce procedures and represents or warrants that all persons or representatives who have access to the online bidding platform on their behalf are fully acquainted with the online bidding platform's functionality and comply with the Terms and Conditions.

2.9. SODIAM may, at its absolute discretion, cancel a customer's registration, and / or refuse to grant access to any of the customer's representatives and valuers to a pre-sale inspection or a sale, without notice and with immediate effect.

### **3. Undertakings and warranties**

3.1. The customer hereby warrants and confirms that its company, its holding company, all subsidiaries, and each of such companies' shareholders, partners, directors, representatives or valuers:

- a. Comply with applicable laws;
- b. Are not and have not been involved in or associated with conflict diamonds;
- c. Have not purchased, sold, exported, imported or otherwise traded rough diamonds without the full authority of, and in compliance with, the Kimberley Process certification scheme since its inception in 2003;
- d. Comply and have not failed to comply with all trading obligations to third parties;
- e. Have not been convicted of, in any jurisdiction, any illegal activity, including, but not limited to any offence of fraud, money laundering, theft, dishonesty, or for causing any damage to the health or welfare of any individual;
- f. Have not been expelled from a diamond bourse, or a similar industry organisation, whether pursuant to a judgement from a litigation committee or otherwise;
- g. Have not been turned away or have had their 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;
- h. Have not been involved in or associated with the refusal by any gemological laboratory to grade any diamond or the contravention of any code of ethics or conduct operated by a gemological laboratory;
- i. Have not sold, either directly or through a third party, any undisclosed synthetic diamonds, undisclosed treated diamonds or undisclosed diamond simulants;
- j. Are not subject to any insolvency or bankruptcy proceedings;
- k. Have not been included in a list of organisations and individuals with respect to which there is information on their engagement in extremist activities or terrorism that is maintained by a country who is a participant in the Kimberley Process.

3.2. The customer shall immediately advise SODIAM in the event that their registered company, their holding company, any of their subsidiaries, and / or any of such companies' shareholders, partners, directors, senior managers, representatives or valuers fail or cease to satisfy the aforesaid compliance requirements.

3.3. The customer shall implement and enforce procedures sufficient to ensure that their use of the online bidding platform is secure, warrant that all persons who have access to and use of the online bidding platform on their behalf, are fully acquainted with the operation of the online bidding platform, and comply in all respects with the applicable laws and these Terms and Conditions, as well as any contract pursuant to them in respect of such use and any resulting transactions. The customer shall be responsible for obtaining and properly using any computer equipment, software and communications services that may be necessary to use the online bidding platform and making any modifications to the same, as is required to access and use the online bidding platform.

3.4. If the customer is in breach of the aforesaid compliance requirements:

- a. The customer's registration shall be immediately revoked;
- b. SODIAM shall have the right to refuse to permit the customer to collect any lots and / or terminate any contracts of sale;
- c. The customer shall be fully liable to SODIAM for any damages resulting from their failure to comply, including payment of a 15% default fee, as set out below for any terminated contracts of sale.

### **4. Invitation to sale**

4.1. SODIAM or the diamond producer shall decide, at their absolute discretion, as they see fit, whether or not to invite the customer to participate in a sale.

4.2. SODIAM or the diamond producer shall be under no obligation to invite the customer to participate in a sale, whether or not such customer may have participated in any previous sale or whether such customer has successfully completed the registration process.

4.3. Prior to any sale, SODIAM may at its absolute discretion publish a description of the lots to be inspected at that sale. Such description shall be indicative only and SODIAM makes no representations as to the quality and quantity of diamonds or to the exact weight of the lots, which will be available at the sale. SODIAM cannot assure that the quality of diamonds within multiple splits of one article is the same, despite descriptions being identical. Neither can SODIAM assure that the quality of diamonds in one sale is the same as those offered in a previous sale, despite the description being identical.

## **5. Invitation to pre-sale inspection**

5.1. If SODIAM invites the customer to participate in a sale, the customer shall be invited to inspect the lots to be offered for that sale and to bid on them. Such pre-sale inspection and bid submission do not automatically guarantee an offer to sell the diamonds.

5.2. Unless otherwise approved, pre-sale inspection appointments are limited to one visit per customer, including the customer's partners, directors, representatives, shareholders or valuers who are registered as SODIAM customers through several legal entities.

5.3. SODIAM shall, at its absolute discretion, determine, amend or cancel the date, time, duration and / or place of the pre-sale inspection of the lots offered.

5.4. The pre-sale inspection shall take place at SODIAM's premises by appointment only or as otherwise notified by SODIAM.

## **6. Representation of customer**

6.1. The number of representatives and valuers per customer allowed to attend the pre-sale inspections shall, unless otherwise agreed by SODIAM in advance of the sale, be limited to four (4), shall be an employee of the company, its holding company(ies), any of its subsidiaries, or a contracted external consultant. All representatives and valuers must be listed and pre-approved in SODIAM's online registration form.

6.2. Unless SODIAM agrees otherwise, the customer shall provide proof acceptable to SODIAM of the identity of each representative and valuator that the customer wishes to attend the pre-sale inspection and / or participate in the sale on the customer's behalf, of the nature of the relationship between the representative or valuator and the customer, and any other documents or information that SODIAM may require to comply with any legal, security, money laundering and other 'know-your-customer' requirements.

6.3. If such proof, documents or information considered acceptable to SODIAM are not provided before the appointed time for a pre-sale inspection and / or sale, SODIAM may, in its absolute discretion, refuse to allow that representative or valuator to attend the pre-sale inspection and / or refuse to allow that customer to participate in the sale.

6.4. If a customer wishes to bring along or delegate to the pre-sale inspection a consultant, advisor or any third-party individual who is not listed in the registration form or who is not an employee of its company, its holding company(ies), or of any of its subsidiaries, the customer shall notify SODIAM of the identity of any such third-party individual in advance of any pre-sale inspection appointment. Said third-party individual shall be considered to be the customer's representative as well, and shall meet the same security, compliance and other 'know-your-customer' requirements as the customer and their authorised representatives and valuers. The customers shall be legally responsible for all representatives and valuers they may bring to the pre-sale inspection or provide with access to the online bidding platform. SODIAM reserves the right, in its absolute discretion, to refuse any third-party individual to attend a pre-sale inspection appointment.

6.5. The customer warrants and guarantees that any of their representatives, valuers, consultants, advisors and / or any third-party individual engaged by the customer adheres to and complies with the Terms and Conditions and the Privacy Policy of SODIAM.

## **7. Access and security during pre-sale inspection**

7.1. If justified for security reasons, SODIAM shall be entitled to deny entry or remove any person from the pre-sale inspection premises.

7.2. SODIAM shall be entitled to monitor the pre-sale inspection by means of video cameras and other surveillance equipment, to which surveillance the customer and their representatives and valuers specifically agree.

7.3. Customers shall not have any diamond or diamond substitute on their person or in their possession when entering or leaving the pre-sale inspection premises.

7.4. SODIAM shall record the weight of each lot before and after each pre-sale inspection of that lot by the customer.

7.5. Where there is a discrepancy between the weight recorded after the pre-sale inspection and the weight recorded before that pre-sale inspection, SODIAM reserves the right to pause the distribution of any further goods for pre-sale inspection and will be entitled to search the area in which the pre-sale inspection took place. The customer and their representatives and valuers shall not be entitled to leave SODIAM's premises until such time as the discrepancy has been resolved, unless SODIAM allows otherwise.

7.6. Each customer agrees that and will procure that all of its representatives and valuers agree that, SODIAM may carry out such security measures as, at its absolute discretion, it sees fit before any of the customer's representatives and valuers attend or leave the premises at which the pre-sale inspection took place, including, but not limited to, physical searches.

7.7. Any suspicious behaviour by a customer or any of its representatives and valuers may be further investigated by SODIAM and referred for criminal investigation.

7.8. In the event that a stone within a particular lot is either lost or severely damaged during the pre-sale inspection, customers shall then be charged on a pro rata basis at the final selling price per carat value or at the target selling price of the lot, whichever is the highest.

7.9. To the maximum extent permitted by law, SODIAM shall not be liable for any loss or damage suffered by the customer whilst on SODIAM's premises.

## **8. Inspection process**

8.1. If a customer fails to attend a pre-sale inspection at the appointed time (being more than twenty minutes late for an appointment shall constitute failure to attend), SODIAM may, in its absolute discretion, refuse to allow that customer to attend the pre-sale inspection at any later time and / or deny that customer to participate in the sale.

8.2. Unless otherwise approved, pre-sale inspection attendance is limited to one visit only per customer, and to a maximum of four representatives and valuers per customer. SODIAM may at any time and without prior notice limit the number of representatives and valuers of any customer attending the pre-sale inspection to such number as SODIAM, at its absolute discretion, deems appropriate.

8.3. SODIAM shall have absolute discretion as it deems fit in relation to the pre-sale inspection of any individual lot by any customer.

8.4. During pre-sale inspection, any lot description made by SODIAM is merely general and not a guarantee of the nature, size or quality of the goods. It is the responsibility of the customer to adequately examine all lots before submitting any bids. Customers should make a full and detailed inspection of all lots before bidding. The customer agrees not to hold SODIAM or the diamond producer liable or responsible for any description or information provided on any lot.

8.5. Before pre-sale inspection, customers will be requested to check the weight of each lot (and of the constituent sub-lots that may make up that lot) presented to them. Any discrepancy should be reported to SODIAM prior to the commencement of inspection of that lot.

8.6. During pre-sale inspection, the customer may view as many lots as the timing of the appointment allows but may only view one lot in each size range at any given time.

8.7. Each lot is sold as a whole and shall not be mixed or split from its original presentation.

8.8. Customers are not allowed to apply white or any other coloured coating to the diamonds being inspected, as it may alter the natural colour of the stone for subsequent pre-sale inspections. SODIAM reserves the right to immediately disqualify customers that have not complied with this prohibition and the customer shall be fully liable for diamond boiling costs and any losses or damages suffered by SODIAM or the diamond producer due to its non-compliance. Marking the diamond with an ink pen, where easily removed with ethanol, may be allowed. Approval for the use of an ink pen must be obtained from SODIAM prior to its use.

8.9. Customers will be required to leave the pre-sale inspection room at the end of the time limit of their appointment, irrespective of having finished inspecting the lots offered, unless SODIAM specifically permits the customer to stay past the end of appointment time.

8.10. Customers agree to conduct themselves in a business-like manner, maintaining and respecting the privacy and security of other customers, and to follow all instructions of SODIAM regarding the pre-sale inspection of diamonds.

## **9. Online bidding platform**

9.1. Bids must be submitted on SODIAM's dedicated online bidding platform.

9.2. The website address of the online bidding platform shall be communicated to the customer and the customer may at the pre-sale inspection request to be trained on how to use the online bidding platform if required.

9.3. The customer agrees not to use the online bidding platform for any purpose other than participation in the sale in which that customer is entitled to participate.

9.4. The customer represents and warrants that a bid submitted on the online bidding platform by one of its representatives shall be submitted by an individual who is legally authorised to make a financial commitment on the customer's behalf. SODIAM shall have no obligation to verify the financial authorisation of any representative of the customer.

9.5. Access to the online bidding platform is on an 'as is' basis. SODIAM does not guarantee uninterrupted access to the online bidding platform and shall not be liable for any technical problems, which render the online bidding platform inaccessible or inoperable.

9.6. During tender sales only, where a customer is unable to submit a bid through the online bidding platform (whether due to a failure of equipment either of SODIAM, or of the customer, or of any other person or due to difficulties with an Internet connection or howsoever) SODIAM shall, in its absolute discretion, be entitled to accept duly signed and dated bids from that customer manually on physical paper in a sealed envelope, by e-mail or facsimile before the end of the bid submission period. If SODIAM declines to accept a manual bid, that customer shall not be able to participate in the sale except through the online bidding platform. For the avoidance of doubt, SODIAM's discretion shall not be affected by the acceptance of bids by envelope, e-mail or facsimile from any other customer, nor by SODIAM having accepted manual bids from the customer on any previous sales.

9.7. SODIAM or the diamond producer, shall have no liability whatsoever to any customer for any losses whatsoever and howsoever incurred arising out of or in connection with the partial and / or total inability of the customer to submit or withdraw a bid through the online bidding platform or any exercise by SODIAM of its discretion under the Terms and Conditions. The customer accepts this exclusion of liability and waives its possible rights in this respect to the maximum extent permitted by law.

9.8. In the event of any occurrence which, impairs the proper functioning of the sale or of the online bidding platform, SODIAM may, in its absolute discretion, cancel, stop or suspend the sale or bid submission process and, where applicable, restart the sale or bid submission process either from the beginning or from any such point that, in the opinion of SODIAM, the sale has been impaired. In exercising this discretion, SODIAM may deem the whole, or any part, of the sale that has taken place prior to

such time to be cancelled. The effect of such cancellation will be as though such part, or all of the sale had not taken place.

## **10. Bidding procedure applicable to both tender and auction sales**

10.1. SODIAM shall have absolute discretion as it deems fit in relation to the conduct of the sale, including and without limitation:

- a. The time at which the sale shall take place and SODIAM shall not be obliged to commence the sale at all;
- b. The right to move the physical pre-sale inspection site;
- c. The right to change the sale schedule;
- d. The right to withdraw from a sale any lot at any stage prior to the end of the bid submission period;
- e. The right to prevent any customer accessing the online bidding platform;
- f. The right to accept or reject a bid, whether submitted on the online bidding platform, by e-mail or facsimile.

10.2. The bidding currency / value is in United States dollars (\$) and a bid must be entered in respect of individual lots and not in respect of a combination or aggregate number of lots.

10.3. Bids can be entered in value per carat amount (\$/ct) or in total value per lot (\$); whichever field is entered; the other field is automatically populated.

10.4. Once the submission period has ended, any bid is final and shall stand as an offer to buy the lot in respect of which the bid is made.

10.5. Customers shall not receive a notification e-mail for the bids submitted, nor at the closure of the submission period.

## **11. Bidding procedure applicable to tender sales only**

11.1. Bids can be submitted, modified, or withdrawn at any time up until the end of the bid submission period.

11.2. Bids are submitted through a secure and encrypted connection on the online bidding platform, which prevents SODIAM or the diamond producer from being able to see the value of any customer bids before the closing of the submission period.

11.3. In order to be protected from inadvertently over-stretching their budget(s) and to be able to bid with full confidence, customers may be requested to predefine their spending limit, i.e. the maximum amount a customer would be prepared to buy at the sale.

11.4. The minimum value of the spending limit shall not be lower than the value of the highest individual bid submitted. This means that if a customer places an individual bid, which is higher than its previously defined spending limit, the spending limit shall then be automatically increased in order to match that individual bid.

11.5. In the case where a customer has submitted several successful bids and the total amount of the lots won exceeds their spending limit, SODIAM shall reduce the customer's total purchase to an amount that is below its pre-defined spending limit. To do so, SODIAM shall allocate to the customer one or several lots for which they have submitted the highest bid by the highest margins relative to the second highest bidder or otherwise, so that the total value won does not exceed the pre-defined spending limit.

11.6. The customer may modify their spending limit at any time prior to the end of the bid submission period.

11.7. Bids which have not been submitted through the online bidding platform, shall be considered without spending limit, unless otherwise specified by the customer at the time of submission, whether in a sealed envelope, through e-mail or facsimile.

## **12. Bidding procedure applicable to auction sales only**

12.1. Auction sales are conducted in two distinct bid submission stages, (i) the qualifying phase to participate to the auction, and (ii) the actual auction.

12.2. Paper bids are not accepted for auction sales given the interactive bid submission process.

12.3. The bid submission process during the qualifying phase is similar to a tender sale without having the possibility of defining a spending limit:

- a. Bids can be submitted, modified, or cancelled at any time up until the end of the qualifying phase after which they are final.
- b. Bids are submitted through a secure and encrypted connection, which prevents SODIAM or the diamond producer from being able to see the value of any customer bids before the end of the qualifying phase.

12.4. Only the five highest bidders on each offered lot shall be qualified to participate to the auction. This means that if a customer has submitted two bids and respectively ranks fourth and seventh, the customer shall only be entitled to participate to the auction for the lot where it ranks fourth.

12.5. Where two or more customers have submitted the same fifth highest bid value on an offered lot, they shall all be qualified for the auction, which shall then be conducted with more than five participants for that particular lot.

12.6. Only SODIAM and the diamond producer shall be able to see the number and name of the qualified customers for each auctioned lot in order to maintain the anonymity among competing participants during the auction.

12.7. The auction shall start immediately after the end of the qualifying phase and shall last fifteen (15) minutes.

- 12.8. The starting price on each auctioned lot shall be the highest bid submitted during the qualifying phase.
- 12.9. As soon as the auction starts, customers are able to see the highest submitted bid only for the lot(s) they are qualified for, but are not able to see what their ranking is vis-à-vis other competing customers, unless if ranking first.
- 12.10. While the auction is running, customers have the possibility of submitting a bid, which is superior to the highest one by at least 0.5%. If a customer is already ranking first, it shall not be able to overbid on its own bid.
- 12.11. Bids that are submitted during the auction cannot be reduced, nor withdrawn.
- 12.12. If a bid is submitted on an offered lot within the last two minutes of the auction, the duration of the countdown shall be reset to two minutes for that particular lot only, until no further bids are submitted.
- 12.13. At the end of the countdown, customers are able to see the value of the final highest submitted bid on the lot(s) for which they have been qualified.
- 12.14. The highest submitted bids at the end of the auction do not constitute an offer to sell from SODIAM and / or the diamond producer until these have been accepted.

### **13. Acceptance of the submitted bids**

- 13.1. At the end of the submission period, SODIAM and the diamond producer shall consider and subsequently accept or reject the highest submitted bids on each offered lot.
- 13.2. SODIAM shall only open the bids submitted during tender sales after the closure of the bid submission period.
- 13.3. SODIAM in conjunction with the diamond producer may, in their absolute discretion, set a target or reserve price at which they are willing to sell a particular lot and may at any time reduce or waive such target or reserve price.
- 13.4. SODIAM shall not be obliged to disclose the target or reserve price of any particular lot offered to any customer.
- 13.5. During tender sales, where two or more customers have bid the same winning price, SODIAM shall contact by phone each customer informing them that they are joint-highest bidder with one or more parties and offer them the opportunity to review their bidding price. Should the joint-highest bidders be unreachable or decide to keep the same bid within twenty minutes after having been notified, SODIAM shall allocate the lot for which equal bids have been submitted to the joint-highest bidder that has won the highest value during that particular tender, provided that their spending limit is not exceeded. If none of the joint-highest bidders have submitted a winning bid on another lot, SODIAM shall then decide by drawing of lots, which of the bidders shall be the winner.
- 13.6. SODIAM may call customers and record an oral confirmation of either the total submitted value for all lots, or the total submitted value for each bid placed. This second factor confirmation of the bids submitted through the online platform is a random verification procedure performed for internal auditing and security purposes.
- 13.7. SODIAM shall be entitled, but not obliged, to publish on the online bidding platform and / or to send by e-mail to customers the final selling price of the lot(s) upon which they have submitted a bid, provided that their submitted bid is higher than 60% of the final selling price.
- 13.8. As soon as practically possible, but nevertheless, within one working day after the closure, successful customers shall be notified by phone and / or e-mail of the lot(s) on which they have submitted a successful bid.

### **14. Sale contract, invoicing and payment**

- 14.1. Notwithstanding anything to the contrary, prior to the conclusion of a binding contract of sale SODIAM reserves the right, at its sole and absolute discretion, to refuse to sell any particular lot won to any successful bidder for any reason.
- 14.2. A binding contract of sale is concluded between SODIAM and a customer in respect of any lot won only when the customer has been sent a notice by SODIAM that they are the winning customer and SODIAM has sent its invoice via the online bidding platform or by e-mail or facsimile in respect of that lot to that customer.
- 14.3. SODIAM shall issue an invoice in United States dollars for the lot(s) won within one working day after the conclusion of the contract of sale.
- 14.4. A flat fee of US\$ 7,500, irrespectively of the value purchased, shall be added to the invoiced value to cover the following public administration services: Kimberley Process certificate (US\$ 5,000), fiscal stamp (US\$ 1,500), export license (US\$ 1,000).**
- 14.5. During the course of any pre-sale inspection of diamonds related to a sale, the weight of any given lot might vary by a few hundredths of a carat. This marginal difference is proportionate to the initial weight of the lot and is caused by the handling of the goods resulting, either in the abrasion of stones rubbing against each other within a parcel, or in the removal of a small chip on a single stone. By bidding on the offered lots, customers recognise and accept this risk of marginal weight variance, inherent to the handling of goods. Prior to invoicing, SODIAM shall perform a weight reconciliation of the won lot(s) to ensure that the customer pays the correct total price based on the final weight of the lot.
- 14.6. Each customer shall within five (5) working days after SODIAM has sent its invoice by e-mail or facsimile pay in United States dollars the winning price including taxes and duties for each lot which it has won by electronic bank transfer to the bank account referred to in SODIAM's invoice.
- 14.7. The invoice shall only be issued to the customer and payment shall only be accepted from the bank account(s) specified in the customer's registration form. Customers may split a payment between several companies as long as the invoiced companies are already registered as a customer of SODIAM before the start of the sale. SODIAM shall not register additional

customers for the purpose of invoicing post a sale. SODIAM is under no obligation to accept the splitting of invoices and if it does, may carry out whatever additional 'know-your-customer' checks it considers necessary.

14.8. 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 SODIAM in writing of the details of any different bank account that it intends to use to pay the invoice. SODIAM is under no obligation to accept payment from an alternate bank account to those specified in the customer's registration form and may carry out whatever 'know-your-customer' checks it considers necessary in respect of such bank account.

14.9. The details of the bank account onto which the payment must be made shall only be specified on the invoice issued by SODIAM. Such invoice shall either be sent via the online bidding platform, by e-mail through encrypted connection or by facsimile. SODIAM shall never send to any customer separate notifications of change of bank account details. In the event that a customer receives a notice regarding bank account details that is not sent through an encrypted connection, SODIAM hereby notifies the customer that such notice is fraudulent, and the customer shall be solely liable for any losses incurred due to relying on such notice.

14.10. In the event that any payment by the customer results in SODIAM being charged bank charges, SODIAM shall be entitled to invoice to the customer the same amount as the one charged by the bank.

14.11. If a customer fails to pay the price and, if applicable, the charges in respect of a lot won within five (5) working days after receipt of the invoice, without prejudice to any and all of SODIAM's and the diamond producer's rights against the customer, including, but not limited to damages associated with such default, SODIAM may at any time by merely sending a written notice automatically and without any prior notice effect the termination of its obligations to sell and deliver diamonds within the relevant lot or all of the lots won by that customer. The customer and their affiliated companies may be excluded from participation in any future sale and SODIAM may decide in its absolute discretion to offer the relevant lot(s) to another customer. The customer shall be subject to a default fee of 15% of the total of its winning bids for all of the lots that are covered by the termination notice regardless of whether or not such lots are purchased by another customer. The customer expressly agrees that the default fee is not a penalty and that payment of the default fee shall not prejudice SODIAM's or the diamond producer's right to recover further losses, damages, or expenses.

14.12. Working days shall mean any day in Angola that is not a weekend or a public holiday.

## **15. Delivery, ownership and risk**

15.1. Each customer shall, following receipt of full payment in cleared funds (including charges, if applicable) by SODIAM, collect its winning lot(s) at SODIAM's premises or as otherwise notified by SODIAM.

15.2. Swift copies of payments cannot be accepted as a way to release the lot(s).

15.3. A customer shall not be permitted to collect any diamond within a lot won or any lot within a group of lots won until SODIAM has received full payment for all lot(s) won. In the event that one or more winning customers are related to each other (i.e. affiliated companies), all of such winning customers shall not be permitted to collect any diamond within a lot won or any lot within a group of lots won until SODIAM has received full payment for all lots won by such affiliated companies.

15.4. Title of ownership in the lot(s) won shall pass to the customer on the receipt of full payment.

15.5. The customer may be charged additional insurance and storage costs in case the won lot(s) have not been collected within two (2) working days after receipt of the full payment as cleared funds.

15.6. If the customer requests the winning lot(s) to be shipped, SODIAM shall inform the winning customer of the shipment costs and details of lot(s) won.

15.7. The customer acknowledges and agrees that SODIAM is not liable for the winning lot(s) and all risk of loss shall pass to the customer once they have crossed the threshold of SODIAM's premises; insurance for the lot(s) won shall be the responsibility of the winning customer once the lot(s) won have crossed the threshold of SODIAM's premises, even if SODIAM has agreed to arrange for shipment with a courier.

15.8. When applicable, all transport, export, shipping insurance, diamond office tax fees and associated costs shall be for the customer's account to be paid for prior to movement of lot(s) won. The customer solely shall be liable for all applicable taxes and duties, such as local taxes, service fees, valued added tax, and export duty.

15.9. The customer undertakes, represents and warrants to comply with all laws, including, but not limited to export / import control and trade sanction laws and regulations, which may apply to the lot(s) won. This compliance is the customer's sole responsibility, and SODIAM shall not be held responsible for any breach of the export / import and sanctions rules by the customer.

15.10. Before collecting any lot(s) won, the winning customer, its authorised representative and / or its nominated courier shall sign SODIAM's form of receipt.

15.11. No return of goods after collection or delivery shall be accepted.

## **16. Proprietary rights**

16.1. SODIAM's website and online bidding platform contain confidential information, copyright, trademarks, database rights and other intellectual property rights, which are SODIAM's exclusive property ('protected material'). No right or licences are granted to the user in respect of the said protected material.

16.2. The customer shall:

- a. Not (and not attempt to) access and / or use any part of the SODIAM's website and / or online bidding platform (i) in any way not expressly permitted in these Terms and Conditions; (ii) in any way that violates any applicable law; (iii) for the purpose of reverse compiling, copying or adapting the whole or any part of the SODIAM's website and online bidding platform (including any of its logic, architecture, look and feel);
- b. Not (and not attempt to) disturb, interfere with, or disrupt SODIAM's website and / or online bidding platform;
- c. Not (and not attempt to) upload, post, e-mail, transmit or otherwise transfer to SODIAM's website and / or online bidding platform any computer codes, viruses, files or programmes that may interrupt, destroy, or limit the functionality of any part of SODIAM's website and online bidding platform;
- d. Not make any copy of the content of SODIAM's website and / or online bidding platform, or download or print any pages from the SODIAM's website and / or online bidding platform, unless otherwise agreed;
- e. Notify SODIAM immediately if it becomes aware of any unauthorised use of the whole or any part of the content of SODIAM's website and online bidding platform by any third party; and
- f. Without prejudice to the foregoing, take all such other steps as SODIAM may require from time to time to protect its confidential information and intellectual property rights in the content of SODIAM's website and online bidding platform.

16.3. The customer shall inform all their relevant employees and other staff that the content of SODIAM's website and online bidding platform constitute SODIAM's confidential information and that all intellectual property rights therein are SODIAM's property and the customer shall take all such steps as shall be necessary to ensure compliance by their employees and other staff with the provisions of this clause.

## **17. Confidentiality**

17.1. Unless in connection with a joined or partnered bid, no customer shall disclose to any other customer, or to any other person whatsoever, any information relating to the sale. Without prejudice to the generality of the meaning of the phrase, 'information relating to the sale' shall include:

- a. Identification of the lot(s), which a customer intends to bid on, is considering bidding on, or has bid on; and the price that a customer intends to bid on, is considering bidding on, or has bid on, for any lot(s). In particular, no customer shall agree with any other customer the lot(s) for which any of them shall or shall not bid and / or the level of any bid that any of them shall make;
- b. Any and all information concerning the online bidding platform, including but not limited to the username and password associated with any customer.

17.2. If a customer engages in collusive acts, or does not maintain the required confidentiality, without prejudice to all of SODIAM's rights (including, but not limited to terminating or recovering damages for breach of contract), SODIAM may:

- a. Recover from the customer any losses or damages arising out of the collusive act or breach of confidentiality, which are fixed at 1% of the total proceeds of the sale with a minimum lump sum of \$100,000 (one hundred thousand United States dollars) by way of an agreed genuine estimate of liquidated damages by all parties, subject to SODIAM's right to claim and receive from the customer a higher amount if it appears that the damage from such breach exceeds such sum;
- b. Recover from the customer any benefit accruing to the customer by reason of the customer's collusive act or breach of confidentiality. The customer shall hold such benefit on trust for SODIAM;
- c. Terminate any of SODIAM's obligations to sell or deliver any diamonds (whether pursuant to the Terms and Conditions or otherwise) to the customer.

17.3. To avoid any conflict of interest, SODIAM and / or the producer shall not bid on any of the lots offered.

17.4. SODIAM shall not communicate the name of the winning customers, unless specifically authorised by the winner.

17.5. Public disclosure or distribution of winning bid values is solely at SODIAM's discretion.

## **18. Liability and indemnity**

18.1. The customer hereby indemnifies SODIAM and the diamond producer, their shareholders, directors, employees, subcontractors, representatives and consultants (collectively the 'indemnified persons', or where the context requires, any of them), hereby agreeing to hold the indemnified persons harmless on first written demand against any liability arising from any and all legal process, claims, demands, proceedings or judgements (collectively 'claims') and any and all losses, liabilities, damages costs, charges and expenses (collectively 'losses'), which an indemnified person may incur or suffer as a result of any claim or losses of whatsoever nature and in whichever jurisdiction, which may be instituted, made or alleged against, or suffered or incurred by an indemnified person and relate to or arise from, directly or indirectly, these Terms and Conditions and any contract pursuant to them including but not limited to a breach of the warranties and undertaking given by the customer.

18.2. Neither SODIAM nor any of the indemnified persons shall be liable to any person (including the customer) in any way whether in contract, delict (including negligence), breach of statutory duty or otherwise for:

- a. Any technical or other malfunctions of the operation, functionally, availability, connection or communication with SODIAM's website and / or online bidding platform;
- b. Any loss of whatsoever nature arising by reason of a customer failing to participate in any sale, regardless of the cause of such failure, including where caused by negligence or default of SODIAM or the indemnified persons;
- c. Any pure economic loss, loss of income or profits, contracts or business opportunities or any anticipated savings (whether



direct or indirect) or any loss of goodwill or reputation, any cost of procurement of substitute products or services, or any indirect, incidental, punitive, or consequential damages or loss of any kind whatsoever that may be suffered or incurred by such person directly or indirectly arising out of these Terms and Conditions and any contract pursuant to them; or

d. Any loss or damage suffered by a customer whilst in the viewing office, whether indemnified persons were made aware of or should have been aware of any such loss or damage or not.

18.3. Any liability which may be proven against SODIAM shall not exceed a total of US\$ 10,000 (ten thousand United States dollars).

## **19. Notices**

19.1. Except as otherwise expressly provided in the Terms and Conditions, SODIAM may give any notice under the Terms and Conditions to any customer by such means as, in its absolute discretion, it deems fit.

19.2. Any notice, including an invoice, shall be effective upon receipt and shall be deemed to have been received by the customer at 9.00am on the fifth working day after posting, if sent by registered post; at the time of transmission in legible form, if delivered by e-mail or shared via the online bidding platform; or on receipt of a facsimile confirmation report, if delivered by facsimile.

## **20. Miscellaneous**

20.1. These Terms and Conditions supersede and replace any / all previous Terms and Conditions of SODIAM in relation to the conduct of a diamond sale via its online bidding platform.

20.2. SODIAM shall be entitled to amend the Terms and Conditions by making such amended terms available on the online bidding platform, prior to the customer's participation in the sale to which the amended terms shall apply.

20.3. For referential purposes, the current version of these Terms and Conditions shall be available on the website of the online bidding platform.

20.4. The customer is not entitled to transfer any of its rights or obligations under these Terms and Conditions and the agreements with SODIAM, either whole or in part, to any third-party without the prior written consent of SODIAM. Any such assignment or transfer without the prior written consent shall be deemed null and void.

20.5. The provisions of these Terms and Conditions shall be interpreted so as to be valid and enforceable under the applicable law. If one or more provisions of these Terms and Conditions is found to be invalid, illegal or unenforceable, in whole or in part, the remaining provisions shall not be affected.

20.6. A failure by SODIAM or the customer at any time to require the performance of any obligation hereunder or enforce any provision hereof shall neither be construed as a waiver of any right or remedy hereunder nor in any way affect the validity of these Terms and Conditions and any contract pursuant to them or any part hereof. No waiver shall be effective unless given in writing, and no waiver of a breach of these Terms and Conditions and any contract pursuant to them shall constitute a waiver of any preceding or subsequent breach.

20.7. Neither SODIAM nor the customer shall be held liable for any breach of its obligations under these Terms and Conditions and any contract pursuant to them if such failure is due to a Government decision, a withdrawal or suspension of licences of any kind, of a total or partial strike, internal or external to the company, a fire, a natural disaster, a state of war, a total or partial interruption or blockage networks telecommunications or electrical, computer hacking act or generally any other force majeure having the characteristics defined by case law. The party becoming aware of the force majeure event shall, promptly, inform the other party of its inability to perform its obligations. The suspension of obligations or delay shall in no case be a cause of liability for non-performance of the suspended obligation, nor be the cause for the payment of damages or penalties for late execution.

20.8. The expiration or termination of these Terms and Conditions and any contract pursuant to them shall not affect such of the provisions of these Terms and Conditions and any contract pursuant to them as expressly provided that these provisions will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

20.9. The customer undertakes at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and / or import of these Terms and Conditions and any contract pursuant to them. In its dealings with SODIAM and in the implementation of these Terms and Conditions and any contract pursuant to them, the customer undertakes to observe the utmost good faith and to give full effect to the intent and purpose of these Terms and Conditions and any contract pursuant to them, and neither to do anything nor to refrain from doing anything which might in any way prejudice or detract from the rights, property or interests of any of the others of them.

## **21. Governing law and jurisdiction**

21.1. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of these Terms and Conditions and any contract pursuant to them as well as all tort matters and other matters of pre- and extra-contractual liability between SODIAM and the customer shall be governed by and construed in accordance with the laws of Angola, without giving effect to any other choice of law or conflict-of-laws rules or provisions (foreign or international, including the United Nations Convention on Contracts for the International Sale of Goods (1980) ('Vienna Convention'), if applicable), that would cause the laws of any jurisdiction other than Angola to be applicable.

21.2. Any dispute concerning the validity, interpretation, enforcement, performance or termination of these Terms and Conditions and any contract pursuant to them as well as any dispute on a tort or any other extra-contractual matter shall be submitted to the exclusive jurisdiction of the courts of Luanda (Angola). All proceedings shall take place in Portuguese.