

Tender Terms – Your Diamonds

Last updated: 1 October 2021

A summary of the key terms of the Tender Terms is set out below for convenience and is not to be taken to be binding on the parties – please ensure to read the Tender Terms in full:

1. From time to time, we may list Goods for sale on the Platform on behalf of Sellers via auction until a set closing time. You can submit the Tender Bid Form to make a bid on the Goods. These are sealed until the auction is closed. Each bid you make is an irrevocable offer to purchase the Goods.
2. You acknowledge that we are not the vendor of the Goods and merely the agent auctioning the goods on behalf of the Seller and to the maximum extent permitted at law you release us from all liability relating to the Goods.
3. After the auction is closed, valid bids for the Goods will be opened and reviewed by us, in the presence of an independent third party. Bids that are not completed to our satisfaction, will be rejected.
4. The highest bid will win if it is above the reserve price and we will contact the highest bidder to arrange payment and delivery/pick up. Otherwise, the highest bidder will be invited to negotiation, either with the vendor directly, or us. If no agreement is achieved, no sale will occur.
5. If you are the winning bidder, you will be required to pay the Bid Price specified in your Tender Bid Form, plus a 'buyer premium' of 12.5% of the Bid Price, plus GST, plus any fees and charges associated with that purchase specified on the Listing and any applicable delivery fees, duties and other taxes, within 5 Business Days of notification of your winning bid.

1. Introduction

- 1.1. By using this website (located at www.yourdiamonds.com), any related websites or URLs, social media platforms owned or operated by us (**Platform**) and our related services (**Services**), including making a purchase through the Platform and use of our contact form, you agree to be legally bound by these Terms and Conditions (**Terms**).
- 1.2. By agreeing to these Terms, you (the **Buyer** or **you**) are entering into an agreement with Fine Art Bourse Australia Pty Ltd ACN 168 030 331 including its successors, assignees and related bodies corporate (defined in the *Corporations Act 2001* (Cth)) (**Your Diamonds** or **we** or **us**) and agree to comply with any and all applicable laws and regulations, whether domestic or international.
- 1.3. Our Services include the provision of the Platform in which third party sellers (**Sellers**) can list their goods for sale (**Goods**) by auction via the Platform and engage us to act on their behalf in relation to the sale of Goods to buyers, including managing the tender and auction process, arranging for payment and delivery of the Goods.
- 1.4. Our Services, including but not limited to the registration of an account with us or placing of a Bid or an Order, is not intended to be used by children under the age of 18. If you are under 18, any use of our Services must be with the involvement of a parent or guardian.
- 1.5. By accessing or using our Services, you warrant and represent to us that you have read, understand and agree to be bound by these Terms and that you are over the age of 18 years, have the right, authority and legal capacity to enter into a legally binding agreement and to abide by these Terms.

- 1.6. All of our terms and conditions and policies that are linked to or contained on the Platform, including our Privacy Policy, are incorporated into these Terms. You agree to comply with all such Terms when accessing or using our Services.

2. Use of the Services

- 2.1. You agree that you are responsible for your access to our Services and for ensuring that any persons that may access the Services through your internet connection are aware of and compliant with, these Terms.
- 2.2. You warrant and represent to us that your use of the Services will comply with all applicable laws and regulations in Australia, in your state/country, in the location that you access the Services and otherwise where applicable, and that you will not use our Services for any activities that are unlawful or discriminatory, harmful to others, or for any activity that does, or may, violate the rights of others.

Details and marketing emails

- 2.3. When you provide your details to us, you warrant and represent to us that the details are accurate and that you are the account holder or authorised nominee of the contact number and/or email address that you provide to us. You consent in advance to be contacted during our usual business hours (including in relation to customer service matters, Order confirmation/assistance, product offers and/or other promotional purposes) and to receiving marketing and promotional materials via electronic communication to the contact details provided in accordance with our Privacy Policy.

Your Conduct

- 2.4. You agree that you will not:
 - (a) engage in unlawful, obscene, harassing, intimidating, threatening, predatory or stalking conduct, or conduct that may fall under one of the aforementioned categories;
 - (b) disclose or share your password or login information for the Services with any party;
 - (c) use the Services in a manner that may affect, damage, disrupt, impair, disable, interfere with or prevent the reliability and performance of the Services, or interfere with or attempt to interfere with any other user's use of the Services;
 - (d) copy or impersonate any other person or entity, or misrepresent any of your details including your image (for example by using only accurate and current photos), name, age, identity, affiliation, connection or association with, any other person or entity;
 - (e) post a person's personal information or images without express permission;
 - (f) solicit or engage in any illegal or unlawful activity;
 - (g) use the Service to redirect users to other websites or encourage users to visit other websites;
 - (h) defraud, scam, hack, swindle or deceive us or other users of the Services;
 - (i) circumvent, disable or otherwise interfere with security-related features of the Services or features that determine whether you are acting in accordance with these Terms;
 - (j) attempt to access any Services or area of the website that you are not authorised to access;
 - (k) allow third parties to access and use the Services via your account;
 - (l) collect or solicit another person's personal information or images for commercial, inappropriate or unlawful purposes;

- (m) use any programs, scripts, bots or other automated technology to scrape or access the Services or hijack user accounts or log-in sessions;
- (n) embed, frame, include or imitate any part of the Services on another website, application or other platform, without our prior written authorisation;
- (o) use any kind of code, program or device containing reference to the Services in order to direct any person to any other website for any purpose;
- (p) use robots, data mining or similar data gathering or extraction methods or otherwise collect any pictures, descriptions, data or other content from the Services;
- (q) attempt to mislead others as to the origin of any information through the Services by copying, forging or manipulating identifiers such as headers, footers or signatures;
- (r) use automated methods or processes to use or access the Services or create user accounts;
- (s) attempt to, or actually gain, unauthorised access to our Services, the server on which our Services are stored or any server, computer or database connected to our Services;
- (t) cause harm to our Services by hacking, phishing, introducing viruses, trojans or other programs, scripts or material that may be malicious or technologically harmful to us, our website, Services or other users of our Services; or
- (u) use the Services other than for their intended purpose.

Trading on the Platform

- 2.5. For the avoidance of doubt, Your Diamonds merely provides the Platform to enable the Buyer to purchase the Goods from the Seller. You acknowledge and agree that Your Diamonds sells the Goods on behalf of the Seller and is not a party to the final sales transactions between a Buyer or Seller. When you enter into a transaction via the Platform, you create a legally binding contract with the Seller to purchase the Goods on any terms specified in the Listing for the Goods and you agree that you will comply with your obligations including in relation to any applicable laws in Australia and other countries as relevant to you.

User accounts

- 2.6. To access and use the Services, you may be required to register for a user account.
- 2.7. You agree that you are solely responsible for maintaining the confidentiality of your account details, including your password. When you register an account with us, your Personal Information will be accessible in accordance with our Privacy Policy.
- 2.8. You agree that User Content, as defined in clause 9, that you provide to us, may be made publicly accessible to third parties, including other users or visitors of the Services. You agree that we are not liable to you for the use or access of User Content by third parties.
- 2.9. We retain the right to screen and verify you or your business (if applicable) and identity in our sole discretion. You agree to submit to such screening and to provide to us, at your cost, immediately upon request, complete, accurate and current information confirming your identity and eligibility to use the Services, including company records, copies of photo identification (such as driver's licence and passport) or other identifying documentation. Approval of your user account is in our sole discretion.
- 2.10. You understand that we may, in our absolute discretion, investigate, take legal action, terminate or cancel your access to the Services, your account, subscription or membership at any time for any reason, including if it is found that you have, or are suspected of, violating these Terms.

3. Bidding, Orders and Cancellations

Auction Process

- 3.1. You may view auction listings (**Listings**) for auctions for Goods on the Platform (**Auctions**) and may place a bid on the Goods via the Platform or in person by submitting the **Tender Bid Form** in the form required by us (**Tender Bid Form**), subject to the terms and conditions of that particular Listing. You must specify the amount you are bidding for the purchase price of the Goods in the Tender Bid Form (**Bid Price**). If your Tender Bid Form has been completed to our satisfaction, it will be considered a valid Bid (**Bid**). Once you have submitted a Bid, it is sealed and stored until the Listing is closed.
- 3.2. Subject to its obligations under Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**), Your Diamonds may, in its absolute discretion, cancel, delay, postpone, or take any other action whatsoever in relation to a Listing, prior to a Winning Bid being selected.
- 3.3. Each Bid that you make is an irrevocable offer to purchase the Goods at the Bid Price, plus a 'buyer premium' of 12.5% of the Bid Price (**Buyer Premium**), plus GST, plus any fees and charges associated with that purchase specified on the Listing and any applicable delivery fees, duties and other taxes (**Payment Price**).
- 3.4. Each Listing has an opening and closing time/date. Our Auctions are silent auctions unless otherwise specified, and as such, we reserve the right not to disclose any other Bids placed on the Auction or the Reserve Price, at any time in our sole discretion.
- 3.5. Your Diamonds, and/or a Seller, may set a reserve price for a Good, being the minimum price that a Bid must meet or exceed in order to be considered a successful Bid (**Reserve Price**).
- 3.6. After the Listing is closed, the Bids for the Listing will be opened and reviewed, in the presence of an independent third party.
- 3.7. Subject to clause 3.8 below, bids for a Bid Price below the Reserve Price will be discarded. Out of the Bids that meet or exceed the Reserve Price, the highest Bid on a Listing will be considered the winning Bid (**Winning Bid**). Once a Winning Bid (if any) has been identified, Your Diamonds will contact the relevant bidder to confirm the Winning Bid, arrange payment of the Payment Price and delivery or pick up of the Goods.
- 3.8. If your Bid is the highest Bid, but does not meet or exceed the Reserve Price, then:
 - (a) you will be invited to negotiate the Bid Price with the Seller directly, or via Your Diamonds as agent for the Seller. If agreement can be achieved, such amount will be considered the Winning Bid; and
 - (b) if no agreement can be achieved under this clause 3.8 within ten (10) Business Days' of the end of the Auction, no transaction will have occurred and the Good(s) may be returned to the Seller or sold to another party or otherwise dealt with, at the Seller's election.
- 3.9. If you hold the Winning Bid, your Winning Bid will be considered an order for the purchase of the Goods for the Payment Price (**Order**). You are obligated to pay the Payment Price in accordance with clause 5. Failure to pay the Payment Price or otherwise comply with these Terms will entitle Your Diamonds or the Vendor to terminate the sale agreement between you and the Vendor, on the Vendor's behalf, and take necessary steps to attempt to recover any monies owing, including, but not limited to, taking legal or debt recovery action and/or selling the Good(s) to another party.

Orders

- 3.10. Your Diamonds reserves the right to:
 - (a) accept or reject a Bid or a part of a Bid for any reason, including, without limitation, the unavailability of any Goods, limitations on quantities available for purchase, inaccuracies

or errors in a Listing or pricing information, where fraud is suspected, or where there is an error in your Order;

- (b) request identification from you, including photo ID or any other such documentation for verification purposes before we process your Order; or
- (c) cancel an Order at any time, for any reason.

3.11. Where we exercise the rights above, we will notify you by email and may suggest alternative Goods, remove an item from an Order or provide a refund of amounts paid where applicable and Your Diamonds shall not be liable for any loss or damage whatsoever arising from such acts.

Cancellations

3.12. Please note that you cannot cancel, withdraw or amend a Bid or an Order once it has been placed (except as permitted by Australian Consumer Law).

3.13. If you are entitled to cancel a Bid or an Order, to the maximum extent permitted by law, you agree that you will be liable for any and all loss incurred (whether direct or indirect) by Your Diamonds or a seller as a direct result of the cancellation (including, but not limited to, any loss of profits).

4. Goods

Private viewing

4.1. Private viewing of Goods may be available from time to time, by appointment only in our sole discretion and subject to any Government restrictions.

Product images

4.2. Whilst we have made every attempt to show textures, appearances and colours of the Goods as accurately as possible, product images may vary from the delivered Goods depending on your monitor, settings and computer equipment. Unless otherwise stated, any additional products and accessories styled or shown in a product image are for display purposes only and are not included in the listed price. You must ensure that you carefully read the title and description of the Listing before making a purchase.

Product descriptions

4.3. All product information including those referring to size, weight, technical specifications, price and other details of the Goods are approximate and will not be binding on Your Diamonds and are the responsibility of the Seller.

4.4. Where we become aware of any misdescription, we reserve the right to correct any error or omission including to terminate an auction or remove a Listing.

Availability of Goods

4.5. All Orders are made subject to availability.

4.6. Where we cannot fulfil your Order, or a part of your Order, we will notify you within a reasonable time after you complete your Order. Please note that we may need to reject your Order or reject part of your Order on this basis.

4.7. If your Order is rejected through no fault of your own, then we will reissue you a refund for any amounts that you have paid.

Recalls and bans

- 4.8. If any Order is subject to a recall or ban, you agree to follow any reasonable instructions provided by us or the Seller regarding return of the Goods and you consent to us or the Seller contacting you and you agree to inform any recipient, of any recall applicable to the Goods.

5. Prices and payment

Prices

- 5.1. Unless specified otherwise, prices displayed in our Services are shown in Australian dollars (AUD) and are exclusive of GST. Please note that displayed prices do not include shipping and delivery charges and will be a separate charge as specified.
- 5.2. In addition to the Bid Price, you are responsible for any taxes, duties or other liabilities imposed by any government agency, including, without limitation, any goods and services taxes or any value added tax imposed on any Goods purchased by you. Where applicable, you must pay any such taxes, duties or other liabilities, without deduction or set off of any other amounts, at the same time and on the same basis as you pay the purchase price.
- 5.3. As specified in clause 3.3, in addition to the Bid Price, you agree to pay Buyer Premium.

Payment

- 5.4. Full payment of the Payment Price for the purchase of Goods is required within five (5) business days of being notified of your Winning Bid. Payment is charged/debited at the end of the complete check-out process.
- 5.5. Payment may be made by the methods and to the accounts specified or approved by Your Diamonds.
- 5.6. You must not pay, or attempt to pay, for an Order through any fraudulent or unlawful means. If your payment is not able to be successfully processed, or if we, in our sole discretion, suspect that it has been paid for using any fraudulent or unlawful means, we may immediately cancel the Order and invalidate your Bid.
- 5.7. If any sum due for payment under these Terms including any Payment Price, is not paid on the due date, the party in default must pay interest on the amount unpaid at 8% per annum accruing on a day-to-day basis from the due date up to and including the date of actual payment, plus any amounts incurred or suffered by us in the enforcement or recovery of such payments, including collection agency and legal costs and for all costs which would be incurred as if the debt is collected in full, including commission on collection of the additional costs and also including legal demand costs.

6. Returns and refunds

We do not accept returns of Goods other than as required by Australian Consumer Law and such returns will be handled in accordance with our Returns Policy.

7. Delivery and shipping

- 7.1. Shipping and delivery will be handled in accordance with our Shipping Policy.
- 7.2. Delivery of the Goods (**Delivery**) is taken to occur at the time that we deliver the Goods to your nominated delivery address (including leaving the Goods at your nominated delivery address where there is authority to leave), even if you are not present at the address or when you or your nominee collects the Goods. Risk in and title to the Goods transfers to you upon Delivery of the Goods.

- 7.3. If you or your freight company are collecting the Goods from the Seller or from us, risk of damage to or loss of the Goods passes to you upon collection, and you must insure the Goods on or before Delivery.
- 7.4. You must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that you are unable to take delivery of the Goods as arranged, then Your Diamonds and the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.5. Any delivery date or time specified by us is an estimate only and you agree that you will still accept delivery of the Goods even if they are delivered on a different date or time. Your Diamonds will not be held liable for any loss or damage suffered as a result of any delay in delivery. However, if the Goods are not delivered within a reasonable time after the estimated date, please contact us.

8. Promotions and discounts

- 8.1. Promotions or discounts are subject to their own specific terms and conditions as provided by us from time to time.
- 8.2. Unless otherwise stated, promotional offers, including but not limited to discounts, package deals and coupons, cannot be used in conjunction with any other offer.
- 8.3. Your Diamonds reserves the right to:
 - (a) terminate, modify or extend any promotional offer at any time, without notice; or
 - (b) cancel any Order to which a promotional discount or code has been applied in error or contrary to the terms and conditions of such discount or code.

9. User Content

Licence to use User Content

- 9.1. By providing or sending to us, uploading, publishing, transmitting or making available any data, content or other material to Your Diamonds (**User Content**), you agree to grant Your Diamonds, its affiliates, licensees and successors a non-exclusive, royalty-free, perpetual, irrevocable, worldwide and fully sub-licensable right to use, communicate, reproduce, modify, adapt, publish, publicly perform, translate, create derivative works from, distribute and display in any form, any such content, including but not limited to text, images, videos, graphics, audio and photographs without attribution, including for the purpose of completing your Order.
- 9.2. By uploading, publishing, transmitting or making available any User Content to Your Diamonds, you warrant and represent to Your Diamonds that:
 - (a) you hold all the intellectual property rights to the User Content and have the authority to upload or make available the User Content and licence the User Content to Your Diamonds;
 - (b) Your Diamonds' use and disclosure of the User Content will not infringe or violate any third-party rights, including but not limited to defamation, intellectual property rights, moral rights and privacy rights and will not give rise to an obligation to make any payment to a third party;
 - (c) any User Content you provide is accurate, complete, not false and not misleading;
 - (d) the use by Your Diamonds of the User Content will not breach the security of Your Diamonds or its users by containing viruses, Trojan horses, worms or other harmful or disruptive scripts, code, programs or content; and

- (e) the disclosure and use of the User Content by Your Diamonds will not bring Your Diamonds into disrepute.

Rights and liability of Your Diamonds in relation to User Content

- 9.3. Your Diamonds retains the right, at any time without reason or notice, to pre-screen, review, control, monitor, reject, delete or edit User Content, however Your Diamonds is not obliged to do so.
- 9.4. You agree that Your Diamonds may require you to remove, amend or delete User Content and that you must comply with such requirement within 1 day's written notice to you.
- 9.5. You acknowledge and agree that Your Diamonds does not control, take responsibility for, or assume any liability for, any content submitted by you or the Sellers in relation to the Goods, and that Your Diamonds is not liable for any mistakes, defamation, omissions or falsehoods that you may encounter. You agree to release Your Diamonds and its agents and officers and employees from any such claims or liability and acknowledge that the User Content submitted by you or other users, as well as any other information or materials available through the Services may have copyright protection whether or not it is identified as being copyrighted.

10. Your information, errors and access

Current information, errors and access

- 10.1. You agree to ensure that any billing information provided to us is current, complete and accurate and that you will keep all such information updated (including any changes in billing address, credit card number or credit card expiration date).
- 10.2. When purchasing Goods, you must pay using the payment method specified on the Platform (**Payment Method**). Where your Payment Method is cancelled (for example, due to loss or theft) or if you are aware of a potential breach of security related to your Payment Method, you agree to notify Your Diamonds as soon as you become aware of the issue.

Errors and Incorrect Payments

- 10.3. Your Diamonds reserves the right to correct any errors or mistakes that may result in incorrect payment for any Services or Goods, and may, in its absolute discretion, return or refund all or some of the amount of the payment even after a request or receipt of payment is made or may require additional payment in the event that an underpayment has been made.
- 10.4. Your Diamonds reserves the right, in its sole discretion, to seek reimbursement from you if it discovers any payment processing error. You expressly agree that if there has been a payment processing error, Your Diamonds may deduct any amounts payable to third parties by debiting or charging your credit card or bank account on record or seek reimbursement in any other lawful manner.

Termination or suspension of your access or use of the Services

- 10.5. You agree that Your Diamonds may, in its sole discretion, immediately and without notice to you, terminate, limit your access to, or suspend your access or use of, the Services, including but not limited to by blocking your IP address or email and blocking, deactivating or deleting your Your Diamonds account or terminating your licence to use Your Diamonds IP if you breach or become in breach of any of these Terms and Your Diamonds shall be released from its obligations to you under these Terms and shall not be liable to refund to you any fees or for any loss caused to you by such action. If your Services have been terminated due to your breach, you agree that you will not create another Your Diamonds account without the prior written consent of Your Diamonds.
- 10.6. You agree that Your Diamonds may, in its sole discretion, immediately and with 5 days' notice to you, terminate, limit your access to or suspend your access or use of the Services for any reason.

11. Termination

11.1. Without prejudice to any other remedies, Your Diamonds may:

- (a) cancel all or any part of any Bid or Order or suspend or terminate the supply of Goods to you with written notice if, at any time you are in breach of any obligation (including those relating to payment) under these Terms; or
- (b) terminate these Terms and the Services, in its absolute discretion, at any time and without notice to you and in such instance will complete or cancel, and refund, any Orders placed prior to the date of termination, at its election.

12. Intellectual Property

12.1. Your Diamonds owns, controls or licences all materials contained on, or in, our Services, including text, images, graphics, logos, designs, illustrations, audio, videos, music, user interfaces, photographs, trade marks, logos, coding or programming and artwork, including but not limited to the design, structure, selection, co-ordination, expression, “look and feel” and arrangement of such content contained in our Services (**Your Diamonds IP**).

12.2. Your Diamonds IP is protected by copyright, trade mark laws, and various other intellectual property rights and unfair competition laws and must not be copied, imitated or used (in whole or in part) without the prior written consent of Your Diamonds.

12.3. You agree that you will not:

- (a) copy, modify, publish, adapt, sub-licence, translate, sell, distribute, transmit, perform, display, reverse engineer, decipher decompile or otherwise disassemble any portion of the Your Diamonds IP or our Services or cause or assist others to do so;
- (b) challenge Your Diamonds’ ownership of Your Diamonds IP;
- (c) infringe Your Diamonds IP; or
- (d) use or make any intellectual property that is similar to Your Diamonds IP.

12.4. You may access and use the information provided in our Services, on a limited, revocable, non-sublicensable licence, for your personal, non-commercial informational purposes subject to these Terms. No content may be downloaded, copied, reproduced, republished, uploaded, posted, publicly displayed, encoded, translated, transmitted or distributed in any way to any other computer, server, website or other medium for publication or distribution or for any commercial enterprise, without the prior written consent of Your Diamonds.

12.5. Unless explicitly stated herein, nothing in these Terms may be construed as conferring any licence to, or assignment of, any of Your Diamonds’ intellectual property rights, whether by estoppel, implication or otherwise. Your Diamonds reserves all rights not expressly granted in the Services.

13. Privacy

You agree to allow Your Diamonds to send you emails regarding the Services, including any information regarding or relating to the Goods, in accordance with our Privacy Policy. Please see our Privacy Policy for information about our privacy practices.

14. Third Parties

Our Services may, from time to time, contain links to and from websites which are owned or operated by other parties. Links in the Services to third parties do not constitute sponsorship, approval or endorsement of the content, policies, practices or services offered by those parties unless expressly

stated by us in writing. Third party websites are governed by their own terms and conditions and privacy policies and we recommend that you make your own enquiries as to their terms. We do not accept any liability for any information on, or the privacy practices of, any third party websites.

15. Limitation of Liability

- 15.1. To the maximum extent permitted by law, neither Your Diamonds, nor any of its employees or agents, will be liable for any loss, damage or injury whatsoever (including for negligence, death, injury or illness and special, indirect or consequential loss or damage such as loss of profits, loss of revenue, loss of goodwill, loss of opportunity, unavailability of systems or loss of data), whether in contract, tort or otherwise, arising from or in connection with:
- (a) any act, omission or negligence or the use of, or reliance on, information, comments or opinions contained obtained through or in our Services;
 - (b) any, use of the information on or access to Services including if for any reason the Services are unavailable at any time or for any period;
 - (c) malicious or harmful programs, scripts or technologies that may affect our Services as aforementioned, system failures or any other harmful material that may infect your computer, device, programs, data or other proprietary;
 - (d) any errors in, or omissions from, the information contained in the Services;
 - (e) any Services supplied by Your Diamonds;
 - (f) the Goods; or
 - (g) these Terms or any breach of these Terms.
- 15.2. To the maximum extent permitted by law, Your Diamonds liability under these Terms shall be limited to any one or more of the following at the election of Your Diamonds:
- (a) a refund of amounts paid;
 - (b) the replacement of the Goods or re-supply of equivalent Goods;
 - (c) the repair of such Goods;
 - (d) the payment of the cost of replacing the Goods or of acquiring equivalent goods or services or a refund of the purchase price; or
 - (e) the payment of the cost of having the Goods repaired.
- 15.3. To the extent permitted by law, Your Diamonds expressly disclaims all warranties of any kind unless expressly stated in the Services or if required under Australian Consumer Law. Nothing in these Terms purports to exclude any rights or remedies in respect of goods or services under the Australian Consumer Law which cannot be excluded, restricted or modified.
- 15.4. This clause survives termination of these Terms.

16. Disclaimer of Warranty

- 16.1. Your Diamonds provides the Platform and its contents on an “as is” basis and use of this information is at your own risk. While we aim to update the Platform regularly, to the maximum extent permissible of law, neither Your Diamonds, nor any of its employees or agents, makes any representation or warranty as to the accuracy, completeness, currency or reliability of the information contained on the Platform.
- 16.2. We reserve the right to restrict access to the Services or any part of the Services, change or withdraw any Goods, information or content featured in the Services or provided through our

Services, without notice. You acknowledge and agree that we retain complete editorial control over the Services and may alter, amend or cease the operation of the Services or any part of the Services, at any time, in our sole discretion.

17. Release and Indemnity

17.1. You agree to release and indemnify and hold Your Diamonds and (as applicable) its affiliates, agents, and employees, harmless from and against any claims, demands, proceedings, losses and damages (actual, special and consequential) of every kind and nature, known and unknown, including legal fees on a full indemnity basis, arising from or in relation to:

- (a) the Goods, your purchase or use of Goods;
- (b) any act, omission, fraud, negligence or misconduct of a Seller;
- (c) an actual breach, or a suspected breach (in the opinion of Your Diamonds), of these Terms by you (including a breach of any warranty);
- (d) any failure by you, to make payments to us;
- (e) any negligent, unlawful, wilful or fraudulent act or omission by you in connection with these Terms;
- (f) any loss of or damage to any property or injury to or death of any person caused by any negligent or fraudulent act or omission or wilful misconduct of you;
- (g) any act, omission or negligence or the use of, or reliance on, information, comments or opinions contained obtained through or in our Services;
- (h) any, use of the information on or access to Services including if for any reason the Services are unavailable at any time or for any period;
- (i) any errors in, or omissions from, the information contained in the Services;
- (j) your use or access of the Services;
- (k) any access to the Services by a third party arising out of your breach of these Terms; or
- (l) your violation of any law or the rights of a third party (including intellectual property rights).

17.2. This clause survives termination of these Terms.

18. Amendments and correction of errors

18.1. Your Diamonds reserves the right to amend these Terms from time to time as it sees fit. Any amendments or changes to these Terms are effective from the date on which the amended terms are published on the Platform except in relation to Orders placed prior to the publication of any varied terms.

18.2. Whilst we endeavour to notify you as soon as reasonably possible of any changes to our Terms, it is your responsibility to keep up to date with any changes or amendments to these Terms by checking this page, which contains our most accurate and up to date version of our Terms especially before submitting a Bid.

18.3. Your Diamonds reserves the right to amend any errors in the Services, including any pricing errors, and amend any prices and Goods, at any time without notice to you.

19. General

19.1. **Waiver:** Any failure or delay by Your Diamonds in exercising a power or right (either wholly or partially) in relation to these Terms does not operate as a waiver or prevent Your Diamonds from

exercising that power or right or any other power or right. We are not liable to any other party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right. This clause survives termination of these Terms.

- 19.2. **Force majeure:** If we are unable to perform in whole or in part, any obligation under these Terms as a result of any fact, circumstance or matter beyond our control, we are relieved of that obligation to the extent and for the period that it we are unable to perform the obligation. You agree that Your Diamonds will not be held liable for any delay or failure in performance of any part of the Services or delivery of Goods.
- 19.3. **Severability:** If any part of these Terms is determined to be by a court of competent jurisdiction to be invalid or unenforceable, that part shall be severed from the Terms. Such invalidity does not affect the validity of the remaining provisions of these Terms. This clause survives termination of these Terms.
- 19.4. **Relationship:** These terms do not confer an agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship between Your Diamonds and you or any other party unless expressly stated otherwise.
- 19.5. **Entire agreement:** These Terms (and all other terms and conditions and policies that are incorporated by these Terms) and any additional policies or terms you have agreed to through use or access of our Services make up the entire agreement, and supersede all prior written and oral agreements, representations, undertakings and understandings. Where there is an inconsistency between these Terms and any additional Terms, the additional Terms will prevail. This clause survives termination of these Terms.
- 19.6. **Jurisdiction:** These Terms are governed by the laws of New South Wales, Australia. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in New South Wales and its appellate courts. Although the Services may be accessed throughout Australia and overseas, we make no representations or warranties that its content, or the Goods, comply with the laws (including intellectual property laws) of any country outside Australia. If you access the Services from outside Australia, you do so at your own risk and are responsible for ensuring compliance with all laws in the place where you are located. This clause survives termination of these Terms.