

Schedule to Seller Terms

| Seller Details | Description |
|---------------------------------|-------------|
| Name: | |
| Company Number (if applicable): | |
| Address: | |

Fine Art Bourse Australia Pty Ltd (ACN 168 030 331) of Level 7, 167 Macquarie Street, Sydney, NSW, 2000 Australia operates an online platform on which we can sell Goods on behalf of you, the Seller as detailed above (**Seller** or **you**) to Customers by way of public tender (the **Tender**), in accordance with the Seller Terms below.

By signing this document, you agree that you have read, understood and agreed to be legally bound by the Seller Terms.

You warrant and represent to us that you have the legal capacity, power and authority to enter into and be bound by the Seller Terms.

Executed as an **agreement**

Executed on behalf of Fine Art Bourse Australia Pty Ltd by its authorised signatory:

.....
Authorised Signatory Signature

.....
Print Name

.....
Date Signed

Signed by the Seller, by its authorised signatory:

.....
Authorised Signatory Signature

.....
Print name

.....
Date signed

Seller Terms – Your Diamonds Australia

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

1. You can notify us of the Goods you wish to sell on our Platform in writing. We may request further details from you.
2. Once we approve of the Goods in writing to you, you can deliver them to us at the address we specify or we can arrange to collect them in accordance with agreement by separate cover.
3. Once we have graded and valued each of the Goods, we may approve or reject them for sale and return any rejected Goods to you, at your cost.
4. We will work together to determine a mutually acceptable reserve price for the approved Goods.
5. The Goods will be listed for sale on the Platform via the Tender until a set closing time. Potential buyers can submit the Tender Bid Form to make a bid on the Goods. These are sealed until the Tender is closed.
6. After the Tender 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.
7. 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.
8. We will settle with you once we have received full payment in cleared funds from the winning bidder, within 10 Business Days of the end of the Tender (otherwise payment will be delayed for a reasonable period until payment is received by us), we will remit you the price of the winning bid less our commission of 10% plus GST and any other agreed expenses.
9. All sales will be subject to a buyer's premium as further set out in these terms.
10. We reserve the right to pay a commission to any party who introduces a seller or buyer to us.

1. Introduction

- 1.1 These Seller Terms govern the relationship between Fine Art Bourse Australia Pty Ltd (ACN 168 030 331) of Level 7, 167 Macquarie Street, Sydney, NSW, 2000, Australia including our successors, assignees, and related bodies corporate (defined in the *Corporations Act 2001* (Cth)) (**Your Diamonds** or **we** or **us**) and you (the **Seller** or **you**).
- 1.2 We operate an online platform on which we may sell your Goods (including a single or multiple items) to Customers by way of the Tender (**Platform**). We arrange the bidding and tender process, marketing, Customer communication, sale, storage, fulfilment of orders, delivery of the Goods to Customers and other related activities (**Services**).
- 1.3 By agreeing to these Seller Terms, you are entering into a legally binding agreement with us and agree to comply with these Seller Terms.

2. The Platform

- 2.1 We will sell the Goods on the Platform on your behalf. For the avoidance of doubt, we merely provide the Platform to enable listing and sale of Goods for the Tender and we act as your agent for the purpose of providing the Services. You acknowledge and agree that the

contractual relationship for the sale of Goods is between you and the Customer and that you are solely liable and responsible for the sale transaction of the Goods to the Customers.

- 2.2 As part of the Services, we may, but are not obliged to:
- (a) inspect, assess and/or value your goods for the purposes of resale in the Tender;
 - (b) advertise or promote you or your Goods from time to time on the Platform, social media platforms, websites, online, in print media and electronic media (**Marketing Materials**);
 - (c) respond to complaints or disputes arising from or in connection with, Goods sold by the Seller via the Platform; and
 - (d) manage refunds to Customers in relation to Goods sold by the Seller via the Platform if applicable or as required under Australian Consumer Law.

3. Goods and Storage

Your delivery of Goods to us

- 3.1 If you wish for us to provide the Services in relation to Goods, then you must notify us in writing of the details of the Goods which you wish to sell on the Platform. We may require further details from you regarding the Goods.
- 3.2 Once we agree the list of Goods that we will sell via the Platform, we will finalise an inventory list of the Goods for you to send to us (**Inventory**).
- 3.3 Once we have agreed the Inventory, you must immediately deliver the Goods to our nominated storage facility (**Storage**), at your cost (including any applicable import tax or duty) unless otherwise agreed between the parties.

Risk and title to the Goods

- 3.4 You acknowledge and agree that we hold, store and deal with the Goods as bailee of the Goods and you appoint us as your agent for the purpose of, and to the extent necessary, for us to perform our obligations under these Terms and facilitate the storage and sale of Goods on the Platform on your behalf.
- 3.5 At all times (including while your Goods are in Storage), you acknowledge and agree that risk passes to us only when the Goods are in our care and custody, however, title and ownership to the Goods never passes to us and remains with you at all times until the Goods are paid for with cleared funds by the Customer.

Goods

- 3.6 The Goods must be appropriately packaged and labelled, with consideration of the nature of the Goods. We may issue packaging and labelling guides from time to time. Once you have delivered the Goods to our Storage, we will conduct an assessment of the Goods against the descriptions provided by you, and we will maintain inventory data of the Goods once listed for sale on the Platform.
- 3.7 We will notify you of any inventory discrepancies within a reasonable time of receiving the Goods at our Storage. If we notify you of any discrepancy between the Inventory and Goods received, you agree to update the Inventory List.
- 3.8 You must approve any Listing descriptions in writing within two (2) days' of receiving the draft Listing from us, otherwise it will be deemed to be approved. You acknowledge and agree that the Listing will be published on the Platform and accessible by the public and Customers. We will not be liable in any way, for any content in the Listings and you release us from all liability relating to such Listings.
- 3.9 We will assess, grade and value each diamond in the Goods. If, as a result, we determine that the Goods do not meet our standards, we may reject listing some or all of the Goods for sale and return them to you, at your cost.
- 3.10 We will prepare relevant catalogues, photography and marketing materials for the Goods, in our sole discretion.

Listing the Goods and your brand

- 3.11 You acknowledge and agree that, unless you instruct us to the contrary, your details, including but not limited to business/brand name and logos, descriptions of Goods, Goods imagery and reviews and ratings, may be listed publicly on the Platform and Marketing Materials, pursuant to clause 4.
- 3.12 You agree to provide us with all information required by us to list the Goods on the Platform, including but not limited to your entity name, contact phone number, email address, Personnel details and/or written evidence of your business registration and its Australian Business Number (ABN) or other company number or such other verification details as are required by us.
- 3.13 We will list approved Goods for Tender on the Platform, including any relevant descriptions, imagery and any applicable fees (**Listing**).
- 3.14 We reserve the right, in our sole discretion, to reject any Goods to be listed for sale via the Platform or remove any Listings or Goods listed for sale via the Platform, for any reason and without notice to you.
- 3.15 By approving the Listings, you warrant and represent to us that at all times, the Listings and any content or imagery relating to the Goods on the Platform:
- (a) correctly and accurately describe and depict the Goods, including that the overall impression of the Listing is not misleading or deceptive;
 - (b) are kept up to date and free from error, including in any product photography;
 - (c) do not infringe upon any third party rights, including intellectual property rights; and
 - (d) do not breach any laws, regulations, guidelines, industry best practice and advertising guidelines and standards including the Australian Consumer Law.

Reserve Price

- 3.16 We will work with you to agree to a reserve price for each Listing, being the minimum price that a Bid must meet or exceed in order to be considered a successful Bid (**Reserve Price**).
- 3.17 It is your responsibility and liability to ensure that you conduct your own evaluations and calculations regarding the Reserve Price and to ensure that the Reserve Price is acceptable
- 3.18 Your Diamonds will not be liable to any party for any issues, errors or miscalculations or representations with respect to the Reserve Price.
- 3.19 If we cannot agree on a Reserve Price for any Good or Listing, we will exclude that item from the Tender.

4. Tender Process

- 4.1 The Goods will be listed for sale on the Platform for the Tender and Customers may bid to purchase the Goods by submitting the **Tender Bid Form**. The Tender process is expected to be as follows, however, we are not liable for any acts or omissions of a Customer.
- 4.2 Once your Goods have been listed on the Platform for sale (**Listing**), Customers may submit the Tender Bid Form to make a bid on the Goods for the Bid Price they specify in the Tender Bid Form. Bids which are sufficiently completed, as determined by us in our sole discretion at the time of opening the bids, will be accepted as a valid bid (**Bid**). The Listing closes at the closing time specified for that Listing, and after this time no further Bids will be accepted. All of the bids for a Listing will be sealed and stored until the closing time for the Listing.
- 4.3 If you wish to withdraw a Good from sale at any time prior the close of the Tender for any reason then you must pay us 100% of the YD seller's and buyer's Commission as though that Good had sold for the Reserve Price (and if no Reserve Price then based on the agreed lower estimate).
- 4.4 Each Bid that a Customer places is an irrevocable offer to purchase the Goods at the Purchase Price, as calculated in accordance with clause 7.
- 4.5 Our Tenders are silent tenders unless otherwise specified. After the Listing is closed, the Bids for the Listing 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.

- 4.6 Provided that the Customer's Bid meets or exceeds the Reserve Price, the highest Bid on a Listing will be considered the winning Bid (**Winning Bid**). Once a Winning Bid has been selected, Your Diamonds will contact the Customer to confirm its Winning Bid, arrange payment of the Purchase Price and delivery or pick up of the Goods.
- 4.7 If the highest Bid for a Listing does not meet or exceed the Reserve Price, then:
- (a) the Customer that holds the highest Bid will be invited to negotiate the Bid Price with you via Your Diamonds as your agent. You must notify us of your acceptance or rejection of any negotiated Bid Price within 24 hours of receiving it. If agreement can be achieved, such amount will be considered the Winning Bid; and
 - (b) if no agreement can be achieved between you and the Customer or any Customer within 30 Business Days' of the end of the Tender, no sale will have occurred for that Good and the Good(s) may be returned to you at your cost or as otherwise agreed.
- 4.8 The Winning Bid will be considered an order for the purchase of the Goods for the Payment Price (**Order**).

5. Orders and fulfilment

Orders and fulfilment

- 5.1 We process, fulfil and dispatch the Orders.

Delivery to Customers

- 5.2 We will arrange for the delivery of the Goods to the Customer as your agent (**Delivery Services**).
- 5.3 We will set Delivery Fees for the Delivery Services in relation to Goods which may include reimbursement of third-party logistics costs.
- 5.4 Any goods in transit at our direction prior to the completion of the Tender are insured by us on your behalf for the reserve price.

6. Returns, disputes and enquiries

Returning Goods to you

- 6.1 If any Goods are to be returned from our Storage to you for any reason, including where you request return of Goods if we reject Goods for the Tender or if a Listing passes in, then we may return the Goods to you, at your sole cost (including that you must pay all return shipping costs, including any applicable import tax and duty fees).
- 6.2 If you fail to accept delivery of the Goods or confirm a return delivery address within five (5) Business Days of receiving notice of return delivery from us:
- (a) we may charge you any applicable re-delivery fee, storage/warehousing and insurance costs or other costs incurred or suffered by us in connection with the Goods; and/or
 - (b) the Goods will be considered Abandoned Goods and we receive full authority and consent from you to dispose of or re-sell the Goods on such terms as we determine are reasonable, without any compensation to you.
- 6.3 You acknowledge that we will incur costs (both internal and external) in dealing with the Abandoned Goods and that you will pay the costs of and indemnify us for all costs, expenses, damages, claims, action or liability whatever arising from or in connection with us exercising our rights under this clause.

Customer returns

- 6.4 If a Customer requests a return of Goods to us due to a claim of misrepresentation, you give us full authority to assess the claim and if the claim is accepted by us, to negotiate such claims, returns and refunds.
- (a) If we determine that there was a misrepresentation that was due to our fault, the transaction will be voided and any money paid to any party (including the sale price and the Buyer's Premium will be refunded to the Customer).

- (b) If we determine that there was a misrepresentation that was due to your fault, then we may, in our absolute discretion cancel all or part of the Tender (including the transaction with the Customer complainant) and you will be liable to repay all of the Sale Price that we have already paid to you and to pay us (or we will be entitled to retain) 100% of the YD Commission as though the Tender had completed and as though each item had sold for the Reserve Price (or if the parties were not able to agree on a Reserve Price the valuation that we attribute to each Good on the basis of its lower estimate).
 - (c) You acknowledge and agree that we may make all decisions with regard to accepting a return or determining whether such Goods meet the requirements in our Returns Policy.
- 6.5 You agree to accept returns in accordance with and comply with our **Returns Policy** at all times at your own cost. For clarification, our returns policy is that a Customer is entitled to a refund required under Australian Consumer Law, as determined by us in our sole discretion.
- 6.6 You must bear the cost of any Processing Fees, Delivery Fees, the Seller's Commission, in respect of returned Goods, even if you are required to provide a refund for the Order or Goods, and you indemnify us in respect of such losses. If a payment is required to be made to a Customer under this clause 6, you agree to make immediate payment to us of such amount on demand.
- 6.7 If Goods are returned to us, then the Goods will be forwarded to you at your sole cost and we may, in our sole discretion:
- (a) retain the relevant Seller Payment for that item;
 - (b) deduct or set off any amount payable to us or the Customer, against other Seller Payments payable to you; and/or
 - (c) invoice you for the any portion of the Purchase Price, including the Commission.

7. Purchase Price and Your Diamond's Fees

- 7.1 We will arrange for the Winning Bidder to pay the Purchase Price for the Goods prior to dispatching the Goods.
- 7.2 The Purchase Price is calculated as follows:
- Purchase Price** = Winning Bid + GST + Delivery Fees + Processing Fees + Customer Premium (buyer's premium)
- Bid Price** means the relevant price specified by the Customer in their Tender Bid Form;
- Customer Premium (also known as buyer's premium) means** 12.5% of the Winning Bid plus GST, payable to Your Diamonds;
- Delivery Fees** mean any delivery or pickup fees set by us or the Seller for the relevant Listing;
- Processing Fees** mean any other applicable duties or taxes and any fees and charges associated with the purchase of the Goods, including any payment processing fees or bank fees; and
- Winning Bid** means the highest Bid Price, at or above the Reserve Price placed prior to the end time of the Tender or the amount agreed in accordance with clause 4.7(a), plus GST.
- 7.3 You must provide any such information as reasonably required by Your Diamonds in order to process payments, including providing any business and taxation information required by Your Diamonds.
- 7.4 Within 10 Business Days' of the end time for the Tender for each Listing where there is a Winning Bid, and provided that the Customer has made payment of the Purchase Price and it is received by Your Diamonds in cleared funds (otherwise, payment will be delayed for a reasonable period until the Purchase Price is received), Your Diamonds will remit the Seller Payment, as calculated below to you via the payment method nominated by the Seller via the Platform:

Seller Payment = Winning Bid – YD Commission

YD Commission means 10% of the Winning Bid, plus GST.

Winning Bid means the highest Bid Price, at or above the Reserve Price placed prior to the end time of the Tender or the amount agreed in accordance with clause 4.7(a) plus GST.

- 7.5 Your Diamonds reserves the right, in its sole discretion, to seek reimbursement from the Seller if it discovers any payment processing error. The Seller expressly agrees that if there has been a payment processing error, Your Diamonds may deduct any amounts payable from the Seller Payment, debit or charge your credit card or bank account on record or seek reimbursement in any other lawful manner.
- 7.6 If the Customer fails to make payment for the Purchase Price within 30 days' of the closing time for the Tender, we will notify you in writing and seek your instructions. In the event that you do not wish to commence proceedings to recover the Purchase Price you authorise us to terminate the sale contract on your behalf, with no Seller Payment payable to you. Within 24 hours of such notice, you may elect in writing to re-list the Good for sale at a forthcoming Tender, or have the Goods returned to you, at your cost. If you do not provide such notice, you will be deemed to have elected for us to re-list the Goods for sale in accordance with these Terms.

8. Insurances

- 8.1 We will insure the Goods for the agreed reserve price from the period that the Goods come into our possession or the possession of our agent/s, until they are delivered to and received by the Customer or returned to you.

9. Seller obligations and warranties

- 9.1 You warrant and represent to us that you:
- (a) will not place a Bid on any Goods owned by you or arrange for any third party to place any Bids on any Goods owned by you;
 - (b) will ensure that none of your employees, contractors, officers or representatives place any Bids on any Goods owned by you;
 - (c) have legal capacity, clean title, power and authority to enter into and be bound by these Seller Terms;
 - (d) are a private individual or you are a registered entity for GST Law;
 - (e) will comply with any reasonable directions given to you by us from time to time;
 - (f) will comply with any other reasonable agreements, terms and conditions and policies provided by us from time to time, such as the Tender Terms, Privacy Policy, Returns Policy and Delivery Policy;
 - (g) have, or will enter into and comply with any agreements, terms and conditions and policies of any third party platforms, as necessary to enable performance by us under these Seller Terms (for example, to allow for the functionality of the Platform such as the processing of payments and refunds);
 - (h) will ensure that your Personnel will not represent themselves to be affiliated with an employee of ours;
 - (i) have the right to sell the Goods;
 - (j) will act lawfully and in performing your obligations under these Seller Terms, comply with any applicable licenses, laws, regulations, industry standards or codes of conduct, health and safety requirements; and
 - (k) hold, maintain and comply with all valid and up to date licences, permits, consents or other permissions as required by law, to operate your business, offer for sale and sell your Goods.
- 9.2 You warrant and represent to us that the Goods:
- (a) are free from any third party interests;
 - (b) strictly conform to the specifications, images, description, itinerary, samples or other descriptions provided and/or approved by you, including in clause 3;
 - (c) are of acceptable and merchantable quality, fit for the purpose(s) intended;
 - (d) are free from defects for any period required by any applicable law or regulation;

- (e) comply with all applicable laws, regulations, standards and codes;
 - (f) are legally, beneficially and unconditionally owned by you; and
 - (g) are unencumbered financially.
- 9.3 You agree that you will immediately notify us of any changes to your business structure or any change in ownership of the business (including any Change of Control as defined in the Corporations Act).
- 9.4 You warrant and represent to us that the Goods are and at all times will be unencumbered and free from any third party claim or interests. You indemnify and hold harmless Your Diamonds and its officers from any claims that may arise from any dealings by Your Diamonds with the Goods that gives rise to any claim for compensation, commission or payment arising in connection with any interest whether legal or beneficial in the Goods.

10. Intellectual Property and Customer Data

- 10.1 You acknowledge and agree that we and our licensors, own or hold the Intellectual Property rights to the Platform, any Customer lists and Customer details, and all related intellectual property (**Your Diamonds IP**).
- 10.2 You acknowledge and agree that Customers are not, by virtue of these Terms, your customer, and that you are not authorised or permitted to have any contact with Customers. If you are contacted by any Customer regarding any Good purchased through the Platform, you must direct those Customers to our customer service team and immediately report such contact to us.
- 10.3 All information relating to Customers is confidential. You are prohibited from using Customer data for any purpose other than that directly connected with fulfilling your obligations under these Terms.
- 10.4 You must not copy, modify, publish, adapt, sub-license, translate, sell, distribute, transmit, perform, display, reverse engineer, decipher, decompile or otherwise disassemble any portion of the Your Diamonds IP or Platform or cause or assist others to do so.
- 10.5 You grant us an irrevocable, non-exclusive, transferable, sublicensable, royalty-free, perpetual, worldwide license and right to use, publish, modify, alter, reproduce and make derivative works from your Content for the purposes of us performing our obligations and exercising our rights under these Seller Terms and providing the Platform to your Customers, including but not limited to, listing you on the Platform, listing the Goods on the Platform, for promotional, marketing and advertising purposes including on social media platforms, and providing the Services, including your trade-marks, brand names, logos, images of Goods, descriptions of Goods, and your details including address, location, operating hours and description.
- 10.6 You waive all of your Moral Rights in the Seller Content and will procure that all of your Personnel also waive their Moral Rights in the Intellectual Property in the Seller Content. In relation to the exploitation of the Seller Content by us, you irrevocably consent to us using the Seller Content without attribution to you and altering the Seller Content for any purposes and in any manner for the purposes of these Seller Terms and for the provision of the Platform and Services.

11. Termination

- 11.1 Without affecting any other right or remedy available to us, we may terminate or suspend these Seller Terms with immediate effect, for any reason in our sole discretion, with written notice to you.
- 11.2 Without affecting any other right or remedy available to it, either party may terminate these Seller Terms with immediate effect by giving written notice to the other if:
- (a) either party commits a material breach of any term of these Seller Terms and either:
 - (i) the breach is irremediable; or
 - (ii) the breach is remediable and the breaching or allegedly breaching party fails to remedy that breach within a period of 20 Business Days after the other party has, or is deemed to have, received written notice requesting it to do so; or

- (b) an Insolvency Event occurs in relation to either party and the Corporations Act does not prevent the non-defaulting party from terminating these Seller Terms because of that Insolvency Event.
- 11.3 We may terminate these Seller Terms immediately by written notice to you if any warranty given by you in these Seller Terms is found to be untrue, incorrect or misleading.
- 11.4 We reserve the right, in our sole discretion, to reject or remove you or your Goods from the Platform, for any reason and without notice. If we exercise our rights under this clause not due to any fault of yours, any amounts pre-paid with respect to the relevant period will be refunded to you.

12. Effect of termination

- 12.1 The termination of these Seller Terms will not release either party from any obligation or liability to the other party, including any payment and delivery obligation that:
 - (a) has accrued under these Seller Terms prior to termination;
 - (b) comes into effect because of the termination of these Seller Terms; or
 - (c) otherwise survives the termination of these Seller Terms.
- 12.2 Your obligations continue in relation to any Goods sold prior to termination.
- 12.3 Within five (5) Business Days after the later of termination of these Seller Terms or the end of the delivery of all of your Goods, you must:
 - (a) immediately cease using the Platform and any Your Diamonds IP;
 - (b) to the extent that return is possible, return to us, our Confidential Information and all copies of it, or to the extent that return is not possible, destroy all copies of our Confidential Information; and
 - (c) deliver to us, all property belonging to us that is in its possession or control.
- 12.4 Any amounts owing or payable to us by you under these Seller Terms will be payable in full immediately upon termination.

13. Confidentiality

- 13.1 Both parties agree to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under these Seller Terms.
- 13.2 A party must:
 - (a) not disclose any Confidential Information of the other party to anyone else except as permitted under these Seller Terms;
 - (b) limit the disclosure of the Confidential Information within its own organisation only to those of its Personnel to whom such disclosure is strictly necessary for the purposes of these Seller Terms and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause; and
 - (c) not use the name of the other party in publicity releases, advertising or promotion of the party unless the other party has given its prior written consent (which shall not be unreasonably withheld).
- 13.3 The obligations of confidentiality in clause 13.2 will not apply to information which:
 - (a) is generally available in the public domain except where such availability is as a result of a breach of these Seller Terms;
 - (b) we may wish to disclose to a prospective purchaser or investor;
 - (c) was known prior to the disclosure of the information by the other party; or
 - (d) is required to be disclosed by an applicable law or court order.

14. Limitation of liability

- 14.1 You acknowledge and agree that we are merely a technology platform provider and provider of the Services, and that liability for the provision of Goods to Customers is your sole responsibility.
- 14.2 To the maximum extent permitted by law, we exclude any liability to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Seller Terms, including loss of any profit, sales or business, production, agreements or contracts, business opportunity, anticipated savings, or damage to goodwill, reputation or use or corruption of the Platform, software, data or information.
- 14.3 To the maximum extent permitted by law, we will not be liable to you for any actions, claims, charges, costs (including legal costs on a full indemnity basis), expenses, losses, damages and other liability that they may sustain or incur, directly or indirectly, arising out of or in connection with:
- (a) any act, omission, communication, inaccuracy or error by you or your Personnel, in relation to any Good;
 - (b) the delivery, recall or return of any Goods, whether or not caused by you or your Personnel; or
 - (c) any loss of, theft, or damage to any property or Goods except due to our gross negligence or wilful misconduct.
- 14.4 To the maximum extent permitted by law, our total aggregate liability to you under or in any way connected with these Seller Terms, or the performance or non-performance of these Seller Terms, whether under the law of contract, tort or otherwise, is limited to the Your Diamonds Fees paid by you under these Seller Terms in the 12-month period immediately preceding the date on which the relevant claim arose.
- 14.5 To the maximum extent permitted by law, you will not be entitled to commence any action or claim whatsoever against us in respect of these Seller Terms, or the performance or non-performance of these Seller Terms, whether under the law of contract, tort or otherwise, after the expiration of one (1) year after the earlier of:
- (a) the date of expiry or termination of these Seller Terms; and
 - (b) if relevant, the closing date of the Listing to which the Claim relates.
- 14.6 To the maximum extent permitted by law, we expressly exclude any conditions, warranties, guarantees, representations, undertakings, rights, remedies, liabilities or other terms, under the general law or by statute in favour of you under these Seller Terms, except as expressly set out in these Seller Terms.
- 14.7 We will not offer any rebate on the Commission, unless separately agreed in writing.
- 14.8 Nothing in these Seller Terms purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application of any provisions of the Australian Consumer Law which cannot be excluded, restricted or modified.

15. Indemnity

- 15.1 You indemnify us and our Personnel, and will keep all of them indemnified and hold us and our Personnel harmless, against all actions, claims, charges, costs (including legal costs on a full indemnity basis), expenses, losses, damages and other liability that they may sustain or incur, directly or indirectly, arising out of or in connection with:
- (a) any misrepresentation by you or any party acting on your behalf as to the quality, nature, title or ownership of the Goods;
 - (b) an actual breach, or suspected breach in our opinion, of these Seller Terms by you or your Personnel, including a breach of any warranty;
 - (c) any act, omission, communication, inaccuracy or error by you or your Personnel, in relation to any Good, order or status of an order;
 - (d) the delivery, recall or return of Goods, whether or not caused by you or your Personnel;
 - (e) any breach, or suspected breach in our opinion, of clauses 9 and/or 13;

- (f) any act or omission by you, or your Personnel, including any negligent, unlawful, wilful or fraudulent act or omission, in connection with these Seller Terms;
- (g) 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 yours or any of your Personnel; and
- (h) any claim that we infringe the intellectual property rights or other rights of any person.

16. Dispute resolution

- 16.1 If a dispute arises out of or relates to these Seller Terms, a party must not commence any court or other proceedings relating to the dispute unless it has first complied with the following procedure:
- (a) the party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute;
 - (b) on receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute using informal dispute resolution techniques such as mediation, expert evaluation, arbitration or similar methods agreed by them;
 - (c) if the parties do not agree within 10 days of receipt of the notice (or such further period as the parties agree in writing) as to:
 - (i) the dispute resolution method and procedures to be adopted;
 - (ii) the timetable for all steps in those procedures; and
 - (iii) the selection and compensation of the independent person required for such method,the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales.
- 16.2 Nothing in these Seller Terms will prejudice the right of a party to seek injunctive or declaratory relief in respect of a dispute or any matter arising under these Seller Terms.

17. GST

- 17.1 Words used in this clause 17 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless otherwise indicated.
- 17.2 Unless expressly stated otherwise, the consideration for any supply under or in connection with these Seller Terms is exclusive of GST.
- 17.3 To the extent that any supply made under or in connection with these Seller Terms is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under these Seller Terms for that supply (unless it expressly includes GST) plus an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 17.4 The recipient must pay the additional amount at the same time as the consideration to which it is referable, and upon the issue of an invoice relating to the supply.
- 17.5 If an adjustment event occurs in relation to any taxable supply to which clause 17.3 applies:
- (a) the supplier must determine the amount of the GST component of the consideration payable; and
 - (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 17.6 If either party is entitled under these Seller Terms to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with these Seller Terms, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

- 17.7 For the avoidance of doubt each of the Purchase Price, Customer Premium and Seller Payment will attract GST which must be paid by the party liable for such payment in addition to the relevant amount.

18. General

- 18.1 **Introductory Commission:** We reserve the right to pay an introductory commission to any party that introduces a seller or a buyer to us. This commission will not be deducted from your payment and may not necessarily be disclosed each time we make such a payment.
- 18.2 **Amendments:** The Platform is subject to updates and changes and as such, parts of these Seller Terms may need to be amended or varied. We may amend or vary these Seller Terms, in our sole discretion, by notice in writing to you. You may, within 14 days of receiving such notice, elect to terminate these Seller Terms if you do not agree with such amendments, by notice in writing to us. Changes will apply to the Tender and Inventory Lists dated after the variation date. If we do not receive such notice of termination within the specified timeframe, you are deemed to have accepted and agreed to be bound to such amendments and variations as at the date of receiving the notice of such amendment or variation.
- 18.3 **Assignment:** You must not assign, transfer, novate or deal with the whole or any part of your rights or obligations under these Seller Terms without the prior written consent of ours. Any purported dealing in breach of this clause is of no effect. A change in control (as defined in the Corporations Act) by you constitutes a deemed assignment.
- 18.4 **Costs:** Each party must pay its costs of entering into and negotiation of these Seller Terms.
- 18.5 **Counterparts:** These Seller Terms may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of these Seller Terms, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart. The parties agree that an executed electronic copy of a digital scan (including in portable document format), of these Seller Terms (where such email address has been notified by a party to another party for these purposes) will serve as a legal and binding agreement with the same force and effect as the original.
- 18.6 **Entire agreement:** The Seller Terms constitute the entire agreement between the parties and supersedes all and any communications, negotiations, arrangements and agreements, whether oral or written, between the parties in respect of the matters that are the subject of these Seller Terms.
- 18.7 **Force majeure:** If by reason of any fact, circumstance, matter or thing beyond our reasonable control, either we are unable to perform in whole or in part any obligation under these Seller Terms then:
- (a) we are relieved of that obligation under these Seller Terms to the extent and for the period that we are unable to perform such obligation; and
 - (b) we will not be liable to you for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause.
- 18.8 **Further assurance:** Each party must from time to time and in a timely manner do all things reasonably required of it by the other party to give effect to these Seller Terms.
- 18.9 **Notices:** Notices must be:
- (a) in writing;
 - (b) signed – if the party is a company, then the Notice must be signed by at least one of the company's directors or solicitors;
 - (c) sent by prepaid ordinary post, email or given in any other way permitted by law; and
 - (d) take effect from the time they are received unless a later time is specified.
- 18.10 **No representations or warranties:** The parties hereby acknowledge that no representations or warranties have been made other than those expressly recorded in these Seller Terms and that, in respect of these Seller Terms or any part of it including the transactions contemplated pursuant to these Seller Terms, no party has relied or will rely upon any representations or information, whether oral or written, previously provided to or discovered by it. In particular, we make no warranty or representation to you that your Goods will sell or will achieve any particular price.

- 18.11 **Relationship:** Except as expressly stated in these Seller Terms, nothing in these Seller Terms is intended to create a relationship of partnership, joint venture, agency or employer-employee between the parties. Neither party has authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the other party.
- 18.12 **Powers, rights and remedies:** Unless otherwise stated in these Seller Terms, the powers, rights and/or remedies of a party under these Seller Terms are cumulative and are in addition to any other powers, rights and remedies of that party. Nothing in these Seller Terms merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a party may have at any time against the other party to these Seller Terms or any other person.
- 18.13 **Set off:** We are authorised to deduct any amount due and payable by you from amounts otherwise due and payable to you under or in connection with these Seller Terms. Any exercise by a party of its rights under this clause does not limit or affect any other rights or remedies available to it under these Seller Terms or otherwise.
- 18.14 **Severance:** If any provision of these Seller Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Seller Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Seller Terms and shall not in any way affect any other circumstances of or the validity or enforcement of these Seller Terms.
- 18.15 **Survival:** The following clauses are continuing obligations and will continue after termination or expiry of these Seller Terms: 19 (Definitions and interpretation), 4 (Seller Obligations and Warranties), 12 (Effect of termination), 13 (Confidentiality), 14 (Limitation of Liability), 15 (Indemnity), 16 (Dispute Resolution) and 18 (General).
- 18.16 **Waiver:** A failure by either party to take action to enforce its rights does not constitute a waiver of any right or remedy under these Seller Terms unless it is in writing signed by the party granting the waiver.
- 18.17 **Jurisdiction:** The parties irrevocably submit to the exclusive jurisdiction of the courts of the state of New South Wales, Australia.
- 18.18 **Governing law:** These Seller Terms will be governed by and construed and interpreted in accordance with the laws of New South Wales, Australia.

19. Interpretation and definitions

19.1 In these Seller Terms, unless the context requires otherwise:

- (a) words in the singular include the plural and vice versa;
- (b) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Seller Terms;
- (c) any reference to gender includes the other gender;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of these Seller Terms;
- (e) if any act which must be done under these Seller Terms is to be done on a day that is not a Business Day, then the act must be done on or by the next Business Day;
- (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (h) the words "includes" and "including" or words of similar effect are not words of limitation;
- (i) no clause of these Seller Terms shall be interpreted to the disadvantage of a party merely because that party drafted the clause or would otherwise benefit from it;
- (j) a reference to a party includes the party's successors, assigns and persons substituted by novation;
- (k) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;

- (l) a reference to time and date is to local time and dates in New South Wales, Australia;
and
- (m) unless specified otherwise, a reference to "\$" or "dollars" refers to Australian dollars.

19.2 Definitions

In these Seller Terms, capitalised terms are defined as follows:

| Term | Definition |
|---------------------------------|--|
| Australian Consumer Law | Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth). |
| Business Day | A day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia. |
| Customers | Actual or potential bidding customers for Goods listed on the Platform. |
| Confidential Information | <p>(a) these Seller Terms and their subject matter, including information submitted or disclosed by a party during negotiations, discussions and meetings relating to these Seller Terms;</p> <p>(b) any information relating to our business;</p> <p>(c) any information relating to our commissions, margins or pricing details;</p> <p>(d) any information provided by us to you regarding consumer demand for Goods, consumer preferences, case studies and any reasonably similar information;</p> <p>(e) any Customer lists or Customer details including contact information;</p> <p>(f) any information of ours which is designated by us as confidential;</p> <p>(g) any information of ours which is of a confidential or sensitive nature, which is marked or denoted as confidential or which a reasonable person to whom that information is disclosed or to whose knowledge the information comes would consider confidential; or</p> <p>(h) any information which is disclosed by us to you, directly or indirectly, or otherwise comes to the knowledge of that party in relation to or in connection with these Seller Terms, whether that information is in oral, visual or written form or is recorded or embodied in any other medium.</p> |
| Corporations Act | The <i>Corporations Act 2001</i> (Cth). |
| Goods | The good or goods offered for sale or provided by Sellers. |
| GST Law | The definition given to that term in the <i>A New Tax System (Goods & Services Tax) Act 1999</i> (Cth). |
| Intellectual Property | Patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs and unregistered designs, rights to use, and protect the confidentiality of, confidential information (including know-how, trade secrets, and datasets), technology and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist now or in the future, anywhere in the world. |

| | |
|-------------------------|--|
| Insolvency Event | <p>The occurrence of any one or more of the following events in relation to a party:</p> <p>(a) a receiver, manager, trustee, administrator, or similar officer (or a combination of these parties) is appointed in respect of a person or any asset of a person (and that appointment is not withdrawn or dismissed within 5 Business Days);</p> <p>(b) a liquidator or provisional liquidator is appointed in respect of a corporation (and that appointment is not withdrawn or dismissed within 5 Business Days);</p> <p>(c) any application (not being an application withdrawn or dismissed within 5 Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:</p> <p>(i) appointing a person referred to in paragraphs (a) or (b) above;</p> <p>(ii) winding up a corporation; or</p> <p>(iii) proposing or implementing a creditors' scheme of arrangement;</p> <p>(d) a moratorium of any debts of a person, an official assignment, a composition, an arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 5 Business Days;</p> <p>(e) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any Law to be, insolvent or unable to pay its debts; or</p> <p>anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.</p> |
| Moral Rights | <p>The rights conferred by Part IX of the <i>Copyright Act 1968</i> (Cth) and any similar rights existing or that may come to exist anywhere in the world, including:</p> <p>(a) a right of attribution of authorship;</p> <p>(b) a right not to have authorship falsely attributed; and</p> <p>(c) a right of integrity.</p> |
| Notices | Includes any approvals, consents, instructions, orders, directions, statements, requests and certificates or other communications that may be given, or are required to be given, under these Seller Terms. |
| Personnel | An employee, director, officer, agent, representative, contractor or sub-contractor of a party. |
| Platform | Our website or application (including mobile application) which allows Customers to purchase Goods from us. |
| Privacy Policy | Our Privacy Policy as provided by us, including as linked on the Platform, from time to time. |
| Seller Terms | These Seller Terms and its schedules and annexures and any subsequent variation. |
| Seller Content | Intellectual Property owned by or licensed to you, including information and data provided to us by you, including information related to you, information and description of Goods and images of Goods. |
| Services | Has the meaning set out in clause 1.2. |
| Tender | Public tender referring to the process of offering goods to a market that is well informed by public multi-media marketing whilst inviting prospective Customers (buyers) to submit competing sealed Bids to Your Diamonds whereby the sealed tender Bids are opened at an advertised time and the results announced to Customers and Sellers. |
| Tender Terms | The Tender Terms and Conditions , which apply to all users of the Platform, which incorporate by reference, our Privacy Policy, Returns Policy and Delivery Policies. |

