

# MIRANEL

## CONDITIONS OF SALE

## PART I – INTRODUCTORY

### 1. INTRODUCTION

- 1.1. Miranel will hold regular internet based Sales to sell Goods via its online Sales Platform on its Website.
- 1.2. Any Customer, Bidder or User is bound by these Conditions of Sale together with the Sale Conduct Rules on the Sale Platform (which Sale Conduct Rules are incorporated herein as if specifically repeated).
- 1.3. Use of the Website, the Sale Platform or any part thereof or the Services offered by Miranel shall constitute an acceptance by the Customer, Bidder or User of these Conditions of Sale.
- 1.4. The Parties wish to record in writing their agreement in respect of the above and matters ancillary thereto, in this Agreement.

### 2. INTERPRETATION

- 2.1. In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –
  - 2.1.1. “**Agreement**” means these terms and conditions of sale and “**Conditions of Sale**” shall bear the same meaning;
  - 2.1.2. “**Applicable Laws**” means, in relation to any relevant jurisdiction, the common law and statutory law applicable in such jurisdiction, including any present or future constitution, decree, judgment, legislation, measure, requirement, order, ordinance, regulation, statute, treaty, directive, rule, guideline, practice, concession, or request issued by any relevant authority, governmental body, agency or department or any central bank or other fiscal, monetary, regulatory, self-regulatory or other authority or agency;
  - 2.1.3. “**Authorised Representative**” means representatives of the Customer who are designated as such by the Customer in writing and who are approved by Miranel in terms of clause 3.8;
  - 2.1.4. “**Bid**” means an irrevocable offer coupled to a price in USD per Lot offered by a

Bidder for a Lot at the Sale;

- 2.1.5. “**Bidder**” means a Customer who submits a Bid;
- 2.1.6. “**Bid Deadline**” means in respect of each Lot, the latest time as specified on the Website in respect of each Lot by which all Bids must be received from Bidders;
- 2.1.7. “**Carat**” means a unit of weight for precious stones and diamonds equivalent to 200 milligrams as determined in the Discretion of Miranel;
- 2.1.8. “**Customer**” means a person approved as such by Miranel in terms of clause 3 hereof;
- 2.1.9. “**Discretion**” means sole and absolute discretion;
- 2.1.10. “**Goods**” means polished diamonds, unpolished diamonds, semi-precious stones and/or gemstones;
- 2.1.11. “**Good Industry Practice**” means industry best practice business process and conduct undertaken by a diamantaire and purchaser of diamonds in an effective, reliable, professional and safe manner with the appropriate good faith, honesty, care, skill, knowledge and foresight (including in respect of security and confidentiality) which could reasonably be in the diamond trading business;
- 2.1.12. “**Interest Rate**” means the Libor Rate plus 4 %;
- 2.1.13. “**Kimberley Process Certification**” means authorisation under the Kimberley Process Certification Scheme to prevent conflict diamonds from entering the mainstream rough diamond market by United Nations General Assembly Resolution 56/56;
- 2.1.14. “**Libor Rate**” the London Interbank Offered Rate;
- 2.1.15. “**Miranel**” means Miranel BVBA, Diamond Club, Suite 103, Antwerp 2018 and shall include reference to its affiliates and agents;
- 2.1.16. “**Lots**” means the parcels into which the Goods are assessed and sorted for the purposes of the Sale, and can mean a single diamond or a set of diamonds which is traded as a whole;
- 2.1.17. “**Lot Listing**” means a descriptive entry on the Website providing a summary of the details of the Lot to which the entry relates and which shall be indicative only;

- 2.1.18. "**Parties**" means Miranel (on the one hand) and the User, Bidder or Customer (on the other hand) as the context indicates;
- 2.1.19. "**Payment**" means payment by the Purchaser for the Lot or Lots purchased on the Sale;
- 2.1.20. "**Purchase Price**" means the price or prices paid by each of the respective Purchasers in respect of the Goods purchased by them on the Sale;
- 2.1.21. "**Purchaser**" means a Bidder who makes the winning Bid in respect of a Lot; and "**Purchasers**" shall have a commensurate meaning;
- 2.1.22. "**Registration Form**" means the form to be completed by a person applying to become a Customer as contemplated in clauses 3.1, 3.2 and 3.3 and shall include reference to all ancillary documents to be provided by such person as stipulated by Miranel;
- 2.1.23. "**Reserve**" means a minimum price applied to any Lot at the Sale;
- 2.1.24. "**Services**" means all Services related and ancillary to the Sale utilising the Sale Platform;
- 2.1.25. "**System**" means all software, programmes, hardware, network and communications equipment used by Miranel in providing the Website and the Services;
- 2.1.26. "**Sale**" means the offer for sale of the Goods, utilising the Viewing Facility and the Sale Platform to solicit offers from Bidders for the purchase of the Goods and held at regular intervals and "**Sales**" shall have a commensurate meaning;
- 2.1.27. "**Sale Conduct Rules**" means the rules and regulations stipulated by Miranel from time to time for the process of the Sale which are subject to amendment by Miranel and which appear on the Website;
- 2.1.28. "**Sale Platform**" means the internet based Sale system on the Website which is utilised for the sale of the Goods on Sale to the Purchasers;
- 2.1.29. "**USD**" means United States Dollars, being the official currency of the United States of America;
- 2.1.30. "**User**" means any person accessing the Website;
- 2.1.31. "**Viewing**" means an appointment for a Customer to view the Goods prior to Sale as

provided for by clause 4;

2.1.32. "**Viewing Office**" means the premises provided by Miranel to Customers to physically view the Goods comprising the Lots prior to Sale as contemplated in clause 4 and from which Goods can be collected or shipped as provided by clause 6; and

2.1.33. "**Website**" means the website with domain www.koininternational.com.

2.2. In this Agreement –

2.2.1. clause headings and the heading of this Agreement are for convenience only and are not to be used in its interpretation;

2.2.2. an expression which denotes –

2.2.2.1. any gender includes the other genders;

2.2.2.2. a natural person includes a juristic person and *vice versa*;

2.2.2.3. the singular includes the plural and *vice versa*; and

2.2.2.4. a Party includes a reference to that Party's successors in title and assigns allowed at law.

2.3. Any reference in this Agreement to –

2.3.1. "**days**" shall be construed as calendar days unless qualified by the word "Business", in which instance a "Business day" will be any day other than a Saturday or Sunday;

2.3.2. "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality; and

2.3.3. "**writing**" means legible writing and in English and excludes any form of electronic communication.

2.4. The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

2.5. The words "**shall**" and "**will**" and "**must**" used in the context of any obligation or restriction imposed on a Party have the same meaning.

- 2.6. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement.
- 2.7. Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.8. Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.9. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business day, the next succeeding Business day.
- 2.10. If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business day.
- 2.11. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.12. The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.13. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they 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.
- 2.14. The use of any expression in this Agreement covering a process available under either Belgium, such as insolvency or winding-up, shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.15. Any reference in this Agreement to "**this Agreement**" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may

be, such other agreement or document, as amended, varied, novated or supplemented from time to time.

- 2.16. In this Agreement the words "**clause**" or "**clauses**" refer to clauses of this Agreement.

## **PART II – SALE PROVISIONS**

### **3. REGISTRATION AS A CUSTOMER**

- 3.1. Any person wishing to participate in a Sale must apply to become a Customer by completing the Registration Form supplied by Miranel for this purpose and providing all such documentation as Miranel may require including proof of the identity of the Customer, its directors and shareholders; a copy of the Customers constitutional documents and business licence and proof of bank account details.
- 3.2. All information and documentation supplied shall be up to date and complete in all respects.
- 3.3. In order to be approved as a Customer a person shall have met all Miranel security, money-laundering and other due diligence requirements. In the event that a Customer fails or ceases to satisfy the aforesaid requirements the Customer shall immediately advise Miranel.
- 3.4. In the event that Miranel in its Discretion approves the application in writing then the applicant shall become a Customer. The Customer shall receive login details to access the Sale Platform including a username and password. The Customer shall be responsible for maintaining the security and confidentiality of its login details and shall immediately notify Miranel of the loss or theft of such details. Miranel is not responsible at any point for the misplacement, loss or misuse of the username or password.
- 3.5. A Customer's registration may be cancelled without notice by Miranel in its Discretion.
- 3.6. Participation by a Customer in a Sale is no guarantee that such a Customer may participate in any future Sale.
- 3.7. The identity of the Customer's proposed Authorised Representatives shall be made known to Miranel in writing in a manner acceptable to Miranel including providing a copy of the Authorised Representative's passport; stipulating the relationship of the Authorised Representative to the Customer and providing any other documentation

required by Miranel as part of its due diligence requirements referred to at 3.3 above.

- 3.8. Miranel shall approve an Authorised Representative as such and shall be entitled to withdraw the approval of an Authorised Representative at any time. Miranel may refuse to allow any Authorised Representative entry to the Viewing Office at any time.

#### **4. PRE-SALE VIEWING**

- 4.1. Miranel shall in its Discretion invite Customers to view the Lots prior to Sale at a date, time and for a duration determined therefore at the Viewing Office.
- 4.2. A Viewing may be cancelled or the date, time, duration and/or place of the Viewing may be amended in Miranel's Discretion.
- 4.3. A Viewing shall be attended by a maximum of 4 (FOUR) Authorised Representatives.
- 4.4. In the event that a Customer fails to attend the Viewing Miranel shall in no way be obliged to arrange another Viewing for the Customer.
- 4.5. Miranel shall impose and the Customer and its Authorised Representative shall adhere to any security measures that Miranel may have in place at the Viewing Office.
- 4.6. No Customer or Authorised Representatives may be in possession of any Goods (other than the goods being viewed) or any diamond substitute while in the Viewing Office. A Customer shall be entitled to open 1 (ONE) Lot at a time to view and weigh the Goods.
- 4.7. Any behaviour by a Customer's Authorised Representative which Miranel deems suspicious may be further investigated by Miranel and referred to criminal investigation by Miranel in its Discretion.
- 4.8. Miranel shall be entitled to deny entry or remove any person from the Viewing Office.
- 4.9. Miranel shall be entitled to monitor the Viewing by means of video cameras and other surveillance equipment, to which surveillance the Customer and its Authorised Representatives specifically agree.

## **5. SALE PROCESS**

- 5.1. This Agreement and the Sale Conduct Rules shall regulate the Sale process.
- 5.2. Miranel shall be entitled in its Discretion to determine:
  - 5.2.1. the time and location at which any Sale takes place;
  - 5.2.2. the schedule for the Sale including the duration for which the Sale is open to receive Bids and the Bid Deadline;
  - 5.2.3. whether a Sale is commenced, proceeded with, ceased or extended at any point in time;
  - 5.2.4. the amendment or withdrawal of the Lots or the Lot Listings;
  - 5.2.5. the prohibition of any Customer from participating in the Sale or from accessing the Website and/or Sale Platform or limiting such access;
  - 5.2.6. whether a Bid is accepted or rejected;
  - 5.2.7. whether or not a Customer may Bid by telephone or facsimile and if so in what circumstances;
  - 5.2.8. the acceptance and/or, rejection or investigation of any information sent by a Customer including a Bid;
  - 5.2.9. whether a Customer may withdraw or amend a Bid;
  - 5.2.10. which Customer is the Purchaser in the event that more than one Customer makes a winning Bid in respect of a Lot;
- 5.3. Miranel shall ensure the proper functioning of the Sale including its cancellation, suspension and recommencement (from any point in the process determined by Miranel); in doing so Miranel may determine that the entire or any part of the Sale that has already taken place be cancelled in part or in whole.
- 5.4. Lots shall be sold as a whole and shall not be mixed or split, unless Miranel otherwise determines.
- 5.5. Miranel may require the Customer to pay a deposit (“the Deposit”) of USD10’000.00 (TEN THOUSAND UNITED STATES DOLLARS) which Deposit shall be refunded to a Customer who did not make a winning Bid within 2 (TWO) business days after the Sale Deadline.

- 5.6. Bids must be submitted on the Website via the Sale Platform and in accordance with the Sale Conduct Rules prior to the Sale Deadline.
- 5.7. A Bid must be in respect of an individual Lot and not in respect of a combination of Lots.
- 5.8. Customers may change or cancel their Bids until the Sale Deadline. The Bid as at the Sale Deadline is final and binding. No Bids will be entertained after the Sale Deadline.
- 5.9. In the event that a Customer experiences any difficulty in accessing the Sale Platform or making a Bid, that Bidder must promptly notify Miranel. Miranel is not responsible for any Bid which is not captured whether as a result of the Customer, internet connection, the Sale Platform or any reason whatsoever.
- 5.10. In the event that more than one Customer makes the same winning Bid then such Customers will be notified by Miranel and shall be afforded the opportunity to increase their respective Bids in writing within one hour of being notified to do so. Such written Bid increase shall include all the details of the Lot on which the Bid is made and shall specify the increased Bid for the Lot in USD per Lot. The highest of the Bids received shall then be accepted as the winning Bid. In the event of further equal Bids the process shall be repeated until a single winning Bid is achieved. In these circumstances Miranel reserves the right at all times to withdraw the Lot.
- 5.11. Miranel may, but shall not be compelled to, determine in its Discretion a Reserve for a Lot, subject to the condition that Miranel may at any time waive the Reserve in respect of any Lot.
- 5.12. Miranel shall be entitled but not be obliged to disclose the Reserve to any Customer.
- 5.13. Miranel shall not be obliged to sell the Lot if it deems that the highest Bid received is not acceptable.
- 5.14. Miranel shall not be obliged to disclose the results of the Sale to the Customer.
- 5.15. Miranel shall not be obliged to disclose the details of any Customer to any other Customer.
- 5.16. Miranel shall not be liable for any technical problems which render the Website inaccessible or the Sale Platform inoperable and does not warrant or guarantee uninterrupted or error free use of the Services. The Customer acknowledges that

due to the online nature of the Services it is not possible to supply the Services error free and uninterrupted.

- 5.17. The access to the Website, the Sale Platform, the Services and the Sale is on an “as is” basis at the own risk of the User.
- 5.18. A Bid is a binding offer of purchase by the Purchaser in respect of which a binding agreement of sale shall be concluded between Miranel and the Purchaser in respect of any Lot “won” by that Purchaser when the Purchaser has been given notice by Miranel that it has won such Lot.

## **6. INVOICING AND PAYMENT**

- 6.1. Miranel will be entitled but not obliged to publish a summary of the Sale results on the Sale Platform within 5 (FIVE) Business days after the Sale Deadline.
- 6.2. Customers must provide all particulars required for invoicing to Miranel prior to the Sale. Miranel will issue an invoice within 5 (FIVE) Business days from the Sale Deadline in respect of the Lot or Lots to be purchased by the Purchaser. Such invoice will set out the relevant Lot number or numbers, the description and Carats of the Lot or Lots, and the total amount payable in USD. Miranel will not issue separate invoices in respect of individual Lots, and reserves the right not in any other manner split invoices to a Purchaser.
- 6.3. Invoices will only be issued to and payments will only be accepted from a currently registered Customer.
- 6.4. Each Customer shall, after 2 (TWO) Business days of the date that Miranel has issued its invoice in accordance with clause 6.2, pay the full amount due, in USD, by electronic bank transfer to the Miranel bank account designated in that invoice, without any deduction, withholding or set off.
- 6.5. 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 Miranel in writing of the details of any different bank account that it intends to use to pay the invoice. Miranel is under no obligation to accept payment from an alternate bank account to that specified in the Registration Form and may carry out whatever “know your customer” checks it considers necessary in respect of such bank account.
- 6.6. In the event that any payment by the Customer results in Miranel being charged bank charges by its bankers it shall be entitled to charge a payment administration fee in the same amount as it is charged by its bankers together with an

administration fee.

6.7. If full payment is not received within the time period specified in clause 6.4 above then Miranel may, without prejudice to any of Miranel's other rights in law:

6.7.1. exercise its rights in the event of breach as specified in clause 13;

6.7.2. retain the Deposit as a penalty fee;

6.7.3. exclude that Customer from participation in any future Sale; and/or

6.7.4. charge interest at the Interest Rate.

## **7. DELIVERY, OWNERSHIP AND RISK**

7.1. No delivery of the Goods will be made until payment for the Goods has been received in full. No return of Goods after delivery shall be accepted by Miranel.

7.2. Full title of ownership and risk in the Goods shall pass to the Purchaser on the receipt of payment of the Purchase Price in full.

7.3. Delivery of the Goods shall take place by collection of the Goods from the Viewing Office (or such other location as may be notified to the Purchaser in writing) within 5 (FIVE) Business days from date of invoice. After the lapse of the 5 (FIVE) Business days insurance and storage costs will be charged to the Purchaser.

7.4. If requested by a Purchaser in writing, Miranel will arrange shipment to the Purchaser at its address specified for this purpose in the Registration Form or otherwise designated by the Purchaser in writing (subject to Miranel's approval) and Miranel shall inform the Purchaser of the date that the Goods are shipped. Shipment shall take place at the risk and liability of the Purchaser who shall be entitled to appoint, in writing, the courier to be used for shipping purposes.

7.5. At the time of the collection of the Goods from the Viewing Office the Purchaser, their Authorised Representatives or the courier shall sign for receipt of the Goods in a form determined by Miranel.

7.6. The Purchaser shall be liable for all the costs related to collection and shipment including (where applicable):

7.6.1. Handling, freight and courier costs;

7.6.2. Insurance;

7.6.3. Local taxes and duties

7.6.4. Costs related to Kimberley Process Certification.

7.7. The Purchaser shall comply with all regulatory requirements for the shipment of the Goods and their export out of Belgium and import into another country including any authorisations, permits, import licenses or other documents that may be required in order to import the goods into the country of destination. The Purchaser shall be responsible for completing all import documentation in compliance with Applicable Law. The Purchaser shall be liable for all taxes and duties related to the import of the goods, including any value added tax, import duty and port tax and shall obtain insurance for the Goods shipped.

## **8. UNDERTAKINGS AND WARRANTIES BY THE CUSTOMER**

The Customer provides the undertakings and warranties set out in this clause 8 in the full knowledge that the warranties and undertakings are material and that Miranel is relying on the same for the purposes of this Agreement. Each warranty and undertaking contained herein, shall be a separate and independent warranty and undertaking that shall in no way be limited or restricted by reference to or from the terms of any other warranty or undertaking or by any other words in the Agreement and shall continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement.

8.1. The Customer warrants that:

8.1.1. it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement, to make Bids and perform its obligations under any binding agreement of sale;

8.1.2. this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;

8.1.3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not –

8.1.3.1. contravene any law or regulation to which the Customer is subject;

8.1.3.2. contravene any provision of the Customer's constitutional documents; or

8.1.3.3. conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it.

- 8.1.4. it has obtained legal, financial and tax advice confirming that the provisions of this Agreement comply with all applicable laws within the countries in which it will operate;
- 8.1.5. it has not obtained any legal, financial or tax advice from Miranel;
- 8.1.6. it does not engage in any unlawful, criminal or, unethical activities (as determined in Miranel's Discretion) including without limitation:
  - 8.1.6.1. forced or child labour;
  - 8.1.6.2. abuse of human rights;
  - 8.1.6.3. any offences under applicable anti-bribery legislation including, without limitation, the bribery or attempted bribery of a Miranel officer or employee;
  - 8.1.6.4. trading in diamonds used to fund conflict;
  - 8.1.6.5. non-disclosure of diamond synthetics, treated diamonds or diamond simulants;
  - 8.1.6.6. money laundering or terrorist financing activities;
  - 8.1.6.7. fraud; and
  - 8.1.6.8. any other activity that might result in criminal conviction.
- 8.2. The Customer shall not:
  - 8.2.1. disclose to any other person any information relating to the Sale including the identification of the Lots for which a Customer intends to Bid, or has in fact a Bid;
  - 8.2.2. contact or attempt to contact any other Customer in relation to a Bid in the Sale;
  - 8.2.3. discuss or reveal prices contained in any Bid with any other Customer;
  - 8.2.4. engage in collusive acts or act in concert with any other Customer;
  - 8.2.5. alter, delete or otherwise circumvent any access details required for the Sale Platform other than as authorised by Miranel.
  - 8.2.6. disclose any information concerning the Sale Platform, including but not limited to the Website address that is used for accessing the Sale Platform and the username and password associated with any Customer; or

- 8.2.7. use the Sale Platform for any other purpose other than participation in Sales in which that Customer is entitled to participate.
- 8.3. The Customer shall:
- 8.3.1. implement and enforce procedures sufficient to ensure that its use of the Website, the Services and the Sale Platform are secure including ensuring that all persons who have access to and use of the Website, the Services and the Sale Platform on its behalf, are fully conversant with the operation of the Website, the Services and the Sale Platform, and comply in all respects with the Applicable Laws and this Agreement in respect of such use and any resulting transactions.
- 8.3.2. be responsible for obtaining and properly using any computer equipment, software and communications services that may be necessary to use the Website, the Services and the Sale Platform, and making any modifications to the same as is required to access and use the Website, the Services and the Sale Platform.
- 8.4. As the Goods may be subject to export control and trade sanctions laws, regulations, rules and licences (“Export and Sanction Rules”), including those imposed by the United States of America and the European Union, the Customer undertakes to comply with all such Export and Sanctions Rules for which it is solely responsible. The Customer shall not cause Miranel to be in breach of the Export and Sanctions Rules.
- 8.5. The Customer shall at all times conduct itself in accordance with Good Industry Practice in its relationship with Miranel and the other Bidders.
- 8.6. The Customer shall ensure that all its Authorised Representatives adhere to and comply with the terms and conditions of this Agreement.

## **9. LIABILITY AND INDEMNITY**

- 9.1. The Customer hereby indemnifies Miranel, its directors, employees, sub-contractors, representatives and consultants (collectively the “indemnified person/s”, 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, this Agreement

including:

- 9.1.1. a breach of the warranties and undertaking given at clause 8 hereof
  - 9.1.2. the partial or total inability of the Customer to submit access or modify a Bid through the online Sale Platform or by any alternative means;
  - 9.1.3. any information submitted through the Bidder's access to the Website, by an Authorised Representative or otherwise (including information submitted erroneously, or which should have not been submitted); and/or the actions of any third party who gains access to or otherwise makes use of the Services through the Customer's login details; or
  - 9.1.4. the use or loss of the Customer's login details;
  - 9.1.5. any exercise by Miranel of its Discretion under this Agreement.
  - 9.2. Neither Miranel 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:
    - 9.2.1. any technical or other malfunctions of the operation, functionally, availability, connection or communication with the Sale Platform or Website; or
    - 9.2.2. 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 Miranel or the indemnified persons,
    - 9.2.3. 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 this Agreement; or
    - 9.2.4. 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.
- 9.3. Any liability which may be proven against Miranel howsoever caused shall be limited to the value of the Sale Price submitted by the Bidder in respect of the Lot however Miranel's liability, in aggregate, in respect of any matters arising at any

time in connection with this Agreement shall not exceed a total of USD 10'000 (TEN THOUSAND UNITED STATES DOLLARS).

## **PART IV- GENERAL**

### **10. CONFIDENTIALITY**

- 10.1. The Customer shall keep confidential and all information concerning the business affairs and transactions that may come to its knowledge in connection with this Agreement and the Sale.
- 10.2. Miranel shall keep confidential information concerning the Customer that may come to its knowledge in connection with or by virtue of this Agreement and the Sale.
- 10.3. The obligation of confidentiality placed on any person in terms of this clause 10 shall cease to apply to the a recipient of information (“the Recipient”) in respect of any information which –
  - 10.3.1. is or becomes generally available to the public other than by the negligence or default of the Recipient or by the breach of this Agreement by the Recipient;
  - 10.3.2. the Person to whom the information relates (“the Disclosing Party”) confirms in writing is disclosed on a non-confidential basis;
  - 10.3.3. has lawfully become known by or come into the possession of the Recipient on a non-confidential basis from a source other than the Disclosing Party having the legal right to disclose same; or
  - 10.3.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order, to the extent of compliance with such requirement or request only and not for any other purpose,  
  
provided that –
  - 10.3.5. the onus shall at all times rest on the Recipient to establish that information falls within the exclusions set out in clauses 10.3.1 to 10.3.4;
  - 10.3.6. information will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Recipient's possession; and
  - 10.3.7. any combination of features will not be deemed to be within the foregoing

exclusions merely because individual features are in the public domain or in the Recipient's possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient's possession.

- 10.4. In the event that the Recipient is required to disclose confidential information of the Disclosing Party as contemplated in clause 10.3.4, the Recipient will –
  - 10.4.1. advise the Disclosing Party thereof in writing prior to disclosure, if possible;
  - 10.4.2. take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
  - 10.4.3. afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings;
  - 10.4.4. comply with the Disclosing Party's reasonable requests as to the manner and terms of any such disclosure; and
  - 10.4.5. notify the Disclosing Party of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.
- 10.5. Miranel is not making any representation, warranty or undertaking, express or implied, as to the accuracy, reliability, completeness or reasonableness of any of the confidential information disclosed by it and the Customer shall have no claim against Miranel arising out of any loss suffered as a result of the use of, or reliance upon, anything contained in or omitted from such confidential information.
- 10.6. It may be required by Miranel to process personal information of the Customers and its Authorised Representatives and the Customer shall procure all such consents necessary for the processing of such personal information.

## **11. PROPRIETARY RIGHTS**

- 11.1. The Website, the Services and the System each contain confidential information. Such confidential information and all copyright, trademarks, database rights and other intellectual property rights in the Website, the Service and the System are Miranel's exclusive property ("protected material").
- 11.2. Each of the Users shall:
  - 11.2.1. not (and not attempt to) access and/or use any part of the System or Services:
    - 11.2.1.1. in any way not expressly permitted in these terms and conditions;

- 11.2.1.2. in any way that violates any Applicable Law;
- 11.2.1.3. for the purpose of reverse compiling, copying or adapting the whole or any part of the Website or the System (including any of its logic, look and feel)
- 11.2.2. not (and not attempt to) disturb, interfere with, or disrupt any of the Services or System;
- 11.2.3. not (and not attempt to) upload, post, email, transmit or otherwise transfer to the System any computer codes, viruses, files or programs that may interrupt, destroy, or limit the functionality of any part of the System or Services;
- 11.2.4. not make any copy of the content of Website, or download or print any pages from the Website;
- 11.2.5. notify Miranel immediately if it becomes aware of any unauthorised use of the whole or any part of the content of the Website or the System by any third party; and
- 11.2.6. without prejudice to the foregoing, take all such other steps as Miranel may require from time to time to protect its confidential information and intellectual property rights in the content of the Website and/or the System.
- 11.3. No right or licences are granted to the User in respect of the said protected material.
- 11.4. The User shall inform all its relevant employees and other staff (including Authorised Representatives) that the content of the Website, Services and the System constitute Miranel's confidential information and that all intellectual property rights therein are Miranel's property and the User shall take all such steps as shall be necessary to ensure compliance by its employees and other staff (including Authorised Representatives) with the provisions of this clause 11.

## **12. SUPPORT AND GOOD FAITH**

- 12.1. 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 this Agreement.
- 12.2. In its dealings with Miranel and in the implementation of this Agreement, the Customer undertakes to observe the utmost good faith and to give full effect to the intent and purpose of this Agreement, 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.

### **13. BREACH**

- 13.1. If a Customer fails to make payment of the Purchase Price timeously and in full or commits any breach of this Agreement and fails to remedy such breach within 2 (TWO) Business days of written notice requiring the breach to be remedied, then Miranel shall be entitled, at its option –
  - 13.1.1. to claim immediate specific performance of any of the Customer's obligations under this Agreement, with or without claiming damages, whether or not such obligation has fallen due for performance; or
  - 13.1.2. to cancel this Agreement, with or without claiming damages, in which case written notice of the cancellation shall be given to the Customer, and the cancellation shall take effect on the giving of the notice.
- 13.2. Miranel's remedies in terms of this clause 13 are without prejudice to any other remedies to which it may be entitled to in law and as set out in clause 6.7 hereof.

### **14. NOTICES**

- 14.1. Miranel may give any notice under this Agreement (including, where applicable, by way of an invoice) to any Customer by such means as, in its absolute discretion, it sees fit including the address details provided by the Customer in the Registration Form. All notices to be given in terms of this Agreement will be given in writing, in English, and will -
  - 14.1.1. be delivered by hand, posted or sent by telefax;
  - 14.1.2. if delivered by hand on a Business day, be presumed to have been received on the date of delivery; and
  - 14.1.3. if sent by telefax, be presumed to have been received on the date of successful transmission of the telefax.
- 14.2. Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.
- 14.3. The Parties record that whilst they may correspond via email during the currency of

this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

- 14.4. Information of any nature submitted through the Website will be deemed transmitted when received by Miranel.

## **15. BENEFIT OF THE AGREEMENT**

This Agreement will also be for the benefit of and be binding upon the successors-in-title and permitted assigns of Miranel.

## **16. APPLICABLE LAW AND JURISDICTION**

- 16.1. This Agreement will in all respects be governed by and construed under the laws of Belgium and the Antwerp courts shall have competency.

## **17. GENERAL**

### **17.1. Whole Agreement**

- 17.1.1. This Agreement and the Sale Conduct Rules constitute the whole of the Agreement between Miranel and the Customer relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on Miranel. In the event of a conflict between this Agreement and the Sale Conduct Rules, the provisions of this Agreement shall apply.

- 17.1.2. This Agreement supersedes and replaces any and all agreements and communications and undertakings given to or on behalf of Miranel in relation to the subject matter hereof.

### **17.2. Amendments**

Miranel shall be entitled to amend the terms of this Agreement and by any such method, as Miranel deems appropriate, prior to the Customer's participation in the Sale to which the revised amended terms shall apply.

### **17.3. No Indulgences**

No latitude, extension of time or other indulgence which may be given or allowed by Miranel to the Customer in respect of the performance of any obligation hereunder,

and no delay or forbearance in the enforcement of any right by Miranel arising from this Agreement and no single or partial exercise of any right by Miranel under this Agreement, shall in any circumstances be construed to be an implied consent or election by Miranel or operate as a waiver or a novation of or otherwise affect any of Miranel's rights in terms of or arising from this Agreement or estop or preclude any such Miranel from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of Miranel in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**17.4. No Waiver or Suspension of Rights**

No waiver, suspension or postponement by Miranel of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by Miranel. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

**17.5. Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as if it had not been written and the remaining provisions and clauses of this Agreement shall remain of full force and effect. It is intended that this Agreement would be concluded without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

**17.6. Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they 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.