

RIO TINTO DIAMONDS AUCTIONS – CONDITIONS OF SALE

1. PRE-CONDITIONS TO AUCTION PARTICIPATION

1.1 Rio Tinto Diamonds NV ("**RTD**") intends to host regular web-based auctions (each an "**Auction**") to sell rough diamonds through a platform (the "**Auction Site**") hosted by Optimal Auctions, Inc. (the "**Service Provider**").

1.2 Customers may be invited to participate in Auctions from time to time by RTD (each, a "**Bidder**"), on issue of a letter of invitation by email (the "**Invitation Letter**"). Participation in an Auction shall not guarantee that a participant will be invited by RTD to participate in any future Auctions.

1.3 In order to participate in any Auction, the Bidder must (prior to the Auction date):

- (a) have provided, on its own behalf and on behalf of any third party who may be utilised as an invoicing entity for payment in relation to any winning bid at that Auction ("**Invoicing Entity**"), any information or documentation requested by RTD from time to time, in order to meet (to RTD's satisfaction) (i) all relevant requirements under the Anti Money Laundering Act (Belgium) and related legislation (as amended from time to time) and (ii) any Know-Your-Customer due diligence requirements as RTD may reasonably require; and
- (b) comply with any other requirements set out in the Invitation Letter.

Bidder must provide any information or documentation requested by RTD to perform the assessments set out in this Clause 1.3, including if required, by authorising its bankers and other lenders to co-operate with all reasonable requests for information made by or on behalf of RTD. In the event of any change to a bank account and/or Invoicing Entity, the Bidder must notify RTD prior to participation in any upcoming Auctions.

1.4 If at any time the Bidder fails to satisfy, or ceases to satisfy, any of the conditions in Clause 1.3, the Bidder must promptly notify RTD of such non-compliance (or anticipated non-compliance). Without limiting any other clause of these Conditions of Sale, RTD may, at its discretion, suspend Bidder's access to any Auction and to the Auction Site if RTD considers that the Bidder (or an Invoicing Entity) is or may be non-compliant with the requirements of this clause, until such time as non-compliance is rectified to RTD's satisfaction.

2. AUCTION TERMS

2.1 Auction Services

- (a) The Bidder may access the Auction Site solely for the purpose of participating in the Auction (such access and associated services, the "**Services**").
- (b) These conditions of sale (the "**Conditions of Sale**"), together with the auction instructions contained in the auction software user guide (the "**Auction Rules**") and the licence terms communicated by the Service Provider, set out the terms on which a Bidder will access the Auction Site and use the Services. A Bidder's access to and use of the Auction Site or any other part of the Services shall constitute acceptance of these terms.
- (c) RTD may amend the Auction Rules or these Conditions of Sale at any time and in its sole discretion.

(d) RTD may limit, suspend or terminate the Bidder's access to the Auction Site, or its use of any part of the Services, for any reason whatsoever including without limitation if RTD considers that the Bidder (or an Invoicing Entity) is or may be in breach of any relevant provisions of the Conditions of Sale and the Auction Rules.

(e) RTD may change the Auction Site, the Service Provider, or the mode of delivery of Auctions at any time provided that RTD shall endeavour to give reasonable notice thereof to the Bidder, except in the event of an emergency.

2.2 Authorised Users

- (a) Only those persons who the Bidder identifies to RTD and/or the Service Provider on RTD's behalf (each, an "**Authorised User**") may act on behalf of the Bidder as an Authorised User for the purposes of an Auction.
- (b) The Bidder represents and warrants that each of the Authorised Users have the power and authority to place any bid, access the Auction Site and use the Services, and give further instructions to RTD and/or the Service Provider.
- (c) Each Authorised User shall be sent a username and password to access the Auction Site. The Bidder shall maintain the security and confidentiality of its Authorised User(s) username, password and other details and shall notify RTD and the Service Provider immediately of any loss or theft of such details, in which event RTD shall instruct the Service Provider to terminate such Authorised User's access to the Auction Site as soon as reasonably practicable.
- (d) The Bidder agrees not to (and shall procure that its Authorised Users shall not) alter, delete, disable or otherwise circumvent any Authorised User username or password or assist any other party to do so in a manner not authorised by RTD and/or its third party licensors, as applicable.
- (e) The Bidder shall ensure that all of its Authorised Users (and all persons accessing the Auction Site using the username, password and other details issued to those Authorised Users) comply with all relevant provisions of the Conditions of Sale and the Auction Rules, and any breach by such parties shall be deemed to be a breach by the Bidder.

2.3 Auction Process

- (a) The intended process for each Auction is as set out in the Auction Rules.
- (b) RTD reserves the right to amend the date and time of the Auction and the lots of goods that are to be made available through the Auction and shall endeavour, but shall not be obliged, to give advance notice of such amendment. RTD shall determine in its absolute discretion the schedule of the Auction, including the duration of each round.
- (c) RTD reserves the right to amend the schedule of the Auction on the Auction date, and will give notice of such amendments by posting a notice on the Auction Site or otherwise.

2.4 Submission of Bids

- (a) Each bid ("**Bid**"), being a price or a range of prices

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(in US\$/carat) for a lot of rough diamonds submitted by or on behalf of the Bidder during an Auction, shall be submitted electronically via the Auction Site (or in such other manner as RTD shall notify the Bidder) in such time period, content, form and process as may be specified on the Auction Site or in the Auction Rules.

- (b) No Bids for a round shall be accepted either before the time specified by RTD as the opening time for the round, or after the time specified by RTD as the closing of the round. Bids submitted for a round may only be changed as is permitted by the Auction Rules and no later than the closing of that round.
- (c) Each Bid must be submitted on an individual lot only and must be in respect of the entire lot. Where there is more than one lot offered in the Auction, combined bids on more than one lot will not be accepted.
- (d) The Bidder acknowledges and agrees that RTD may apply a reserve price to sales of any lot at any Auction (in respect of that Auction, the "**Reserve Price**") and shall not be obliged to disclose that Reserve Price to the Bidder.
- (e) Upon conclusion of the Auction, each successful Bidder will be notified of the clearing price for the relevant lot on which it made a Bid and its awarded quantity through the Auction Site. Bidders may only rely on the definitive results of the Auction announced after RTD has declared the Auction to have concluded. RTD shall not be liable for any consequences arising from a suspension or restart in the Auction process and/or any cancellation of Auction rounds associated with such suspension or restart and/or any cancellation of the Auction.
- (f) In the event that the Bidder experiences difficulties in accessing the Auction Site, including without limitation, transmitting a Bid or in sending information, that Bidder must promptly notify the Service Provider of the situation. Upon receipt of such notice (and without obligation), RTD shall use reasonable endeavours to ensure that the Service Provider shall investigate and take such steps, or otherwise, as it, in consultation with RTD, determines to be appropriate in relation to such notification.

2.5 Bidder Undertakings

The Bidder acknowledges and agrees that:

- (a) the Bidder shall not contact or attempt to contact any other Bidders in relation to a Bid in the Auction; discuss or reveal prices contained in any Bid with any other Bidder; or engage in collusion or bid shielding or act in concert with any other Bidder, and undertakes that its Authorised Users of the Auction Site shall not, and shall not seek to, manipulate or interfere with the Auction and understands that any manipulation or interference may amount to legal deception or fraud; and
- (b) it shall implement and enforce procedures sufficient to ensure that its use of the Auction Site and/or the Services including all persons who have access to and use of the Auction Site and/or the Services on its behalf are fully conversant with the operation of the Auction Site and/or Services, and comply in all respects with the laws, rules and regulations to which participants and any transactions are subject.

2.6 Bidder Acknowledgements

The Bidder acknowledges and agrees that:

- (a) it will be participating in the Auction on an anonymous basis and RTD will not be obliged to disclose the details of other Bidders in the Auction, or of the results of the Auction, to the Bidder;
- (b) the access to and use of the Auction Site or any other part of the Services is provided "as is" and at the Bidder's own risk;
- (c) RTD and/or the Service Provider are not obliged to investigate or confirm the authenticity or authority of any Authorised Users or persons accessing the Auction Site on behalf of the Bidder, or verify the validity, accuracy or completeness of any Bid submitted, and RTD and the Service Provider shall not be liable for any loss suffered by the Bidder as a result of any of the foregoing;
- (d) the online nature of the Services means that it is not technically possible to supply the Services without interruption or free of errors and for the avoidance of doubt, RTD and/or the Service Provider shall have no liability for any loss suffered by the Bidder because of a failure, suspension or withdrawal of all or part of the Services;
- (e) technical difficulties resulting from hardware, software or communication link issues, inadequacies or other causes, could be encountered in the operation, functionality, availability, connection or communication of or with the Auction Site or any other part of the Service including but not limited to the disclosure of information provided by the Bidder to the public, failures, delays, malfunctions, software errors, hardware, malfunction or non-availability or technical difficulties of or with the Internet, and that such difficulties could lead to economic and data loss and RTD and the Service Provider shall not be liable for any loss suffered by the Bidder as a result of any of the foregoing (including without limitation any problem, error or malfunction relating to the Auction Site or any other part of the Service because any information, communication is delayed or lost while in transit to RTD and/or the Service Provider, any compromise of the Bidder's security, or any performance or failure of any equipment, telecommunications service, Internet connection, Internet service provider or other third party communication or network provider);
- (f) information of any nature submitted through the Auction Site will be deemed transmitted when received by the Service Provider; and
- (g) it shall be responsible for obtaining and properly using any computer equipment, software and communications services that may be necessary to use the Service and the Auction Site, and making any modifications to the same as is required to access and use the Auction Site and the Service.

2.7 RTD's Rights

RTD reserves the right in its sole discretion to:

- (a) stop or suspend the Auction at any time during the Auction process and to restart the Auction within seventy-two (72) hours from the time of cessation or suspension of the Auction, from the beginning or any such other point that, in the opinion of RTD, the Auction has reached in a manner compliant with the

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Auction Rules. In cases where RTD exercises the right to stop or suspend the Auction, it shall use reasonable endeavours to give reasonable notice to the Bidder of the date and time at which the Auction will resume or restart;

- (b) cancel the Auction at any time during the Auction process, including after exercising the right to stop or suspend the Auction (upon exercising such right, RTD may also deem the whole, or any part, of the Auction that has taken place prior to such stoppage or suspension, to be cancelled). The effect of a cancellation will be as though such Auction had not taken place. In cases where RTD exercises the right to cancel the Auction, it shall use reasonable endeavours to give reasonable notice to the Bidder of the cancellation of the Auction; and
- (c) accept, reject or check any information sent or believed to be sent by the Bidder, including but not limited to any Bid made by any bidder (but shall not be obliged to do so).

2.8 Auction Jurisdiction

- (a) The Auction (and all matters undertaken in relation thereto) shall be deemed to have taken place within the United Kingdom.
- (b) Regulations 9 and 11 of the United Kingdom Electronic Commerce (EC Directive) Regulations 2002 will not apply to Bidder's use of the Services, and/or its conclusion of any purchase of goods.

3. FORMATION OF SALE AGREEMENT

- 3.1 Each Bid that is submitted during the Auction through the Auction Site shall, immediately on closing of the applicable round, constitute an irrevocable binding offer, on the terms of these Conditions of Sale, to acquire the specific goods in the relevant lot at any price within the range of prices the Bidder submitted in accordance with the Auction Rules (subject to such rounding as permitted or prescribed by the Auction Rules).
- 3.2 Following conclusion of the Auction, RTD will issue by email to each winning Bidder ("**Successful Bidder**") an invoice in respect of the awarded quantity of goods ("**Awarded Goods**") at the clearing price for such goods (such email and invoice, the "**Confirmation Notice**").
- 3.3 Issue of the Confirmation Notice shall constitute acceptance by RTD of the offer made by the Successful Bidder, and on issue, a binding agreement will immediately arise between RTD and the Successful Bidder for the purchase of the Awarded Goods at the price and quantity stated in the Confirmation Notice, on the terms set out in these Conditions of Sale (the "**Agreement**").
- 3.4 Prior to the commencement of the Auction, RTD will conduct a weight reconciliation in relation to each lot of goods, and the Confirmation Notice will be issued on the basis of that reconciled weight. The Successful Bidder accepts that there may be marginal differences in the weight of the Awarded Goods set out in the Confirmation Notice, as compared to the weight identified through the Auction Site (eg due to abrasion, chipping or minor breakages during product viewing prior to the Auction).
- 3.5 Within three hours of conclusion of an Auction, the Successful Bidder must notify RTD of the following using the functionality provided on the Auction Site:
 - (a) subject to Clause 4.3, entity to be invoiced; and

- (b) preferred courier and shipping method.

Once the above are notified to RTD, no amendment can be made to these instructions. If no notification is made in relation to a particular Auction, RTD will issue the invoice to the Bidder entity last notified via the Auction Platform, or the primary Bidder entity identified by RTD, on the basis that the Awarded Goods will be shipped by Malca Amit on a prepaid basis.

- 3.6 Notwithstanding that an Invoicing Entity is nominated by the Successful Bidder to make payment for the Awarded Goods, the Successful Bidder remains primarily liable under the Agreement to pay all amounts owing and otherwise comply with all obligations in relation to the Awarded Goods.

4. PAYMENT

- 4.1 Unless otherwise agreed in writing, payment for the Awarded Goods shall be made by the Successful Bidder (or Invoicing Entity, if applicable) in U.S. Dollars without deduction, withholding or set off, by electronic transfer to the bank account details advised to the Successful Bidder. Payment must be within five (5) working days of receipt of an invoice (the "**Payment Date**"). The Successful Bidder will not be treated as having paid RTD an amount unless and until the entire amount has been received as cleared funds in RTD's nominated bank account on or before the Payment Date.
- 4.2 If full payment for the Awarded Goods has not been received on or before the Payment Date, then RTD shall have the right to:
 - (a) terminate the Agreement and sell the Awarded Goods elsewhere at prices and on terms RTD thinks fit and charge the Successful Bidder any related administrative costs; or
 - (b) charge interest at the floating rate per annum (rounded up to two (2) decimal places) of the offered rates for US Dollars fixed on a daily basis as published by the Federal Reserve Bank of New York and available at <https://apps.newyorkfed.org/markets/autorates/SOFR+12%> commencing on the day after the due date for the relevant payment.
- 4.3 The Successful Bidder should only make payment of invoices issued by RTD from a bank account and/or, if applicable, Invoicing Entity, notified to RTD prior to the relevant Auction and verified in accordance with Clause 1.3. RTD will not accept payment from any other bank account or entity.

5. DELIVERY

- 5.1 RTD shall in no event be obliged to arrange delivery of the Awarded Goods until payment in full (including any interest due and payable) has been received in respect of such goods. Delivery shall be arranged promptly after receipt of such payment, on the basis of the delivery instructions given to RTD in accordance with Clause 3.5.
- 5.2 If the Awarded Goods are to be delivered to a delivery address within Schupstraat, the Hoveniersstraat and the Rijnstraat in Antwerp, Belgium (the "**Diamond Quarter**"), the transport and handling costs for delivery shall be paid by RTD. If the Awarded Goods are to be delivered to a delivery address outside the Diamond Quarter, the transport and handling costs for delivery (including insurance premium payments) shall either be paid directly by the Successful Bidder or paid by RTD and reimbursed in full by the Successful Bidder.
- 5.3 RTD will act as agent for the Successful Bidder in

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arranging for the Awarded Goods to be transported to the premises of the Successful Bidder by RTD's designated transport representatives. When acting as agent in this regard, RTD shall not be liable for any delay, loss or damage suffered by the Successful Bidder or any other person in connection with the transport of the Awarded Goods.

- 5.4 RTD will notify the Successful Bidder of the anticipated shipment dates once known. The Successful Bidder acknowledges that if delivery is delayed, RTD shall have no obligation to prioritise delivery of the Awarded Goods to the Successful Bidder as against other buyers.
- 5.5 Delivery will be deemed to occur when the Awarded Goods are collected from RTD's premises in the Diamond Quarter by RTD's designated transport representatives. Title to the Awarded Goods shall pass to the Successful Bidder on delivery. Risk in the Awarded Goods shall pass to the Successful Bidder upon full payment in accordance with Clause 4.
- 5.6 The Successful Bidder shall obtain any authorisations, permits, import licenses or other documents that may be required in order to import the Awarded Goods into the country of destination, and must complete all import documentation in compliance with applicable law.
- 5.7 All taxes imposed and/or levied by or payable to any federal, state or local governmental authority on the Agreement, the sales price or upon any transaction or delivery hereunder (including, but not limited to, any value added tax, import duty and port tax), shall be for the account of and are assumed by the Successful Bidder, whether such shall be paid or be payable by RTD, or otherwise (but excluding any taxes based on the net income of RTD). Where RTD has incurred any such taxes, the Successful Bidder shall make RTD whole.

6. COMPLIANCE

- 6.1 The Successful Bidder agrees that it (and any Invoicing Entity, if applicable):
- (a) has read, understood and will comply with the contents of Rio Tinto's policies, "The Way We Work" and the "Business Integrity Standard" (available at www.riotinto.com/sustainability/policies);
 - (b) complies with the Kimberley Process and all legislation of any applicable jurisdiction that prohibits (i) bribery and corruption, including the US Foreign Corrupt Practices Act and the UK Bribery Act, (ii) money laundering, (iii) terrorism financing or (iv) facilitation of tax evasion; and
 - (c) complies with all applicable laws, statutes and regulations in force pertaining to modern slavery (which is deemed to include forced labour, human trafficking and child labour) and that it takes reasonable steps to ensure it has in place adequate procedures and policies to prevent and address involvement in modern slavery, in line with recognised international standards including the UN Guiding Principles on Business and Human Rights.

7. REPRESENTATIONS AND WARRANTIES

- 7.1 The Successful Bidder represents and warrants to RTD (as at the date of the Auction and formation of any Agreement) that:
- (a) it has the power and authority to enter into and perform its obligations under the Agreement, and

doing so will not breach the terms of any contract with any third party;

- (b) performance of the supply under the Agreement will not cause RTD to infringe any letters patent, registered design, trademarks or trade names;
- (c) neither it, nor any Invoicing Entity (if applicable), or any of its affiliates, employees, officers or agents, directly or indirectly, have given or accepted (or will give or accept) anything of value that contravenes applicable anti-corruption laws, in connection with any Auction or any Agreement;
- (d) the funds used to purchase the Awarded Goods do not originate from the proceeds of criminal activities; and
- (e) neither it, any Invoicing Entity (if applicable), or any of its affiliates, employees, officers or agents:
 - (i) is a Restricted Party;
 - (ii) will resell or deliver the Awarded Goods to a Restricted Party or in breach of Sanctions, directly or indirectly;
 - (iii) will make payment to or receive payment from, directly or indirectly, any Restricted Party in connection with the sale, resale or polishing of the Awarded Goods or transportation thereof, which may cause the RTD or its affiliates to breach or be exposed to adverse action under any Sanctions (whether under secondary sanctions or otherwise); or
 - (iv) otherwise will transact in connection with the Awarded Goods with any Restricted Party, directly or indirectly, or in violation of the Sanctions, or in any manner which may cause RTD to be exposed to adverse action under any Sanctions (whether under secondary sanctions or otherwise).

- 7.2 RTD will have the right to immediately terminate an Agreement and delivery of Awarded Goods in circumstances where it considers that the Successful Bidder (or Invoicing Entity, if applicable) may propose to or in fact sells, resells, or delivers the goods to or for a Restricted Party, directly or indirectly; or in which any Restricted Party may otherwise provide services in support of, or benefit from, an Agreement, directly or indirectly. The Successful Bidder shall be liable to RTD for liabilities or delays arising.

- 7.3 In this clause:

"Restricted Party" means any person or entity that is the target of Sanctions, including (A) any person, entity or vessel identified in any list of designated persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control or other U.S. or non-U.S. government entity under its Sanctions; (B) any person or entity resident or organised in any country or territory that is the target of comprehensive Sanctions (including the Crimea region of Ukraine); or (c) any person 50% or more owned (individually or in the aggregate) or controlled by a Restricted Party or someone acting on behalf of a Restricted Party.

"Sanctions" means applicable (a) trade embargos, or economic or financial sanctions (including secondary sanctions) laws or regulations imposed, administered or enforced by relevant governments, including the U.S. Government, the European Union or its Member States, the United Nations, Australia, Canada, or the United

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Kingdom; or (b) export/import/trade control and antiboycott laws and regulations imposed, administered or enforced by the U.S. government and all applicable export/import/trade control, and anti-boycott laws and regulations imposed, administered or enforced by any other country, except to the extent inconsistent with U.S. law. For the avoidance of doubt, this includes EU Regulation 833/2014.

8. TERMINATION AND INDEMNITY

8.1 RTD shall have the right to immediately terminate an Agreement and delivery of Awarded Goods by written notice to the Successful Bidder, if RTD considers that:

- (a) without limiting Clause 7.2, continued performance may expose RTD to the risk of adverse action under any Sanctions (whether under secondary sanctions or otherwise);
- (b) the Successful Bidder (or its Invoicing Entity) is or may be in breach of a representation, warranty or undertaking set out at Clauses 1.3, 6 and 7;
- (c) the Successful Bidder (or its Invoicing Entity) commits or is likely to commit a material breach of these Conditions of Sale; or
- (d) the Successful Bidder (or Invoicing Entity, if applicable) is unable to pay its debts as and when they become due and payable, or the party has an administrator, liquidator or provisional liquidator appointed to it, or the party has a receiver, manager, controller or similar officer or person appointed to all or majority of its property, or an order or application has been made by any person or authority for the appointment of such a person, or the party is dissolved, deregistered or has an order made for its winding up.

8.2 On such termination, RTD may without notice, sell the Awarded Goods elsewhere at prices and on terms RTD thinks fit and charge the Successful Bidder any related administrative costs. Any termination shall be without prejudice to RTD's rights accrued against the Successful Bidder prior to such termination.

8.3 The Successful Bidder hereby agrees to release, hold harmless, indemnify and defend RTD, its affiliates, and any of their respective past or present directors, officers, employees, contractors, representatives, advisors and agents ("**Personnel**"), including the Service Provider, (together, "**Indemnified Persons**") against any and all Liabilities suffered or incurred by the Indemnified Persons arising out of or in consequence of, or alleged to have so arisen, in whole or in part, in connection with any breach by the Successful Bidder of a representation, warranty or undertaking set out at Clauses 1.3, 6 and 7; any information submitted through the Successful Bidder's access to the Auction Site, by an Authorised User 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 Successful Bidder's Authorised User username, password and other details.

8.4 This Clause 8 and Clauses 5.7, 7, 9 and 11 to 16 (inclusive) shall survive termination or expiry of an Agreement, together with each warranty provided by the Successful Bidder (such warranties a continuing obligation, separate and independent from others).

9. LIMITATION OF LIABILITY

9.1 RTD warrants that it shall convey good title to the Awarded Goods to the Successful Bidder. All other Rio Tinto Diamonds N.V.

warranties, representations or conditions relating to the Awarded Goods that could be implied at common law, by contract, by statute or otherwise (including in relation to their description, or any of the supporting digital information, as made available via the Auction Site in connection with the goods), relating to description, variety, characteristics, satisfactory quality, merchantability, polished outcomes or fitness for any purpose (whether made known to RTD or communicated by the Successful Bidder), or arising from a course of dealing, or usage of trade, are specifically disclaimed and excluded to the maximum extent permitted by applicable law.

9.2 Bidders are recommended to inspect and assess the goods in person by appointment. Without limiting Clause 9.1, the Indemnified Persons shall have no liability to the Successful Bidder, the Invoicing Entity (if applicable) or any third party (including liability to any person by reason of negligence or negligent misstatement) for:

- (a) any differences between the Awarded Goods and their description on the Auction Site; or
for any information or matters, express or implied, arising out of, contained in or derived from, or for any omissions in, any of the supporting digital information provided regarding the Awarded Goods via the Auction Site (eg Galaxy file, Sarine scan or 3D video).

9.3 In no circumstances shall the Indemnified Persons be liable to the Successful Bidder, the Invoicing Entity (if applicable) or any third party in any way whether in contract, tort (including negligence), breach of statutory duty or otherwise for:

- (a) any indirect, consequential, incidental, special, punitive or exemplary loss or damage; any loss of profit, revenue, business, production, opportunity, use, contract goodwill, reputation, anticipated savings; and/or any claim against the Successful Bidder by its customers, arising directly or indirectly from any failure or delay in performing any obligation pursuant to these Conditions of Sale or an Agreement, or RTD's exercise of any right under such or otherwise;
- (b) any damages or loss of any kind whatsoever that may be suffered or incurred by any person directly or indirectly arising out of or in connection with the suspension, interruption or withdrawal of the Auction for whatever reason, or any malfunction or technical difficulties relating to the Auction Site, including the operation, functionally, availability, connection or communication with the Auction Site or any Auction; or
- (c) any loss of whatsoever nature arising by reason of the Successful Bidder failing to participate in any Auction, regardless of the cause of such failure (including where caused by negligence or default of an Indemnified Person).

10. FORCE MAJEURE

10.1 Neither RTD nor the Service Provider shall be liable to the Successful Bidder (or any other party) for any delay in or failure to perform any or all of their obligations under these Conditions of Sale or an Agreement, if the delay or failure is due to one or more events or circumstances which are beyond the reasonable control of the affected person and that result in or cause the delay or failure of the affected person to perform any of its obligations ("**Force Majeure**").

10.2 Where RTD or the Service Provider suffers an event of

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Force Majeure, RTD shall notify the Successful Bidder of the likely impact of such event of Force Majeure as soon as reasonably practicable.

- 10.3 If a Force Majeure Event prevents a party from supplying any Awarded Goods for a continuous period of three (3) months, then either party may terminate the relevant Agreement by giving one (1) month's written notice to the other party.
- 10.4 For the avoidance of doubt, if RTD is prevented, hindered or delayed from carrying out in whole or in part its obligations by reason of the effects of COVID-19, whether foreseeable or unforeseeable, this will be a Force Majeure to which this clause applies.

11. CONFIDENTIALITY

- 11.1 Each party may receive from the other party Confidential Information in connection with or by virtue of a Bidder's participation in the Auction and use of the Services, as well as other related purposes in relation to an Agreement or the transportation, manufacturing, use or sale of any Awarded Goods.
- 11.2 Each party agrees that it will keep confidential at all times the Confidential Information received from the other party and it will not use or disclose such Confidential Information other than as permitted under this clause.
- 11.3 The confidentiality obligations under this Clause 11 shall remain in force for a period of three (3) years after the date of the last Auction in which a Bidder participates under these Conditions of Sale.
- 11.4 A party may disclose confidential information:
- (a) to its or its affiliate's directors, officers, employees, contractors, representatives, advisors and agents on a need-to-know basis, provided that such persons are subject to the same confidentiality obligations;
 - (b) to a third party, if, and to the extent, required by any applicable law or the rules or regulations of any applicable stock exchange;
 - (c) to a third party with the prior written consent of the other party;
 - (d) for legal proceedings arising out of or in connection with the Successful Bidder's participation or otherwise in any Auction or the purchase of goods via any Auction; and
 - (e) to an existing or bona fide prospective purchaser of the party or its business in whole or part.
- 11.5 In this clause, "**Confidential Information**" means these Conditions of Sale and any information (in whatever form) or documentation of a confidential nature, including the terms or existence of an Agreement, commercial secrets or business secrets, which relate to technical or operational matters, the business affairs or activities of the party disclosing it or of any of its affiliates, but excluding information that was publically available, disclosed to or otherwise independently known by recipient (other than as a result of a breach of this clause or in breach of an obligation of confidence) as recipient can prove, by documented and probative evidence.

12. DATA PROTECTION

- 12.1 RTD and/or the Service Provider will process personal data (as defined in the EU General Data Protection Regulation) relating to the Successful Bidder's

Authorised Users in connection with the provision of the Services and each Bidder shall accordingly obtain any consents which may be legally necessary for the processing of such personal data, and make the Rio Tinto Customer Privacy Statement (as provided by RTD) available to its Authorised Users.

- 12.2 Bidder agrees to personal data relating to its Authorised Users being sent outside the European Union even if that may result in such personal data being afforded a lesser protection than it currently enjoys.
- 12.3 RTD shall ensure that the Service Provider is bound by appropriate contractual data privacy obligations when processing personal data relating to the Bidder's Authorised Users, including the obligation to keep the personal data secure from unauthorised disclosures or other unauthorised processing.

13. INTELLECTUAL PROPERTY

All copyright, patent, design, trademark or other intellectual property rights (whether registered or unregistered) ("**IP Rights**") in the Auction Site (and any subsequent modifications or improvements to the same), and all other materials provided to the Bidder in connection with the provision of the Services, ("**Protected Materials**") will remain with RTD and/or the Service Provider and/or their licensors (or the licensors of their providers). No licence or right of usage is granted to the Protected Materials.

- 13.1 Without limiting Clause 13.1, no licence or right of usage is granted to any IP Rights of RTD or any of its affiliates, including any trademarks or brands related to the Awarded Goods, and such may not be used by the Successful Bidder (or any other party) for any purpose, especially advertising purposes, without RTD's prior written approval.

14. GOVERNING LAW

- 14.1 These Conditions of Sale and any Agreement, and any non-contractual obligations arising out of or in connection with such, shall be governed and interpreted in accordance with the laws of England and Wales.
- 14.2 These Conditions of Sale and any Agreement expressly and unconditionally exclude the application, at any time or in any form of:
- (a) the provisions of the United Nations Convention on Agreements for the International Sale of Goods, and any relevant legislation adopting or ratifying it; or
 - (b) any consumer protection laws in any jurisdiction whatsoever.

15. DISPUTE RESOLUTION

- 15.1 If any dispute or difference arises in connection with the interpretation or application of the Auction Rules, or the form, validity or time of receipt of any Bid, RTD's decision as to the same shall be final and binding in the absence of fraud or manifest error (and in this regard RTD shall be deemed to act as an expert).
- 15.2 Any other dispute arising under or relating to the Services or any Agreement, including issues at law or in equity, (a "**Dispute**") must be referred initially for resolution by representatives of RTD and Bidder, who will use reasonable commercial efforts to resolve the Dispute within 10 Business Days of a notice of a Dispute being given.
- 15.3 If the Dispute is not resolved within the specified time,

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either party may, in its sole discretion, refer the Dispute for final resolution by arbitration under the Rules of Arbitration of the International Chamber of Commerce, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat of the arbitration shall be Antwerp, Belgium. English shall be used in the proceedings.

- 15.4 Nothing contained in this clause shall prevent the parties from seeking to obtain security or any form of interim relief in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for or obtaining such security or interim relief.

document) that any other party may reasonably require to give effect to any Agreement.

- 16.9 Any notice or communication in relation to any Auction or given under any Agreement shall be in the English language, in writing and may be by email (to the last address notified by the other party) or notification on the Auction Site. Any notice shall be deemed to have been received on the day the email or notification was sent, unless sent after 4pm at the receiver's destination. Emails shall not be delivered if the sender receives any notification of non-delivery or an error message within one (1) hour of the email being transmitted, if sent by email.

16. GENERAL

- 16.1 The terms of the Invitation Letter, Conditions of Sale and the Auction Rules contain the entire agreement between the parties relating to the Services and any Agreement, and supersedes all prior agreements, communications and negotiations, whether written or oral. Each party acknowledges and represents that it has not relied on or been induced to act by any representation, warranty or undertaking other than those expressly set out in the Invitation Letter, Conditions of Sale and the Auction Rules. Such shall be binding upon and inure to the benefit of and be enforceable by each of the parties and their respective successors and permitted assigns. In the event of conflict between the terms of these instruments, the Conditions of Sale shall prevail.
- 16.2 In case any provision in these Conditions of Sale or an Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability. No failure or delay by a party in exercising a right, remedy, power or privilege under these Conditions of Sale or an Agreement shall operate as a waiver; nor shall any single or partial exercise of same preclude the party from any other or further exercise a right, remedy, power, or privilege; and no waiver by a party shall be valid, unless in writing and signed by that party, and then only to the extent specified.
- 16.3 Where one party has certain rights under any particular Clause, unless otherwise expressly stated, those rights shall be without limitation to its rights elsewhere in these Conditions of Sale or an Agreement, in equity or at law.
- 16.4 No other person, company or entity, apart from the parties, shall have any right to enforce these Conditions of Sale or an Agreement.
- 16.5 Neither party shall assign, novate or transfer its rights or obligations under these Conditions of Sale or an Agreement without the prior written consent of the other party; however, RTD may assign, novate or transfer all or any of its rights or obligations to a member of the Rio Tinto corporate group.
- 16.6 Unless otherwise specified, any Agreement shall not be modified, amended, or supplemented except by an instrument in writing duly executed by the parties.
- 16.7 Each party warrants and represents to the other party that it has and shall maintain throughout the duration of any Agreement all relevant licences or authorizations (internal and external) required to execute and perform that Agreement.
- 16.8 Each party must do anything (including executing any Rio Tinto Diamonds N.V.