

# TRANS ATLANTIC GEM SALES

## Online Tender of Diamonds - Terms and Conditions

When we refer to “us”, “we” or “our” it means eDiamond DMCC (trading as Trans Atlantic Gem Sales), a company existing under DMCC law, having its registered office at ALMAS 16A, ALMAS Tower, Jumeirah Lakes Towers, Dubai, United Arab Emirates, Trading Licence Number: DMCC-071931, Registration Number: DMCC16596.

### 1. Definitions

In these Terms and Conditions, the following words shall, unless otherwise stated or be inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

**"Bid"** means an irrevocable offer submitted by a Bidder to purchase a Lot at the relevant

**"Tender Price"**, which offer is open to acceptance by TRANS ATLANTIC GEM SALES from the Deadline;

**"Bidder"** means any Registered Bidder, including that Registered Bidder's agent or representative, who has been invited to a Tender and who submits a Bid(s);

**"Business Day"** means a day apart from a public holiday in DMCC;

**"Closing Date"** in respect of each Tender, means the date, as specified by TRANS ATLANTIC GEM SALES, on which such Tender will close;

**"Confidential Information"** means:

- (i) all information related to TRANS ATLANTIC GEM SALES or any member of its Group, the Tender(s) and related results, the Bid(s), the Website and the Bidder,
- (ii) the existence and provisions of these Terms and Conditions,
- (iii) all communication or information (written or oral) acquired by a Party (or the Party's agent) from the other Party (or the Party's agent), during the course of their relationship, interactions, discussions and negotiations with each other, whether such information is formally designated as confidential or not and however embodied and
- (iv) any other information which by its nature may be identified as confidential information;

**"Deadline"** has the meaning ascribed thereto in Clause 5.5

**"TRANS ATLANTIC GEM SALES "** means eDiamond DMCC, a company incorporated in accordance with the laws of DMCC, Trading Licence Number: DMCC-071931, Registration Number: DMCC16596.

**"Group"**, in relation to any person, means any corporations which are holding companies, subsidiaries or subsidiary undertakings of it or of any such holding company;

**"Lot"** means a particular lot listed on the Website, containing a Product for sale;

**"Lot Listing"** means a description of a Lot;

**"Online Services"** means the online Tender services provided by TRANS ATLANTIC GEM SALES on the Website;

**"Parties"** means TRANS ATLANTIC GEM SALES and the Bidder and **"Party"** shall be construed accordingly;

**"Payment Date"** means, in respect of each Tender, the 4th Business Day following the Closing Date, by which date the Successful Bidder must have paid to TRANS ATLANTIC GEM SALES the Tender Price, plus any VAT and/or other relevant taxes thereon (if any) and associated shipping charges (if any), in respect of the relevant Lot won by the Successful Bidder;

**"Product"** means one or more rough and/or polished diamonds contained in a Lot and described in a Lot Listing, which Lot is to be tendered for sale pursuant to these Terms and Conditions by TRANS ATLANTIC GEM SALES;

**"Registered Bidder"** means an entity which has applied for and been accepted by us to participate in Tenders to which they are subsequently invited to attend;

**"Reserve Price"** means in respect of any Lot, the price determined by TRANS ATLANTIC GEM SALES (in its sole discretion) which if not met by any Bidder such Lot may be withdrawn from the relevant Tender by TRANS ATLANTIC GEM SALES (in its sole discretion);

**"Successful Bidder"** means, in respect of any Lot, the Bidder who has submitted the highest Tender Price for such Lot prior to the expiry of the Deadline and who has been confirmed as the Successful Bidder by TRANS ATLANTIC GEM SALES.

**"Tender"** means the process of us offering a Lot to Bidders for sale;

**"Tender Price"** means, in respect of each Lot identified in the Lot Listing relating to a Tender, the total United States Dollar amount offered by a Bidder in his Bid;

**"Terms and Conditions"** means these Terms and Conditions (including any Annexures to these Terms and Conditions) as amended from time to time and any additional document incorporated by reference;

**"Website"** means the website which is accessible at <http://www.transatlanticgemsales.com>

**"Winning Tender"** means, in respect of any Lot, the Bid placed by the Bidder which, according to these Terms and Conditions, is accepted by TRANS ATLANTIC GEM SALES for the purchase of such Lot.

## **2. Acknowledgement and Acceptance of Terms and Conditions**

The Website is owned and operated by TRANS ATLANTIC GEM SALES. By clicking "Accept" below, you accept these Terms and Conditions together with our operating procedures which are designed to facilitate our Tenders and which may be amended or varied by us from time to time. By becoming a Registered Bidder and by placing any Bid you agree to be bound by these Terms and Conditions.

### **3. Registration and Access to the Website and Online Services**

- 3.1** Anyone who wishes to Bid on a Lot at a Tender must first apply to become a Registered Bidder by completing the procedures set out on the Website. You will be notified whether or not you have been accepted as a Registered Bidder. Only Registered Bidders or their nominees (as stipulated in their Registered Bidder application) will have access to our Tenders (via user ID and password) and be eligible to place Bids on any Lot(s). Becoming a Registered Bidder and/or being granted permission to Bid in any Tender is at our sole discretion.
- 3.2** TRANS ATLANTIC GEM SALES may, in its sole discretion and without having to provide reasons therefore, refuse or at any time cancel the registration of any applicant for registration, any Bidder and/or any agent of any Bidder. In addition, TRANS ATLANTIC GEM SALES reserves the right to, in its sole discretion, withdraw or suspend its approval of a Bidder's registration and the authority to access and/or use the Website and the Online Services.
- 3.3** It is expected that Registered Bidders will participate actively in Tenders. If we consider that you are not participating actively we will notify you and in this regard we reserve the right to revoke your Registered Bidder status.
- 3.4** If you do not comply with these Terms and Conditions in full, we reserve the right to at any time and without notice revoke your Registered Bidder status.
- 3.5** If you no longer wish to be a Registered Bidder, you are required to immediately notify us in writing and we will ensure that you are removed from the Online Services and our Tender system.
- 3.6** Tenders are run through the secure part of the Website. Access to the secure part of the Website is by individual user ID and password only. Your individual user ID and password must be kept confidential at all times and you shall be responsible for ensuring that effective security measures are in place to protect access to this information.
- 3.7** You acknowledge and agree that all Bids submitted using your Registered Bidder's user ID and password have your full approval, authority and consent and you agree that you shall be liable for such Bids which will be legally binding on you. We accept no responsibility if your user ID and password is used by any person not authorised by you to do so and we have no obligations to verify the authority of any person accessing the Bidder's online account using his individual user ID and password.
- 3.8** The Bidder agrees to use the Website and the Online Services only to submit Bids in accordance with the provisions of these Terms and Conditions and to notify TRANS ATLANTIC GEM SALES immediately if it becomes aware of any unauthorised use of the Website or the Online Services. In the event that, prior to or during any particular Tender, TRANS ATLANTIC GEM SALES notifies bidders that a manual written Bid is to be submitted in conjunction with the placing of Bids using the Online Services, Bidders shall, in addition to submitting Bids using the Online Services and prior to the Deadline, provide to TRANS ATLANTIC GEM SALES manual written Bids in the form provided to the Bidder by TRANS ATLANTIC GEM SALES.

- 3.9** TRANS ATLANTIC GEM SALES does not warrant or guarantee the uninterrupted or error free use of the Website and/or the Online Services. In addition, TRANS ATLANTIC GEM SALES is not liable to any Bidder or third party for any interruptions or errors of the Website and/or Online Services.
- 3.10** If the Website and/or the Online Services become unavailable for any reason whatsoever, TRANS ATLANTIC GEM SALES shall use its best endeavours to notify affected Bidders and reserves the right to extend the Closing Date and/or the Deadline. In these circumstances, Bidders may manually submit written Bids using TRANS ATLANTIC GEM SALES 's standard Tender forms. In such event TRANS ATLANTIC GEM SALES shall provide to the affected Bidders the details and forms for such manual submissions. The manual written Bids shall only be considered by TRANS ATLANTIC GEM SALES in the event that the Website and/or the Online Services become unavailable and the acceptance of and/or reliance on the manual written Bids shall at all times be in the sole discretion of TRANS ATLANTIC GEM SALES. In the event of any inconsistency between Bids submitted by the Bidder using the Online Services and the manual written Bids, the Bids submitted by the Bidder using the Online Services shall prevail.
- 3.11** Other than for testing purposes, event monitoring and/or issue resolution, neither TRANS ATLANTIC GEM SALES nor our management or employees nor any member of our group (including their management or employees) shall register as a Registered Bidder nor place any Bid of any kind on any Lot at any live Tender.

#### **4 Invitation to Tenders and Viewing Process**

- 4.1** We may notify you on a regular basis or when appropriate via e-mail of Lots which we intend to offer to Registered Bidders by Tender on the Website and Online Services.
- 4.2** Alternatively we may simply notify you as to the key dates and times of respective Tenders with Lots and contents to be confirmed at our discretion at a point in time.
- 4.3** We reserve the right to invite any Registered Bidder of our choice to submit a Bid(s) and we are under no obligation to invite all Registered Bidders to all Tenders. We also reserve the right to withdraw any invitation to a Bidder to submit a Bid at any time prior to receiving a Bid from such Bidder.
- 4.4** We offer Bidders the opportunity to view a Lot(s) in person prior to a Tender by arranging an appointment with us. Viewing opportunities are subject to our reasonable availability and we will advise when, where and for how long you will be permitted to view the Lot(s). We will only accommodate changes to appointments which we in our sole discretion are able to do so (taking into consideration other Bidders' appointments and the time available at each Tender) and late arrivals will not be given time extensions to view the Lot(s). We reserve the right to monitor viewing with video surveillance. You will not bring rough diamond parcels with you when viewing a Lot(s). If you chose not to or for any reason have not viewed a Lot prior to placing a Bid, you will still be bound to purchase the Lot if you are the Successful Bidder in relation to that Lot.

## **5 Rules for Submitting Bids**

- 5.1** Each Bidder agrees to prepare and submit its Bid(s) in accordance with these Terms and Conditions and unless otherwise advised in writing by TRANS ATLANTIC GEM SALES Bidders may only submit Bids to TRANS ATLANTIC GEM SALES using the Website and Online Services.
- 5.2** TRANS ATLANTIC GEM SALES shall not be liable for any expense incurred by any Bidder in the preparation and submission of its Bid(s).
- 5.3** TRANS ATLANTIC GEM SALES may, in its sole discretion, decline to accept a Bid that is not submitted in accordance with these Terms and Conditions and shall not be obliged to provide any reasons or to negotiate any such decision with a Bidder.
- 5.4** Any Bid submitted through the Online Services by a Bidder, or its agent, using the Bidder's unique username and password shall be deemed to have been signed and fully authorised by the Bidder.
- 5.5** All Bids must be submitted by no later than the published event closing date/time on the Closing Date (the "Deadline"). Any Bid submitted after the Deadline shall be rejected, it being understood and agreed however that TRANS ATLANTIC GEM SALES may, at its sole discretion and without being obliged to provide any reasons, decide to consider any such late Bid.
- 5.6** All Bids shall be made in United States Dollars.
- 5.7** All Bids may be altered or withdrawn by the relevant Bidder prior to the Deadline.
- 5.8** Once the Deadline has expired, all submitted Bids will constitute irrevocable and binding offers by the relevant Bidder to purchase a Lot(s) from TRANS ATLANTIC GEM SALES and shall remain open for acceptance by TRANS ATLANTIC GEM SALES for a period of ten (10) Business Days from (but excluding) the Deadline. The notification of a Winning Tender to the Successful Bidder shall bind the Successful Bidder to purchase the Lot from us according to these Terms and Conditions. Subject to your statutory rights, which remain in force, this sale and purchase is binding upon and may not be revoked by the Successful Bidder.
- 5.9** In the case of an Error bid, and In accordance with the new DDE Tender Best Practice Forum - Code of Conduct, notification of this error must be brought to the attention of TAGS Management within 30 minutes of the tender closure.

Notification to Management beyond this time for whatever reason, will not be accepted and the Company/Bidder will be legally bound to honour the bid in accordance with the Term and Conditions that have been accepted prior to bidding.

For reference please see the attached DDE Tender Best Practice Forum Code of Conduct (Appendix A), which outlines the "acceptable parameters" for which bid error can be challenged.

- 5.10** You acknowledge and warrant that:
  - 5.10.1** you will not fix or adjust any Bid in accordance with any agreement or arrangement with any third party, or engage in collusive activity of any sort in either an attempt to manipulate prices, supply or demand in any manner whatsoever;

- 5.10.2** you will place Bids in good faith and wholly independent of any other Registered Bidder;
  - 5.10.3** without derogating from the generality of clause 5.10.1 you will not enter into any discussions, arrangements or agreements with any third party in an attempt to affect the outcome of any Tender in respect of any Lot (for the avoidance of doubt this clause 5.10 does not prevent Bidders from partnering on any individual Bid);
  - 5.10.4** you will not interfere with or disrupt networks connected to the Website and/or the Online Services; and
  - 5.10.5** your participation in any Tender is not for the purposes of, or connected with (either directly or indirectly) terrorism, child labour, money laundering or any other illegal act.
- 5.11** We reserve the right to monitor all activity on the Website and/or Online Services and to edit, bar or remove access to any Lot or Tender, at any time as we consider necessary in order to prevent any breach of these Terms and Conditions, the Website terms and conditions or any breach of any applicable laws or regulations.

## **6 Withdrawal of Lots**

- 6.1** TRANS ATLANTIC GEM SALES reserves the right to withdraw any Lot from a Tender at any time before expiry of the Deadline. In the event that TRANS ATLANTIC GEM SALES withdraws a Lot, all Bids that have been received in respect of the withdrawn Lot prior to the time of withdrawal, shall not be considered by TRANS ATLANTIC GEM SALES and shall be rejected.
- 6.2** In the event that a Lot is withdrawn, TRANS ATLANTIC GEM SALES shall not be obliged to sell the Product of the withdrawn Lot to any Bidder. In addition, TRANS ATLANTIC GEM SALES shall not be liable to any Bidder in respect of the withdrawn Lot and TRANS ATLANTIC GEM SALES shall not be obliged to provide any reasons for withdrawing the Lot to any Bidder.

## **7 Winning a Tender**

- 7.1** Provided that:
- (i)** a Bidder's Bid is made in accordance with these Terms and Conditions,
  - (ii)** TRANS ATLANTIC GEM SALES receives two (2) or more Bids for the relevant Lot on the Deadline,
  - (iii)** all applicable conditions in respect of a particular Lot have been met by the Bidder and
  - (iv)** the Tender Price is higher than the Reserve Price set for that particular Lot, the Bidder with the highest Tender Price shall be the Successful Bidder. TRANS ATLANTIC GEM SALES will conclude the sale of the Product identified in the relevant Lot to such Successful Bidder, subject to receiving payment on or before the Payment Date in accordance with Section 8 the Successful Bidder will purchase the Product in accordance with these Terms and Conditions.

- 7.2** In the event that any of the conditions of clause 7.1 are not met for any reason whatsoever, TRANS ATLANTIC GEM SALES may in its sole discretion:
- 7.2.1** nevertheless accept the Successful Bidder's Bid in respect of the affected Lot or
  - 7.2.2** offer the affected Lot to the Bidder with the next highest Price; or
  - 7.2.3** withdraw the affected Lot.
- 7.3** Subject to Section 7.1 above, nothing in these Terms and Conditions shall be construed as obliging TRANS ATLANTIC GEM SALES to accept any Bid for any reason or at any time and in this respect TRANS ATLANTIC GEM SALES shall not be obliged to provide any reason to any Bidder.
- 7.4** The Successful Bidder will be informed of the acceptance of its Bid by TRANS ATLANTIC GEM SALES. The Successful Bidder shall be obliged to keep TRANS ATLANTIC GEM SALES 's acceptance of its Bid confidential, until such time as TRANS ATLANTIC GEM SALES notifies all the other Bidders what the highest Tender Price for that relevant Lot is.
- 7.5** TRANS ATLANTIC GEM SALES may at its sole discretion notify (by email) all Bidders of the highest Tender Price offered for each Lot after the Successful Bidder has been notified.
- 7.6** The Successful Bidder undertakes to act in good faith at all times and do all things necessary, including (without limitation) liaising with TRANS ATLANTIC GEM SALES on all matters arising out of its Bid and to cooperate with TRANS ATLANTIC GEM SALES to resolve any dispute that may arise with regard to the Bid.
- 7.7** In the event that more than one Bidder submits the same Tender Price for a Lot ("Tied Bidders") and that such Tender Price is the highest Tender Price for that Lot, the Lot will be tied.
- 7.8** The Tied Bidders will, upon request from TRANS ATLANTIC GEM SALES, submit new Bids (with two (2) decimal points) for the Lot, which new Bids will not be less than the value of their initial Tender Price for that Lot. For the avoidance of doubt if such new Bids are not higher than the Reserve Price, TRANS ATLANTIC GEM SALES in its sole discretion may withdraw the relevant Lot in accordance with these Terms and Conditions.
- 7.9** In the event that a Tied Bidder does not submit an increased Bid for the relevant tied Lot within the time period stipulated by TRANS ATLANTIC GEM SALES in its request referred to in Clause 7.8, Bidder shall be disqualified and its initial Bid shall be rejected.
- 7.10** The processes mentioned in clauses 7.8 and 7.9 will be repeated until the Lot is no longer tied and TRANS ATLANTIC GEM SALES can appoint a Successful Bidder.

## **8 Payment Terms**

- 8.1** The Successful Bidder shall pay the full Tender Price (together with any VAT and/or all other relevant sales and other applicable taxes and/or any bank charges) into a bank account nominated by TRANS ATLANTIC GEM SALES.

In addition, the Successful Bidder shall ensure that all payments due are paid and cleared into TRANS ATLANTIC GEM SALES 's nominated bank account on or before 12h00 (United Arab Emirates Time) on the Payment Date.

- 8.3** All payments due under these Terms and Conditions shall be made in United States Dollars.
- 8.4** In the event that all payments due by the Successful Bidder are not paid or have not cleared into TRANS ATLANTIC GEM SALES 's nominated bank account on or before 12h00 (United Arab Emirates Time) on the Payment Date, TRANS ATLANTIC GEM SALES reserves the right to withdraw the relevant Lot and the provisions dealing with the withdrawal of Lots shall come into effect. In the event that the Successful Bidder makes payment of the Tender Price at any time after the Payment Date, TRANS ATLANTIC GEM SALES shall in its sole discretion elect whether or not to accept the Successful Bidders Bid and further shall be entitled to impose a penalty on the Successful Bidder, which shall be an amount solely determined by TRANS ATLANTIC GEM SALES in its sole discretion and shall not be more than 10% of the Tender Price offered by the Successful Bidder.
- 8.5** In the event that the Successful Bidder has not paid all amounts due to TRANS ATLANTIC GEM SALES before the Payment Date and TRANS ATLANTIC GEM SALES elects not to withdraw the relevant Lot, TRANS ATLANTIC GEM SALES may, in its sole discretion, decide to appoint the Bidder with the second highest Tender Price as the Successful Bidder. The provisions of clauses 7, 8, 9, 10 and 11 shall apply to the newly confirmed Successful Bidder.
- 8.6** If a Successful Bidder fails to make payment of the relevant Tender Price to TRANS ATLANTIC GEM SALES in accordance with these Terms and Conditions, TRANS ATLANTIC GEM SALES shall be entitled to claim from the Successful Bidder the full amount owing together with all costs (including all legal costs) incurred by TRANS ATLANTIC GEM SALES in enforcing its rights under these Terms and Conditions.

## **9 Collection of the Product**

- 9.1** Subject to the fulfilment of the conditions in clause 7.1, payments due by the Successful Bidder, TRANS ATLANTIC GEM SALES shall notify the Successful Bidder
- (i)** that the Product is available for collection and
  - (ii)** the address in Dubai DMCC where the Product is to be collected by the Successful Bidder. All Products shall be collected by the Successful Bidder by arrangement with TRANS ATLANTIC GEM SALES during normal business hours, which are 09h00 to 17h00 United Arab Emirates Time. Upon collection, the Successful Bidder or his authorised agent (previously notified in writing to TRANS ATLANTIC GEM SALES by the Successful Bidder) will be required to provide suitable identification in order to sign acknowledgement of receipt of the Product contained in the relevant Lot(s).
- 9.2** The Product must be collected by the Successful Bidder within five (5) Business Days after payment has been received by TRANS ATLANTIC GEM SALES. TRANS ATLANTIC GEM SALES reserves the right to charge storage fees for any late collections.

## **10 Shipment and Delivery of the Product**

- 10.1** TRANS ATLANTIC GEM SALES may (but shall not be obliged to) upon the request of a Successful Bidder deliver and/or ship the Products to the Successful Bidder. In the event that TRANS ATLANTIC GEM SALES agrees to make such delivery and/or shipment, the Successful Bidder shall pay, in advance, all shipping, insurance and handling fees in respect of such shipment ("Shipping Costs"). TRANS ATLANTIC GEM SALES shall only deliver and/or ship the Product once TRANS ATLANTIC GEM SALES has received payment of the Tender Price (including any VAT and all other relevant sales taxes) and the Shipping Costs.

## **11 Risk and Benefits of the Product**

- 11.1** Upon receipt by TRANS ATLANTIC GEM SALES of payment for Lot(s) in accordance with Section 8:
- 11.1.1** Full title, ownership and all risks in the Product shall pass to the Successful Bidder;
  - 11.1.2** any Product that remains in TRANS ATLANTIC GEM SALES possession or control is held at the Successful Bidder's sole risk; and
  - 11.1.3** all risk and liability for any shipment of the Product will be that of the Successful Bidder.

## **12 Warranties**

- 12.1** The Bidder warrants that:
- 12.1.1** it has full legal right, capacity and authority to participate in the Tenders, submit Bids, exercise its rights and perform its obligations pursuant to these Terms and Conditions;
  - 12.1.2** it is experienced and competent to participate in the Tender and ultimately to purchase the Product; and
  - 12.1.3** it complies, and will comply, with all applicable laws in participating in the Tenders, submitting Bids, exercising its rights and performing its obligations pursuant to these Terms and Conditions.
- 12.2** No guarantees or warranties are made as to the quality, origin, physical characteristics or any other aspect of the Product. Any descriptions of the Product on the Lot Listing are merely general and not a guarantee of the nature, size or quality of the Product. It is the responsibility of the Bidder to adequately examine all Lots, and the Product contained therein, before submitting any Bids. The Bidder agrees that it will not hold TRANS ATLANTIC GEM SALES liable or responsible for any description or information provided by TRANS ATLANTIC GEM SALES in respect of any Product.
- 12.3** All other warranties, conditions and representations relating to the Product, the Online Services and/or the Website are excluded to the fullest extent permitted by law.

### **13 Limitation of Liability**

- 13.1** TRANS ATLANTIC GEM SALES specifically disclaims any responsibility or liability in connection with any third party's use, in particular, the Bidder's use of the information contained in these Terms and Conditions or any Confidential Information subsequently provided to any Bidder or other third party.
- 13.2** TRANS ATLANTIC GEM SALES will have no obligation of any nature whatsoever to any Bidder(s) other than to make the Product available to Successful Bidders for collection after all conditions in terms of these Terms and Conditions, including full payment, have been met.
- 13.3** By participating in the Tender(s), Bidders hereby agree that:
  - 13.3.1** any and all claims by Bidders against TRANS ATLANTIC GEM SALES shall be limited to the return of any payment (if any) made by the Bidder to TRANS ATLANTIC GEM SALES in respect of the Lot in question;
  - 13.3.2** TRANS ATLANTIC GEM SALES and all third parties shall not be liable to any Bidder for any direct, secondary or incidental costs and/or damages resulting from the withdrawal of any Lot or refusal by TRANS ATLANTIC GEM SALES to accept any Bid in accordance with these Terms and Conditions.

### **14 Intellectual Property**

- 14.1** The Bidder agrees that all intellectual property, including (without limitation) trademarks, logos, and brands, belonging to TRANS ATLANTIC GEM SALES or any member of its Group or held by TRANS ATLANTIC GEM SALES under any licensing agreements with any third parties shall, for the purposes of these Terms and Conditions and any Tenders, be deemed to be the sole property of TRANS ATLANTIC GEM SALES.
- 14.2** The Bidder further agrees that all copyright, trademarks, database rights and other Intellectual Property rights in or in connection with the Website and the Online Services, shall for the purposes of these Terms and Conditions and any Tenders, be deemed to be the sole property of TRANS ATLANTIC GEM SALES.
- 14.3** The Bidder acknowledges and agrees that these Terms and Conditions do not authorise or entitle the Bidder to use the Intellectual Property in any manner or form, other than for the purposes contemplated by these Terms and Conditions.
- 14.4** To the extent that the Bidder acquires any right or title in the Intellectual Property, the Bidder agrees to assign such rights to TRANS ATLANTIC GEM SALES on demand.

## **15 Confidentiality**

- 15.1** The Bidder hereby acknowledges and agrees that:
- 15.1.1** the Confidential Information belonging to TRANS ATLANTIC GEM SALES is a valuable, special and unique asset, proprietary to TRANS ATLANTIC GEM SALES; and
  - 15.1.2** any unauthorised disclosure of such Confidential Information is likely to cause harm to the commercial and/or financial interests of TRANS ATLANTIC GEM SALES.
- 15.2** By accepting these Terms and Conditions, the Bidder:
- 15.2.1** agrees to keep the Confidential Information as confidential
  - 15.2.2** agrees to procure that its employees and professional advisors that may gain access to or knowledge of the Confidential Information agree to keep the Confidential Information confidential;
  - 15.2.3** undertakes not to use the Confidential Information for any purpose other than that for which it is disclosed and in accordance with the provisions of these Terms and Conditions;
  - 15.2.4** agrees that it shall protect the Confidential Information using the same standard of care that it applies to safeguard its own proprietary, secret or confidential information; and
  - 15.2.5** agrees to store and handle the Confidential Information in such a way as to prevent any unauthorised disclosure thereof and undertakes to immediately return or destroy any Confidential Information upon request from the other Party.
- 15.3** The identity of Bidders will not be disclosed to any third parties, other than those third parties that TRANS ATLANTIC GEM SALES determines, in its sole discretion, are required to know the identity of the Bidders for the purposes of managing and/or assisting TRANS ATLANTIC GEM SALES with the running of any Tender.
- 15.4** Bidders agree not to disclose their Bids to third parties or coordinate their Bids with any other Bidders or third parties. In the event that TRANS ATLANTIC GEM SALES becomes aware of, or in its sole discretion suspects that, any Bidder(s) have coordinated their Bids, such Bidder(s) shall have its Bid(s) rejected and shall immediately be suspended from the Tender process until further notice from TRANS ATLANTIC GEM SALES.
- 15.5** The obligations of the Bidder and TRANS ATLANTIC GEM SALES in terms of this Section shall not apply to any Confidential Information that:
- 15.5.1** is or becomes publicly known otherwise than as a result of a breach of the provisions of these Terms and Conditions by the Bidder; or
  - 15.5.2** is disclosed by the Bidder to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time.

## **16 General Provisions**

- 16.1** These Terms and Conditions contain all the express provisions agreed on by the Parties and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect of the subject matter of these Terms and Conditions.
- 16.2** A Party may not rely on any representation or agreement, unless the representation or agreement is:
- (i) recorded in these Terms and Conditions or
  - (ii) reduced to writing and signed by or on behalf of the Parties.
- 16.3** No waiver of any right by TRANS ATLANTIC GEM SALES in terms of these Terms and Conditions shall be effective unless reduced to writing and signed by or on behalf of TRANS ATLANTIC GEM SALES.
- 16.4** Any provision in these Terms and Conditions which is or may become illegal, invalid or unenforceable in any jurisdiction affected by these Terms and Conditions shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. pro non scripto) and severed from the balance of these Terms and Conditions, without invalidating the remaining provisions of the Terms and Conditions or affecting the validity or enforceability of such provision in any other jurisdiction.
- 16.5** The Parties shall at all times act in good faith towards each other and shall not bring any other Party into disrepute.
- 16.6** TRANS ATLANTIC GEM SALES may amend these Terms and Conditions from time to time. Bidders are required to read and accept the Terms and Conditions prior to participating in any Tender.
- 16.7** The Bidders can obtain a copy of the current Terms and Conditions at <http://www.transatlanticgemsales.com>, variations to these Terms and Conditions shall apply to any submitted Bids for which the relevant Deadline has not expired and any future Bids to be submitted after the date of the variation.
- 16.8** These Terms and Conditions are to be governed, interpreted and implemented in accordance with the laws of the United Arab Emirates.
- 16.9** The Parties consent to the non-exclusive jurisdiction of the courts of United Arab Emirates for any proceedings arising out of or in connection with these Terms and Conditions.

APPENDICES:

APPENDIX A



The Key Principles for Clients participating in Tenders:

**Switching Goods / Theft**

In the case that goods have been switched and there is evidence of theft, the relevant Tender Company shall issue a permanent ban on that Client from attending any future Tenders operated by any Tender Companies.

**Defaulting Companies**

For the purposes of this Code, the parameters of a "mistake" are defined against the 2nd highest bid within which a 'default' claim would not be accepted. These parameters are:

- All goods presented as parcels in both +10cts and -10cts sizes: 20%
- Single stones White goods less than USD 500,000: 27%
- Exceptional White Stones more than USD500,000: 35%
- Fancy Colour Stones: 50%
- Industrial, browns and boart : 35%

In the case where, during a Tender, a Client submits a bid which post Tender they claim is a "mistake", the Tender Companies are permitted to impose a penalty of 10% payable by the Client on a defaulted bid and future participation in Tenders could be affected as set out below.

Where a Client refuses to accept the responsibility of their bid as set out in the T&Cs of the Tender Company the relevant Tender Company must name the Client to the Forum and ban it from participation in all Tenders operated by other Tender Companies for:

- First Offence - a period of three (3) months;
- Second Offence – a period of six (6) months; or
- Third Offence – a period of twelve (12) months.

The DDE has the right, at its sole discretion, to remove a Tender Company from the Forum at any time for any reason without justification, and/or to remove the Forum logo from any Tender Company.

**Financiers**

In the case where a "financer" is bidding on behalf of a Client and a "mistake" is made, the financer will be required to provide written evidence that the bids were placed on behalf of the Client, and upon receipt of such evidence, the Client would be held responsible and have the consequences of the default.

By signing this Code, we hereby acknowledge and accept the terms of the Code and agree to be bound by them.

P. Duncombe

Member name: PAUL DUNCOMBE

Signed by: Transatlantic Gem Sales Dmcc

Date: 22/02/22



Ahmed Bin Sulayem

Ahmed Bin Sulayem

DDE Chairman

DMCC Executive Chairman and CEO

Date: 22-02-2023



## APPENDIX A (CONTINUED)



# TENDER BEST PRACTICE FORUM

## CODE OF CONDUCT

The Code of Business Conduct of the Dubai Diamond Exchange (the DDE) Tender Best Practice Forum (the **Forum**) (the **Code**) sets out the key principles for rough and polished diamond tenders and auctions (**Tenders**) run in Dubai by companies that have voluntarily signed up to the Forum (**Tender Companies**). A Tender Company will be allowed to use the Forum logo for the duration of their membership in the Forum.

Tender Companies are all members of the DDE and the Forum and have committed to abide by this Code to provide a trusted framework and industry best practice to maintain the integrity and governance for Tenders operating in Dubai.

The objectives of the Code are to:

- Maintain the reputation, standing and good name of Tenders operating in Dubai;
- Promote good business practices by setting out the minimum standards which Tender Companies should follow;
- Create confidence for all parties in the integrity of the Tenders;
- Promote professional behaviour and conduct for Tender Companies and clients participating in Tenders in Dubai (**Clients**);
- Provide guidelines for dealing with mistakes; and
- Outline the consequences and potential disciplinary action Tender Companies can take.

The key principles set out in this Code are supplementary to and do not replace any relevant legislation, codes, guidelines or rules applicable to Tender Companies.

### The Key Principles for Tender Companies:

- All Tender Companies shall be bound by the terms of this Code and shall abide by any directives of the Forum and the DDE issued from time to time.
- All Tender Companies to have their own standard Terms & Conditions (**T&Cs**) which will be the same for all Clients participating in their Tenders. The relevant Tender Company will make their T&Cs available to Clients and will ensure that the Clients agree to them prior to submitting any bids. Tender Companies must include the key principles for Clients in their T&Cs.
- All Tender Companies will notify successful Clients within 48 hours of the close of bids.
- The T&Cs must ensure that all Tenders are by invitation only at the sole discretion of the Tender Company.
- All Tender Companies are committed to the integrity and confidentiality of the Tender bidding process. For Example, there will be no communication with Clients regarding the performance or bids of competing companies.
- All Tender Companies will not "self-bid" in a multi-round auction or create "false" demand.