

# Rapaport Trading Agreement

This Rapaport Trading Agreement (the “Agreement”) is entered into by the undersigned Buyer and/or Supplier, and **Rapaport Diamond Corporation** (“Rapaport”) of 1212 Avenue of the Americas, Suite 801, New York 10036, USA, except if a Sale takes place outside New York in any of the countries in Annexure 1.

This Agreement consists of (i) **Section A**, the General Terms and Conditions, applicable to both Buyers and Suppliers, (ii) **Section B**, the Buyer Specific Terms and Conditions applicable to every Buyer, (iii) **Section C**, the Supplier Specific Terms and Conditions applicable to every Supplier, and (iv) **Annexure 1**, any applicable country specific terms. Section A, Section B, Section C and Annex 1, as may be applicable, shall comprise the “Terms and Conditions” which shall govern and control the contractual relationship between the parties under and in terms of which Rapaport shall buy and sell merchandise either by way of auction, tender or immediate sale (“Buy-Now”) (collectively or individually a “Sale”).

## Section A: General Terms and Conditions applicable to both Buyers and Suppliers

### 1. **Definitions:** For the purposes of these Terms and Conditions:

“**Auction**” shall include all sales where bids may be made for Merchandise offered for sale by Rapaport and shall include Tenders.

“**Auction Bid Form**” shall mean the form supplied by Rapaport in paper or electronic format for recording of bids.

“**Auction Close**” shall mean the last date and time for submitting bids.

“**Buyer**” shall include a buyer of any Merchandise offered for Sale by Rapaport and shall specifically also include a bidder who agrees to participate in a Rapaport Auction or Sale.

“**Merchandise**” shall include diamonds, gems, pearls, precious stones and jewelry provided to Rapaport for Sale, from time to time, by Supplier.

“**Sale**” shall include the sale of Merchandise either by way of Auction, Tender or immediate sale (“Buy-Now”), whether collectively or individually;

“**Supplier**” or “**Seller**” shall include a supplier or seller of Merchandise to Rapaport for Sale, or any undisclosed principal for whom or on whose behalf Supplier may be acting as authorized agent.

“**Tender**” shall have the same meaning as Auction for the purposes of this Agreement.

### 1. **Warranties.**

- a. All Merchandise is sold AS-IS. No guarantees or warranties are made as to the quality, origin, physical characteristics or any other aspect of the Merchandise. Any descriptions of Merchandise made by the Seller(s) or Rapaport staff are merely general and not a guarantee of the nature, size or quality of the goods. Buyers must adequately examine all lots before making any bids. Buyers should make a full and detailed inspection of all Merchandise before bidding or buying. Buyer agrees not to hold Rapaport or any of its staff liable or responsible for any description or information provided about any Merchandise.
- b. In respect of an Auction or Sale which includes melee; while many of the lots may have been sieved and sorted and marked as such by the Seller(s), Buyers and bidders are specifically put on notice that the Merchandise offered for sale may have been delivered directly to pawnshops by the public and that treated, enhanced, laser drilled or simulant stones might be mixed in with lots. Lots have been sorted and described by numerous Suppliers.

2. **Confidentiality.** The identity of all Buyers buying Merchandise will not be disclosed to any third parties except as may be required by law, or for any legal process, or to protect the rights or interests of Rapaport. Buyers agree not to disclose their bids to third parties, nor coordinate their bids with any other bidders or third parties. Nothing in this clause shall prevent Rapaport from disclosing winning bid amounts to bidders as provided for in Section C 1.b.iii.2 below. A party (“Receiving Party”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other Party (“Disclosing Party”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party’s business or its products or services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to its employees, agents or subcontractors as need to know for the purpose of discharging the Receiving Party’s obligations under this Agreement, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This paragraph shall survive termination of this Agreement.

3. **Viewing.** Viewing of Merchandise is by appointment only and is limited to one (1) visit by two (2) representatives per Buyer. Viewing parties will be required to register and have valid identification. Rapaport reserves the right to monitor viewing with

video surveillance cameras, limit viewing to select pre-qualified parties, and reasonably restrict viewing. No party shall have any Merchandise on their person or in their possession when entering, exiting, or whilst in the viewing rooms.

4. **Bidding.** Permission to bid is granted at the sole discretion of Rapaport and subject to approval by Rapaport. All bids are in total US dollars per lot. Winning bids are considered a final sale and the Buyer is required to pay in accordance with this Agreement without an option to deny purchase. Rapaport reserves the right to refuse to accept bids from any party for any reason, and to refuse to sell any lot if the highest bid received is deemed by Rapaport and/or the Seller, to be insufficient. Unless indicated otherwise all lots are subject to a reserve price. Rapaport is entitled to bid on behalf of the Seller up to the reserve price.
5. **Dispute or Error.** In the event of any dispute, error, discrepancy or any other reason deemed sufficient by Rapaport, Rapaport reserves the right to provide a full refund to Buyer, withdraw any lot from Auction and/or refuse any bid or cancel any sale and return the Merchandise to the Supplier, subject, however, to the prior payment in full of any Supplier Advance as provided for in Section C below. In event of cancellation of Sale, Rapaport guarantees return of Merchandise to Supplier or full payment of the high bid/buy-now price minus commission (Sale Fee) and agreed expenses. If Rapaport withdraws any lot or cancels any Sale, both Buyer and Supplier agree to waive any claims, and undertake not to institute any legal action, against Rapaport and/or against each other. All decisions by Rapaport will be final and binding on bidders, Buyers, and Suppliers and their respective agents.
6. **Non-Payment by Bidder/Buyer and Default.** If payment is not made by a successful bidder/Buyer, Rapaport reserves the right to cancel the bid and/or Sale. All Sales are final and no returns are accepted after delivery under any circumstances, unless specifically indicated otherwise in writing. In the event of default by the Buyer, Rapaport reserves the right to cancel the Sale, and/or take legal action against the default Buyer and/or offer the goods to the second highest bidder/alternate buyer who is under no obligation to accept the Merchandise, provided however that the Merchandise cannot be sold by Rapaport at a price that is not agreed by the Supplier or authorized by Section C 3(m)(ii) below, subject, however, to the terms of any Supplier Advance.
7. **Terrorism, Money Laundering and Illegal Activity Disclosure.** Bidders and Buyers confirm and agree that their participation in all Rapaport Sales is not connected in any way to terrorism, money laundering or any other illegal act. Bidders and Buyers agree to provide Rapaport with any requests in connection with any country specific anti-terrorism, anti-money laundering and illegal activity compliance disclosure requirements, including but not limited to, the USA Patriot Act. Such disclosure shall include the provision of all required documents and full disclosure of relevant particulars in accordance with the USA Patriot Act, and any country specific applicable legislation, laws, rules and regulations.
8. **Conflict of Interest.** Rapaport will not bid on any parcel or lot offered for sale for its own account.
9. **Conduct.** All parties agree to conduct themselves in a business-like manner; to maintain the privacy and security of other bidders and Buyers; to follow all instructions of Rapaport staff regarding the handling of Merchandise and to respect and honor the strong traditions of honesty and integrity in the diamond industry.
10. **New York Auctions.** For auctions conducted in New York, the Auctioneer's Name and New York City Department of Consumer Affairs (DCA) License Number is: Michelle Ickowics, License No: 1425301.
11. **Governing Law and Jurisdiction.** Unless otherwise provided herein, this Agreement shall be construed and governed in all respects in accordance with the laws of the State of New York, USA, without reference to its conflict of laws principles, and the appropriate district, state and federal courts of law in New York City shall be the courts of competent jurisdiction.
12. **English Language.** The parties agree that this Agreement has been prepared and shall be executed in English, which shall prevail over any translation of this Agreement. All proceedings related to this Agreement shall be conducted in English.
13. **Entire Agreement.** This Agreement constitutes this entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement.
14. **Amendment.** This Agreement may be amended by Rapaport from time to time or modified only in writing.
15. **Assignment.** Neither the Buyer or the Supplier shall be entitled to assign this Agreement nor any rights or obligations hereunder to any third party.
16. **Prevailing Terms.** In the event of a conflict between this Agreement and any specific Rapaport Auction's terms and conditions, those specific Auction's terms and conditions shall prevail.

17. **Miscellaneous.** No delay or omission by Rapaport in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by Rapaport on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion. The captions of the clauses of this Agreement are for convenience or reference purposes only, and in no way define, limit or affect the scope or substance of any clause in this Agreement. In the event that any provision, or part or section of this Agreement, or these Terms and Conditions shall be held to be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. All warranties and conditions not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law. Nothing in this Agreement shall create or be deemed to create a partnership or joint venture or relationship of employer or employee between the parties. Unless otherwise agreed between the parties, all notices required to be given under this Agreement shall be given in writing and delivered to the address of that party listed below. For the purposes of this Agreement, the term “Business Day” shall mean any day other than a Saturday, Sunday, or day when commercial banks are authorized to be closed in New York City, NY.

## Section B: Buyer Specific Terms and Conditions

Bidders and Buyers agree to participate in a Rapaport Auction or Sale in accordance with the following terms and conditions:

1. **Bid Deposit for Auctions and Tenders.** Rapaport reserves the right to require Buyers to pay a deposit equal to 10% of their total bid with a maximum of \$25,000 to cover a \$1,000,000.00 bid limit. This deposit will be refunded to unsuccessful bidders within three business days after the Auction Close. All bids must be in writing using the official Auction Bid Form, by email or submitted online via the Online Bid Form. If bids are submitted by email they must originate from an authorized email address and be sent to [bids@rapaport.com](mailto:bids@rapaport.com). The Buyer must confirm that the email has been received. Rapaport is not responsible for any bids sent by email that have not been confirmed as received by Rapaport.
2. **Identification.** All Buyers will be required to provide positive identification.
3. **Taxes.** All applicable taxes, duties and other related charges are the responsibility of the Buyer. A copy of Buyer’s Sales Tax Registration and Resale certificate may be requested.
4. **Successful bids.** Rapaport will inform successful Buyers of their purchase no later than three business days after Auction Close.
5. **Total Bid Limit.** Buyers wishing to limit their total purchases may specify a maximum they wish to spend on the Auction. Once this maximum has been reached, all additional bids from this Buyer will be voided. Application of funds will be in the order of priority specified by the Buyer.
6. **Notification and Invoicing.** Rapaport will notify successful Buyers via telephone or email and issue an invoice no later than three business days after Auction Close. Cash or wired deposits will automatically be allocated to invoices issued to successful Buyers. Buyers must provide names of contact persons and telephone and cell phone numbers where they can be reached on the days following the Auction Close.
7. **Payment.** Terms are Certified Bank Check or Bank Wire. Full payment (including bank charges) must be made within three business days of the date stated on the invoice. No Merchandise will be delivered to Buyers unless Rapaport’s bank confirms full irrevocable payment has been received, and all wire charges paid. Buyer shall be invoiced for any shortfall of wire charges once such charge is known, which shall be payable by Buyer immediately upon invoice. If payment is not made, Rapaport reserves the right to cancel the bid and/or Sale. All Sales are final. Unless specifically indicated otherwise in writing, no returns are accepted. Rapaport shall be entitled to charge Buyers that are private consumers (i.e. not members of the trade) a 10% Buyer’s Premium for any Sale.
8. **Default.** In the event a successful Buyer defaults on purchase by not making payment on or before three business days of the date stated on the invoice, Buyer will forfeit all rights to any Merchandise, lose any bid deposit and be required to pay a 10% Bid Default penalty fee. In the event of default, Rapaport reserves the right to cancel the Sale, and/or take legal action against the default Buyer, with legal fees charged to the Buyer, and/or offer the parcel to the second highest bidder who is under no obligation to accept the purchase of the Merchandise.
9. **Insurance.** All Merchandise in the possession of Rapaport will be insured by Rapaport at no charge for up to 7 days after Auction Close. Once the Merchandise has been delivered to the Buyer, the goods will cease to be insured by Rapaport and it shall be the responsibility of Buyer to arrange his own insurance in respect thereof.
10. **Shipping Fees.** Terms of sale are cash. If Buyer requests shipment of Merchandise after Auction and Rapaport agrees to make shipment, Buyer shall pay in advance all shipping, insurance and reasonable handling fees for shipment to Buyer's specified

delivery location. Rapaport shall not be liable for goods once they leave Rapaport office and insurance is the responsibility of Buyers.

11. **Liability.** By participating in an Auction, bidders and Buyers hereby agree; a) Any and all claims by bidders, Buyers against Rapaport or each other shall be limited to the return of any money paid by the bidder or Buyer for the lot in question; b) Rapaport and all third parties shall not be liable to any bidder or Buyer for any direct, indirect, secondary or incidental damages resulting from the withdrawal of any lot or refusal to accept any bid; and c) once the Merchandise has been delivered to successful buyers, Rapaport shall have no further obligations to Buyers/bidders.
12. **Delivery, Title and Ownership.** Title and ownership of the Merchandise will only pass to Buyer after full, unrestricted and irrevocable payment is received and confirmed in Rapaport's bank account. Within one working day after confirmed receipt of funds, Rapaport will deliver Merchandise to Buyers at the specified Rapaport office for each Auction. The risk of loss or damage to the Merchandise will pass to the Buyer upon delivery. Buyers must take delivery of Merchandise purchased within 7 days of Auction Close, after which Buyer will be charged reasonable insurance and storage fees.

## Section C: Supplier Specific Terms and Conditions

Supplier agrees to provide Rapaport with Merchandise for sale, from time to time, in any Rapaport Auction or Sale in accordance with the following terms and conditions:

### 1. Terms and Conditions

- a. Receipt of Goods; Estimated Value of Merchandise.
  - i. Upon the Supplier's delivery of the Merchandise to Rapaport, the Supplier shall inform Rapaport in writing of the estimated value of the Merchandise (the "Estimated Value"):
  - ii. Rapaport shall notify the Supplier of any disagreement regarding the Estimated Value; and
  - iii. If such disagreement cannot be resolved, Rapaport shall immediately return the Merchandise to the Supplier, and such Merchandise shall be deemed rejected by Rapaport, unless otherwise agreed upon in writing with the Supplier.
- b. Sale Process. Rapaport and the Supplier agree as follows:
  - i. The date, place and time of the Sale shall be agreed by both parties.
  - ii. The names of all bidders/Buyers shall remain confidential to Rapaport.
  - iii. In the case of Sale by auction or tender:
    1. Subject to Section A2, the amount of bids shall remain confidential to Rapaport, except that highest bids will be disclosed to Supplier after Auction Close.
    2. Unless otherwise mutually agreed, Rapaport will not disclose the winning bid amounts to the bidders.
  - iv. Unless Supplier has elected the option described in this Section C.4.(d) below, in which case, subject to the terms of that section, Rapaport guarantees return of the Merchandise or payment to Supplier of the high bid/buy-now price minus commission due under this Agreement ("Sale Fee") and agreed expenses.
  - v. The Merchandise shall continue to be the property of the Supplier, until payment in full has been received in respect of the Merchandise, subject, to any liens imposed to secure any Supplier Advance.
  - vi. All bids are not final until payment has been received by Rapaport in full from the successful bidder/Buyer. Supplier shall pay the user fee tax for the importation of the Merchandise calculated at 0.3464% of the estimated value of the Merchandise. Rapaport shall have the right to deduct the user fee tax and any other taxes due from the sale of the Merchandise from the proceeds of the Sale. The Merchandise shall be at the Supplier's risk until collected by Rapaport's courier and thereafter at the risk of Rapaport.

### 2. Rights and Obligations of Rapaport

- a. Rapaport undertakes to manage completely the Sale of the Merchandise on behalf of the Supplier, which includes:
  - i. Marketing of the Sale to relevant Buyers;
  - ii. Qualifying of bidder/Buyers;
  - iii. Accepting bids from bidders/Buyers;
  - iv. Creating catalog of lots and the bidding/sale forms;
  - v. Providing a location for viewing;
  - vi. Attending to management and supervision of viewing;

- vii. Making due disclosure to all bidders that conditions of sale will be AS-IS, and that treated, synthetic, laser drilled, or simulated items may be in the lots and that they must carefully check the Merchandise.
  - viii. Returning to Supplier any undisclosed treated, synthetic or simulated items, at Supplier's cost;
  - ix. Sending notifications to bidders/Buyers;
  - x. Collecting of all funds, and management of delivery of Merchandise to Buyers after money received.
  - xi. Making payment of funds to Supplier and providing a full statement of purchase for each Sale and copies of documentation of all Merchandise sold including the actual purchase price in the form and at the time mutually agreed between the parties; and
  - xii. Providing comprehensive and adequate insurance (against risks including the loss or damage of the Merchandise) for all Supplier's Merchandise that is covered at a minimum to the stated insurance value of the Merchandise. Such insurance shall cover the Merchandise from the time Rapaport accepts receipt of the Merchandise to the time the Merchandise is shipped to the Buyer or Supplier.
- b. Rapaport guarantees that at all times Rapaport will either have Supplier Merchandise on Rapaport premises, or in its possession, with full insurance at the Estimated Value, or have the funds in Rapaport's bank account in anticipation of payment to or for the benefit of Supplier for the Merchandise. Rapaport shall also ensure that reasonably adequate security measures and controls are in place to protect the Merchandise whilst the Merchandise is held at Rapaport risk.
  - c. Rapaport shall indemnify and hold the Supplier harmless against any loss, liability, costs, expenses, damages, or penalty suffered or incurred by the Supplier in connection with any material breach or non-compliance by Rapaport of its representations, warranties or obligations under this Agreement.
  - d. Rapaport warrants and represents that any Sale of the Merchandise will be conducted in compliance with all applicable laws and with all required licenses.
  - e. Supplier shall be notified at the address for Supplier provided herein within 72 hours of any Sale and shall be paid by Rapaport strictly in accordance with the terms of this Agreement.
  - f. Notwithstanding delivery to Rapaport, title to the Merchandise shall remain in Supplier until passing directly from Supplier to the Buyer receiving any Merchandise from Rapaport as part of a completed Sale.
  - g. Rapaport represents and warrants to Supplier that, subject to any liens arising from a Supplier Advance pursuant to Section C.4(d) below, the Merchandise, until sold, will be kept, free of all liens, claims and encumbrances including, but not limited to, claims of governments or governmental agencies.
  - h. Unless otherwise mutually agreed, Rapaport will pay or cause the payment of all shipping charges and import and export taxes related to international shipping of the Merchandise from one auction location to another for the purpose of such Merchandise participating in a Sale. Without limiting the foregoing, Supplier shall be responsible for payment of all shipping charges and import and export taxes related to international shipping of Merchandise to and/or from Supplier.
  - i. Rapaport agrees to notify Supplier promptly in writing within 24 hours of any events or circumstances that may cause any of Rapaport's representations, obligations or warranties under this Agreement to be inaccurate or breached in any way.
  - j. Rapaport shall be entitled to use any images/video of the Merchandise, whether provided by the Supplier or created by Rapaport, for marketing and other purposes, until the Supplier specifies in writing that such consent is withdrawn.

### **3. Rights and Obligations of Supplier**

- a. Supplier warrants that as of the date of the Sale:
  - i. It has complete and lawful right, title and interest in the Merchandise and has full rights to sell the Merchandise. To the extent that any Merchandise offered for Sale are not owned by Supplier, Supplier warrants that it is duly authorized to sell such Merchandise on behalf of its rightful owner.
  - ii. The products are being fairly and honestly offered for sale.
  - iii. There will not be any willful misrepresentation of Merchandise for sale.
  - iv. No treated, synthetic, laser drilled, or simulated diamonds and/or jewelry will be knowingly included in any Supplier Merchandise.
  - v. No glass, cubic zirconium ("CZ") or other non-diamond products shall be knowingly offered as diamonds.
- b. Full disclosure shall be made by Supplier if the Supplier knows that the Merchandise contains any treated, synthetic, laser drilled, or simulated diamonds and, if this be the case, Supplier must indicate at the time of submission of the goods whether it is uncertain if any Merchandise contains any glass, CZ or other non-diamond products.
- c. Supplier acknowledges that in the event that Supplier's Merchandise is found to contain undisclosed treated, synthetic, laser drilled or simulated diamonds in breach or violation of the Supplier warranty given above in Section C.3.(a) then Rapaport will be obligated to report any such fraudulent activity to the relevant authorities.

- d. Supplier shall notify the auctioneer, his or her agents, principals, employees, employers or assignees in the event of any defect in title.
- e. Supplier will not sell or offer for sale any of the Merchandise submitted to Rapaport from the date of submission until the Sale is closed.
- f. Supplier may remove Merchandise from a Sale once submitted provided (a) that the Supplier reimburses Rapaport of any costs that arise from such withdrawal, and (b) if Supplier has elected to receive a Supplier Advance, any such Supplier Advance shall have been paid in full.
- g. **Legal and Ethical Compliance:** Supplier declares that to the best of the Supplier's knowledge:
  - i. All diamonds and metals submitted for Sale have been purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions and the Kimberley Process and have been sourced in compliance with all local laws to which Supplier is subject.
  - ii. Based on personal knowledge and/or written guarantees from its suppliers, to the best of the Supplier's knowledge, no diamonds or metals offered for Sale are connected in any way with any human rights violations (i.e. the mining or other means of production and refinement of the diamonds or metals did not involve murder, rape, physical violence or forced servitude).
  - iii. No diamonds or metals offered for Sale are traded in violation of U.S sanctions or sourced from Marange, Zimbabwe or from other sources or locations banned or prohibited by Rapaport as informed to Supplier from time to time.

**PROVIDED HOWEVER,** that Rapaport acknowledges that it is aware that the Supplier may obtain Merchandise offered for Sale from time to time through a retail pawnbroking and jewelry buying business. As such Supplier may not be able to ascertain whether any of the Merchandise which Supplier obtained from such sources contains diamonds or metals derived from the sources mentioned in this section.

- h. The warranties, representations and declarations of Supplier herein shall constitute a continuing binding obligation of Supplier to Rapaport and its affiliates in respect of all Merchandise supplied and offered either for Sale in terms of this Agreement, or through any other sales channel provided by Rapaport or any of its affiliates, now or at any time in the future. In the event of any breach or violation of these Supplier warranties, representations and declarations, Rapaport shall be entitled to a full cash refund against return of any Merchandise found to be in violation thereof.
- i. Without limiting the generality of the foregoing, it is specifically agreed that in the event after the Sale, any Merchandise is found to be treated, synthetic, laser drilled or to contain simulated diamonds in breach or violation of the Supplier warranty given above, then Rapaport and/or the Buyer of the Merchandise shall be entitled to cancel the Sale immediately, return the affected Merchandise to the Supplier at the Supplier's cost and receive a full cash refund of the part of any or all amounts relating to the returned Merchandise which may have been paid to or on behalf of Supplier in respect of the Sale of said Merchandise.
- j. Supplier will pay all reasonable shipping and insurance expenses necessary to deliver the Merchandise to Rapaport or return Merchandise to Supplier in the event it is not sold.
- k. Supplier will prepare parcels with proper weights, descriptions and insured value in a timely manner and deliver them to Rapaport's office in accordance with mutually agreed time frames.
- l. Supplier will supply Rapaport with a sales tax resale certificate, and/or assist Rapaport in obtaining any other government issued licenses/registration as required by Rapaport for purposes of Patriot Act Anti-Money Laundering compliance purposes.
- m. In the case of sale by auction or tender:
  - i. Supplier and Rapaport may agree on reserve prices on a lot by lot basis. For goods offered without reserve, after the auction closes, Rapaport will notify Supplier of the highest bid on each lot in question and, with respect to each such lot, Supplier shall have the right to either accept the highest bid on the lot or to refuse the highest bid on the lot. If Supplier refuses the highest bid on a lot, Rapaport shall thereafter promptly return the Merchandise in such lot to Supplier, subject to the repayment of any Supplier Advance in the event Supplier has elected the option described in Section 4(d) below.
  - ii. For goods offered with reserve, Supplier hereby agrees that bids in excess or equal to the reserve price may be accepted and Rapaport will sell to the highest respective bidder. Rapaport will accept bids below the reserve price and supplier will be notified and has the right to either accept or refuse that bid. If Supplier refuses the bid, Rapaport shall thereafter promptly return the Merchandise in such lot to Supplier, subject to the repayment of any Supplier Advance in the event Supplier has elected the option described in Section 4(d) below.

- n. In the case of a Buy Now sale:
  - i. Supplier shall set forth a final immediate sale price (the “Buy Now Price”) for each lot submitted for a Buy Now sale (a “Buy Now Item”). Rapaport reserves the right to examine the Buy Now Items, as well as review the Buy Now Prices, and reject Merchandise from submission to a Buy Now Sale, at its sole discretion.
- o. Where applicable, Rapaport will provide Supplier with a resale certificate, which for sales tax purposes, evidences that the Merchandise was purchased for resale and a full statement of purchase for each Sale in the form and at the time mutually agreed between the parties.
- p. Rapaport and Supplier agree that Supplier is not responsible and will not be charged any additional fees, costs, surcharges, tariffs or advertising costs; any actual expenses or costs incurred by Rapaport associated with conducting the Sale other than the Sale Fee provided for herein, and except for agreed expenses in relation to the expense of insured shipping of the Merchandise to Rapaport premises and the insured return of any unsold Merchandise to Supplier from Rapaport premises and agreed boiling, sorting, refining and certification fees.
- q. Supplier shall indemnify and hold Rapaport and its affiliates harmless against any or all loss, liability, costs, expenses, damages, losses or penalty suffered or incurred by Rapaport or its affiliates in connection with any breach or non-compliance by Supplier of its representations, warranties or obligations hereunder.
- r. Supplier agrees to notify Rapaport promptly in writing within 24 hours of any events or circumstances that may cause any of its representations, obligations or warranties under this Agreement to be inaccurate or breached in any way.
- s. Supplier acknowledges and agrees that an interested third party beneficiary of all warranties and representations made by Supplier under this Agreement is the ultimate purchaser of the Merchandise submitted by Supplier to Rapaport for sale.
- t. Supplier acknowledges and agrees that Rapaport shall not be responsible to examine any Merchandise for any chips prior to accepting the Merchandise from the Supplier. No Supplier claims after Auction for chipped Merchandise will be considered under any circumstances after returning the Merchandise back to the Supplier. Without any admission of liability, Rapaport reserves the right at its sole discretion to reimburse the Supplier for chipped Merchandise which Rapaport is aware was unintentionally caused whilst in its possession.
- u. Suppliers participating in any type of Jewelry Auction/Sale shall accept returns from Buyers that are private consumers (i.e. not members of the Trade) for up to 3 days after such Buyer receives the purchased Merchandise, without charging any return, restocking, or any other similar fees.
- v. Supplier hereby authorizes Rapaport to submit the Merchandise to GIA on the Supplier’s behalf, if so requested by the Supplier, and the Supplier hereby acknowledges and agrees that they shall be bound by all the term and conditions of the current GIA Client Agreement (available at <https://www.gia.edu/gem-lab-client-agreement>) in respect to such submission of the Merchandise. Accordingly, Supplier agrees to waive any and all claims towards Rapaport arising in relation to the submission of the Merchandise to the GIA.

#### 4. Payment Structure

- a. Rapaport will be paid a Sales Fee as follows:
  - i. For **Jewelry Sales**: A commission equal to 10% of the total sale price (highest bids);
  - ii. For diamonds entered in **Melee Auctions**: A commission equal to 5% of the total sale price (highest bid) subject to a minimum commission of \$25.00 per lot sold at auction;
  - iii. For diamonds entered in **Single Stone Auctions and Buy Now Sales**: A commission equal to 5% of the total sale price (highest bid) subject to a minimum commission of \$25.00 per lot for single stone lots sold at auction. However, in the case of GIA graded round brilliant cut diamonds submitted which meet the following criteria: 0.50ct or greater, K+ color, SI2+ clarity, VG-EX cut/polish/symmetry, and none-faint fluorescence (“K+SI2+”), the 5% aforementioned commission will be reduced to a 3% commission;
  - iv. For **Merchandise sold via Live ONLINE Auction**: A commission equal to 5% of the total sale price (highest bids).
- b. Sorting Costs and Other Charges.
  - i. Rapaport undertakes, at Supplier’s option and expense, to provide a sorting service of Supplier’s Merchandise, prior to the sale thereof, based on size, color, and clarity, provided such service is agreed to by Supplier and Rapaport.
  - ii. If such sorting service is elected by Supplier, Supplier shall pay Rapaport a \$1.75 per carat fee for the services rendered.
    - 1. In the event that Supplier opts not to make use of such service in respect of Supplier’s Merchandise offered for sale and they are not to be sorted, then Supplier agrees that the following shall be applicable:

- a. For any parcels that are found to contain at least 2% CZ, moissanite or other non-diamond material, Supplier shall pay Rapaport a \$0.50 per carat fee. Supplier shall be liable for said fee regardless if a Sale should eventuate, or if the Merchandise is returned.
  - iii. For all Merchandise sent to boil on behalf of Supplier, Supplier shall pay Rapaport a \$0.50 per carat fee based on the total pre-boil weight of said Merchandise. Supplier shall be liable for said fee regardless if a Sale should eventuate, or if the Merchandise is returned. Rapaport agrees not to send any Merchandise to boil without Supplier consent;
- c. Rapaport Refining and Stone Removal Services
  - i. For all merchandise sent for refining on request of and on behalf of the Supplier the following terms will apply:
    - 1. Refining charges and metal return rates will be agreed upon and signed on an Addendum to this agreement.
    - 2. Should the Supplier request a stone removal service, upon completion of the refining, all diamonds will be available for return to Supplier or submitted to a Sale subject to the diamonds meeting all auction requirements as specified in the Agreement.
    - 3. Any non-diamond material recovered from the stone removal service will be available for return to Supplier upon request. If the Supplier does not request this non-diamond material from Rapaport within 30 days, then Rapaport has the right to discard the material.
    - 4. The Supplier agrees not to dispute the results of the melt. Rapaport will not be liable for any disputes, controversies, or alleged discrepancies based on the outcome of the melt.
    - 5. Unless otherwise requested by the Supplier, the refining settlement rates shall be based upon the "London p.m. fix" of the date that the gold from the Merchandise is refined.
    - 6. Payment for all metals refined, minus all charges and any fees, will be made 2 business days after refining is complete.
- d. Supplier Advance Option.
  - i. On or prior to delivery of any Merchandise to Rapaport, and from time to time, Supplier shall have the option of asking Rapaport Capital LLC, an affiliate of Rapaport ("Provider") to make an advance to Supplier on such terms as shall be provided pursuant to separate documentation between Supplier and Provider (a "Supplier Advance").
  - ii. Supplier acknowledges that if it elects to take a Supplier Advance, Rapaport may act as agent for the Provider and will be deemed to be holding all Merchandise as collateral for any such Supplier Advance. Notwithstanding anything to the contrary in this Supplier Agreement, Supplier acknowledges and agrees that Rapaport is authorized to and shall have the right to apply any proceeds from the sale or disposition of any Merchandise to the repayment of any such Supplier Advance.
- e. Rapaport will pay to Supplier via Fed Fund Bank Wire Transfer all funds that are collected less the Sale Fee and any agreed expenses within 14 (fourteen) days of date of sale, and subject to the repayment of all Obligations under the documents evidencing any Supplier Advance. Any and all fees related to such Bank Wire Transfers shall be the sole responsibility of the Supplier.
- f. Rapaport shall be entitled to hold any Merchandise not sold until the Sale Fee, any outstanding Supplier Advance, and any other agreed expenses have been paid in full. If not so paid by the due date, without limiting the rights of Provider under the documents evidencing or relating to any Supplier Advance, Rapaport shall be entitled to sell any Merchandise up to the value of any amount then outstanding and due to it or any of its affiliates by Supplier.

## 5. Termination

- a. Rapaport or the Supplier may terminate this Agreement immediately by giving written notice to the other party, in the event of the following:
  - i. The other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - ii. The other party commits a material breach of any term of this agreement which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
  - iii. The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts (being a company or limited liability partnership).



- b. Upon termination of this Agreement for any reason, Rapaport shall immediately, but in all events subject to the terms of any outstanding Supplier Advance:
  - i. **For unsold Merchandise:** Return any unsold Merchandise to the Supplier;
  - ii. **For sold Merchandise:** Pay the Supplier the high bid/buy-now price less any Sale Fee, any outstanding Supplier Advances and any other agreed expenses and costs.

**6. Right of Audit**

- a. Rapaport shall permit the Supplier and its third party representatives, at any point during the continuance of this Agreement and upon one week`s prior notice, to access and take copies of only such of Rapaport`s records and any other information held at Rapaport`s premises, and to meet with such of Rapaport`s personnel as may be required to audit Rapaport`s compliance with its obligations to Supplier with respect to the Merchandise under this Agreement provided that any such audit shall be conducted during normal business hours, and so as to not interfere with the conduct of Rapaport`s business. Such audit rights shall continue for three years after termination of this Agreement. Rapaport shall give all necessary assistance to the conduct of such audits during the continuance of this Agreement and for a period of three years after termination of this Agreement. For the avoidance of doubt, this Section shall not confer on the Supplier the right to access information or records about other customers of or the business of Rapaport.
- b. Audit access by any third party representative of the Supplier shall be subject to such representative agreeing to confidentiality obligations equivalent to those Section 2 A above with respect to any information obtained, provided that all information properly obtained may be disclosed by such representative to the Supplier.

**7. Limitation of Liability**

- a. Notwithstanding anything to the contrary in this Agreement, Rapaport`s liability under this Agreement is expressly limited to a sum equal to the Estimated Value of the Merchandise provided to Rapaport less the amount of any payments that Rapaport delivered to or for the benefit of the Supplier with respect to such Merchandise. In addition, each party may be liable for any reasonable attorney`s fees incurred by the other in successfully enforcing its rights under this Agreement.
- b. In the event of a dispute arising under this Agreement, Rapaport shall have no liability whatsoever to the Supplier if Rapaport elects to and does return the Merchandise to the Supplier within thirty (30) days of demand from the Supplier, subject however to the payment in full of any outstanding Supplier Advance.

I/We, the undersigned **Buyer** and/or **Supplier**, or its duly authorized officer, principal or representative with the right to bind the **Buyer** and/or **Supplier** hereby agree by affixing his /her signature hereto as at the date set forth below (the "Effective Date") to all the terms of this Agreement, including to the General Terms and Conditions, applicable to both Buyers and Suppliers, the Buyer Specific Terms and Conditions applicable to every Buyer , and/or to the Supplier Specific Terms and Conditions applicable to every Supplier, as the case may be, and as may be relevant to the applicable Sale, and to the country specific terms (if applicable) and with full compliance with Patriot Act and other Rapaport compliance requirements.

Company/Entity Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Contact Name (print full name): \_\_\_\_\_ (who warrants that he or she is duly authorized)

Signature: \_\_\_\_\_

Title/Position: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized email address: \_\_\_\_\_

Phone Office: \_\_\_\_\_ Mobile: \_\_\_\_\_

## Annexure 1: Applicable Country Specific Terms

In the event that the supply of Merchandise and Sale takes place outside New York in any of the following countries, then the foregoing country specific terms shall apply in place of the relevant clauses as to the Rapaport Party and the Jurisdiction, as provided below:

### I. INDIA

If the supply of Merchandise and Sale take place in Mumbai, or any other location in India, the following terms shall apply and form an integral part of the Agreement:

1. **Parties.** This Agreement shall be between Buyer and/or Supplier, as the case may be, and **Rapaport India Private Limited** of Mumbai Capital, 101 The Capital, Plot No. C-70, Bandra Kurla Complex, Bandra (East) Mumbai 400 051, India for all intents and purposes in respect of the supply of Merchandise and Sale provided in terms hereof, and the term "Rapaport" shall mean and be limited to **Rapaport India Private Limited** for purposes of this Agreement with respect to the aforementioned supply of Merchandise and Sale. For the avoidance of doubt, these India country specific terms will only apply to the supply and Sale of Merchandise which takes place in Mumbai, or any other location in India, and if this Agreement is between Buyer and/or Supplier respectively, and **Rapaport India Private Limited**.
2. **Governing Law and Jurisdiction.** This Agreement shall be construed and governed in accordance with the substantive laws of India, without reference to its conflict of laws principles, and the appropriate courts of law in Mumbai alone shall be the courts of competent jurisdiction.

### II. HONG KONG

If the supply of Merchandise and Sale takes place in Hong Kong, the following terms shall apply and form an integral part of the Agreement:

1. **Parties.** This Agreement shall be between Buyer and/or Supplier, as the case may be, and **Rapaport Hong Kong Limited** of Unit 404-405, Prosperous Building, 48-52 Des Voeux Road, Central, Hong Kong for all intents and purposes in respect of the supply of Merchandise and Sale provided in terms hereof, and the term "Rapaport" shall mean and be limited to **Rapaport Hong Kong Limited** for purposes of this Agreement with respect to the aforementioned supply of Merchandise and Sale. For the avoidance of doubt, these Hong Kong country specific terms will only apply to the supply and Sale of Merchandise which takes place in Hong Kong, and if this Agreement is between Buyer and/or Supplier respectively, and **Rapaport Hong Kong Limited**.
2. **Governing Law and Jurisdiction.** This Agreement shall be construed and governed in accordance with the substantive laws of Hong Kong, without reference to its conflict of laws principles, and the appropriate courts of law in Hong Kong alone shall be the courts of competent jurisdiction.

### III. ISRAEL

If the supply of Merchandise and Sale takes place in Israel, the following terms shall apply and form an integral part of the Agreement:

1. **Parties.** This Agreement shall be between Buyer and/or Supplier respectively, as the case may be, and **Rapaport Diamond Trading Limited** of 21 Tuval Street, Ramat Gan, Israel for all intents and purposes in respect of the supply of merchandise and Sale provided in terms hereof, and the term "Rapaport" shall mean and be limited to **Rapaport Diamond Trading Limited** for purposes of this Agreement with respect to the aforementioned supply of merchandise and Sale. For the avoidance of doubt, these Israel country specific terms will only apply to the supply and Sale of merchandise which takes place in Israel, and if this Agreement is between Buyer and/or Supplier respectively, as the case may be, and **Rapaport Diamond Trading Limited**.
2. **Governing Law and Jurisdiction.** This Agreement shall be construed and governed in accordance with the substantive laws of the State of Israel, without reference to its conflict of laws principles, and the appropriate courts of law in Ramat Gan, Israel alone shall be the courts of competent jurisdiction.

### IV. DUBAI (UAE)

If the supply of Merchandise and Sale takes place in Dubai, the following terms shall apply and form an integral part of the Agreement:

1. **Parties.** This Agreement shall be between Buyer and/or Supplier respectively, as the case may be, and **IDCO Diamonds DMCC** of Dubai Diamond Exchange, Level 2, Office D06 Almas Tower, Jumeirah Lakes Towers, Dubai, UAE for all intents and purposes in respect of the supply of Merchandise and Sale in terms hereof, and the term "Rapaport" shall mean and be limited to **IDCO Diamonds DMCC** for purposes of this Agreement with respect to the aforementioned supply of Merchandise and Sale. For the avoidance of doubt, these Dubai (UAE) country specific terms will only apply to the supply and Sale of Merchandise which takes place in Dubai (UAE), and if this Agreement is between Buyer and/or Supplier respectively, as the case may be, and **IDCO Diamonds DMCC**.
2. **Governing Law and Jurisdiction.** This Agreement shall be construed and governed in accordance with the substantive laws of the United Arab Emirates as applicable in the Emirate of Dubai, without reference to its conflict of laws principles, the appropriate courts of law in the Emirate of Dubai alone shall be the courts of competent jurisdiction.