



BEST PRACTICE GUIDE FOR BUSINESS IN THE BELGIAN DIAMOND SECTOR (2024)

AWDC COMPLIANCE HELPDESK
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1. INTRODUCTION

This best practice guide for trade in the Belgian diamond sector – drafted by AWDC private foundation and endorsed by the supervising authority, the FPS Economy – contains specific guidelines improving transparent and modern diamond trade and contributes in particular to:

1. A better protection of the commercial and legal interests of diamond traders.
2. A sustainable and transparent relationship with banks in the diamond sector.
3. Conformity with legal and regulatory frameworks such as accounting legislation, fiscal legislation, custom legislation etc.

Whereas this is a best practice guide, certain legal obligations are included in this document too.

This guide is inspired on the recommendations made in the 'Risk analysis money laundering in the Belgian diamond sector (2017)'. It touches upon the anti-money laundering legislation, although this guide does not specifically deal with the obligations following from the anti-money laundering law. The latter are dealt with in the '*Anti-money laundering policy for the Belgian diamond trader (2020)*' drafted by AWDC.

For more information about this document or other legal matters, one can get in touch with the AML & Compliance Helpdesk of AWDC: Trissia Stavropoulos, Head of Compliance at AWDC, trst@awdc.be, 03/222.05.03.

Any and all information included in this guide is provided for informational purposes only and is not to be relied upon as a professional opinion whatsoever.

2. CONSIGNMENT

2.1 Consignment in the Belgian diamond sector

a. Consignment to a diamond broker

A Belgian diamond trader (consignor) can give diamonds on consignment to a diamond broker-consignee. A diamond broker will then look for a buyer for the goods entrusted to him. Once a buyer is found, the purchase/sale will take place between the seller (original consignor) and the buyer of the diamonds. The diamond broker will only invoice a commission to the seller of the diamonds for his services. A diamond broker will not take these sold diamonds in his own stock nor purchase them.

It can also occur that the broker buys the goods and immediately sells those to his client whose identity he wishes to keep secret. The goods do not come in the diamond broker's stock.

If no sale takes place, the diamonds will be returned to the consignor by the diamond broker.

b. Consignment to a third party (non-diamond broker)

A Belgian diamond trader (consignor) can give goods on consignment to a third party-consignee, for example to another diamond trader or to a jeweler. As opposed to consignment to a diamond broker, consignment to a third party can result in a sale of the entrusted diamonds to the consignee himself, if subsequently a sale agreement follows between those parties.

Goods can also be given on consignment to a diamond cutter, a diamond grading lab, or another service provider who returns the goods back to the consignor after delivering the service.

2.2 Obligation to identify the consignee

A Belgian diamond trader who sells diamonds to a third party must – subject to exceptions by law – identify this third party and verify his identity prior to the commercial transaction in the context of the Belgian anti-money laundering law.¹

However, when diamonds are given on consignment, in principle no direct purchase/sale of diamonds takes place for the time being. It is **best practice to identify the consignee prior to consignment**, especially if the consignee is unknown to the diamond trader. Firstly, because the consignee takes valuable goods from the consignor into custody which implies a risk of loss, damage, non-return, theft, ... Secondly, because it is also possible that the consignment later results in a purchase of the goods entrusted by the consignor so that the consignee must be identified in any case within the context of the anti-money laundering law.²

In the context of this identification, it is also **best practice to check whether the diamond broker is registered in Belgium³ (legal obligation!)** for his professional activity and in the case of a third party from abroad who acts as diamond broker and who is therefore not registered as a diamond broker in Belgium, whether he has an **equivalent registration or license**. It is also **best practice to verify whether the foreign diamond broker is a member of a diamond bourse affiliated to the World Federation of Diamond Bourses or can provide adequate references**.

The documents identifying the consignee must be kept.

¹ Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

² In the AWDC 'Anti-money laundering policy for the Belgian diamond trader (2019)', more information can be found about the identification and verification of natural persons and legal entities.

³ Also diamond brokers need to be registered at the Federal Public Service of Economy, just as diamond traders.

2.3 Consignment and accounting

If a diamond trader gives diamonds on consignment, it is **legally required⁴ to document the consignment in writing**. This is useful and necessary for tax, accounting and insurance purposes, but also to be able to provide evidence in case of legal disputes following on the consignment. **Consignment records** must therefore be kept. In concrete terms, this means keeping accounts of consignment movements in and out of the company. This consignment bookkeeping and register (incoming and outgoing) needs to be kept for 10 years, just like for a regular bookkeeping.⁵

It is **best practice – and certain elements are legally required** – to proceed as follows in the case of a consignment:

- The Belgian consignor draws up a consignment document in accordance with the points mentioned in 2.5 and provides the consignee with a copy;
- If the consignor is not established in Belgium, the Belgian consignee receiving the diamond(s) must draw up a consignment document containing the information mentioned in 2.5 (for his own accounting purposes);
- In the event of a total or partial return of the diamonds between a Belgian consignor and a Belgian consignee, the Belgian consignee (or the consignor, if this is easier) shall draw up a similar document as mentioned in 2.5 replacing the date of delivery or shipment of the goods by the date of receipt of the returned goods and ideally have this signed by the consignor (or, for practical reasons, amendments can be made on the original consignment document and the copy thereof);
- In the event of a total or partial return of the diamonds by a Belgian consignee to his non-Belgian consignor, the Belgian consignee shall also draw up a similar document as mentioned in 2.5 (and in duplicate) when the goods are returned. In an international context, the proofs of transport related to the return of the goods must be kept;
- If consignment goods are eventually sold by the Belgian consignor, it must be clear that they are removed from the consignment accounting records and are included in the consignor's turnover and in the purchase records of the consignee. The invoice must refer⁶ to the previous consignment document.
 - ➔ If the consignor is not established in Belgium (and is not subject to the obligations of Article 7 §1 RD No. 1 VAT), the consignee must make a reference to the document drawn up on the invoice issued to him.
- It is necessary to keep a clear **overview** of all **incoming and outgoing consignment movements** on national, European and international level. AWDC provides a template which could be used for this (template in Annex G). Using this, you can comply with the legal obligation following from the VAT legislation to keep consignment records. By keeping such a register, you also fulfill one of the conditions to be able to make use of the simplifying rules in case of a call-off stock. Lastly, this register provides more transparency regarding your stock and consignments in case of spot checks or inspections by the supervising authorities.

2.4 Consignment and VAT-aspects

The consignment of diamonds (and goods in general) may trigger specific VAT consequences and other VAT action points. We hereby refer to the Q&A on the so called “Quick Fixes” that can be found on the website of AWDC. It is always advisable to consult your legal advisor for professional assistance when dealing with such transactions.

⁴ Regardless of whether a Belgian diamond trader is exempt from VAT, he is not exempt from the written documentation of consignment. This is an obligation based on art. 7 RD no. 1 VAT.

⁵ Article 60 §4 VAT Code and Law dd. 20th of November 2022, BS 30 November 2022.

⁶ The VAT legislation (Article 7§2 Royal Decree No. 1 of 29 December 1992 on the payment of VAT) requires the consignee who becomes owner of the goods, to refer to the document drawn up, i.e. the consignment document, on the invoice he receives.

2.5 Consignment document

Giving goods on consignment should be documented through a consignment document (template in Annex A) on which it is **best practice to include at least the following information**:

- Sequence number of the consignment document in the consignor's accounting records.
- Name, address, VAT number and registration number (with the FPS Economy) of the consignor and consignee.
- Date of delivery or shipment of the goods.
- Indication that the consignment goods must be returned at the first request of the consignor, and if appropriate specify at whose expense this should be done and that the diamond must be returned in the state as it had been entrusted.
- The expected period of consignment if this can be foreseen and if possible clear distinction between delivery on sight and longer consignment (see 2.4).
- Indication that the diamonds remain the property of the consignor until they are returned or until an agreement is reached with the consignor that the goods may be sold, the goods meanwhile remaining the property of the consignor until the consignor receives full payment for the diamonds either from the consignee, if he is the buyer, or from the third party who is the buyer.
- Describe what may or may not be done with the diamonds, for example: passing on the diamonds to third parties, (international) travelling, any information obligations for the consignee, specify whether a jeweler may assemble the diamond into a piece of jewelry (at the jeweler's own risk).
- Indication that the consignee must also insure himself for the usual dangers (loss, theft, damage, ..) , (unless maybe the consignor has covered the consignment under his own block policy and has foreseen a waiver of recourse (see 2.6)).
- Sectoral arbitration or competent court.
- Applicable law (Belgian law is recommended, if appropriate excluding referral back to foreign law).
- Description of the diamonds (to be specified as far as possible):
 - ➔ Carat size (per stone, per lot or total);
 - ➔ Number of lots (if applicable);
 - ➔ Value (total, per stone or per lot) to be indicated in USD or in other currency;
 - ➔ Type of diamond (polished, rough, synthetic, powder, ...), also taking into account the Diamond Terminology Guideline for synthetic diamonds;
 - ➔ Color, cut, clarity of the diamonds (individual description for large diamonds, description of each lot for small diamonds), if this information is available;
 - ➔ Certificate number if a certificate is available;
 - ➔ If a complete description of the diamonds is not possible on the consignment document, add detail lists in annex and refer to this on the consignment document (both on national level and for import/export).
- Signature of the consignee (if physically present⁷) with date and place of signing by the consignee.

2.5 Insurance of goods on consignment

If a Belgian diamond trader gives diamonds on consignment to a consignee, the question of insurance of these goods arises. In practice, both brokers and diamond traders who receive goods on consignment sometimes fall outside the coverage of the block policy of the consignor, either because of explicit exclusion or because they are not included in the principal coverage.

It is **best practice for the consignor**:

⁷ If the goods are shipped to the consignee and he is thus not physically present to sign the consignment document at the moment of delivery, other written evidence needs to be provided which proves the delivery of the goods to the consignee and acceptance of the consignment terms and conditions. For proof of delivery see title 3.3 of the Best Practice Guide. For proof of acceptance of the terms and conditions, one can request a scanned copy of the signed consignment document or request acceptance of the terms and conditions of the consignment per e-mail.

- To check which persons and companies (brokers, diamond traders, jewelers, polishers, ...) are covered by the block policy of the consignor;
- To **explicitly include** brokers or diamond traders with whom the consignor regularly cooperates in the block policy of the consignor;
- To work with **adapted limits** for consignments to individual consignees, to be mentioned in the block policy;
- To examine the **geographical coverage** of consignments. Block policies often provide different coverage within the secure area in the diamond district (Antwerp Secure Area) and outside this zone. Sometimes there is no insurance coverage outside the secure area;
- To check whether third party infidelity is covered (this is unfairness by a third party). Often this is not provided for in the insurance policy of the consignor, which may be of interest to the consignor in case the consignee acts unfairly (e.g. he sells the goods without the consent of the consignor).⁸

It is **best practice for the consignee** to check:

- whether the consignor has an **insurance policy** covering the consignment to the consignee, and whether this insurance policy provides for a waiver of recourse in the event of coverage and payment to the consignor due to a risk at the consignee (for example in the event of loss or theft at the consignee), as this is not standard;
- whether he is **himself insured** for the risks relating to received consignment goods and, if necessary, purchases an insurance policy for this.

As mentioned above, it is also **best practice from an insurance point of view that detailed information is kept in the accounting records** with regard to all consignments, also taking into account the correct valuation of the goods.

If consignment goods are sold and thus invoiced, but have not yet been paid for, the coverage is usually lost because non-payment by customers is usually excluded in a standard block policy. If a diamond dealer wants to ensure coverage for the risk of bankruptcy of his customers-debtors, this can be covered by a **credit insurance**, which is a separate insurance policy.

2.6 Consignment period

The time limits for consignment strongly **depend on the specific situation**. For example, if diamonds are given on consignment to a company within the same diamond group, the level of trust is high and long consignment periods are not exceptional. Consignment to jewelers where diamonds are assembled in jewelry and offered for sale in jewelers' shops can also often involve long periods of consignment – sometimes for a full season or even much longer (years), until a buyer is found. Consignment of specific diamonds to a specific interested buyer on the market who wants to inspect the diamonds before deciding on purchase, will usually be handled in a shorter period of time.

There is **no legally defined period** for consignment, but be aware that a long consignment period may trigger VAT obligations in the country where the stock lies.⁹ For **VAT** there are indeed specific guidelines that define the consignment period. It is always advisable to consult your legal advisor for professional assistance when dealing with such transactions.

It is **best practice to indicate the expected period of consignment, if this can be foreseen, on the consignment document**. Ideally also a distinction should be made between a 'delivery on sight' and a longer consignment (see also above 2.4).

2.7 Declaration of consignment at import and export of diamonds

⁸ However, insurance for 'third party infidelity' in case of consignment is not commonly granted anymore.

⁹ AWDC 'Q&A on quick fixes', available on the AWDC website.

Diamond traders are **legally obliged to indicate the nature** of the transaction when importing or exporting diamonds. Diamond traders state the nature of the transaction on the order sheet with which they instruct Diamond Office to clear the goods in or out for customs purposes.

2.8 Intra-Community delivery

If diamonds are dispatched or transported from Belgium to another EU member state, evidence of this shipment/delivery needs to be kept. In case of an intra-Community sale, a VAT exemption can in principle be applied (conditions!) and therefore if a seller applies this VAT exemption, he is **legally obliged** to track the flows of his stock and to be in the possession of pieces of evidence proving the actual dispatch or transport of the diamonds outside of Belgium to another EU member state. See chapter 3.3 on supply and intra-Community delivery for sales, for more information about which documents are accepted as pieces of evidence. As it is possible that a consignment leads to a sale, it is **best practice** that the consignor keeps such pieces of evidence as well where possible, for the case the goods that were shipped on consignment are subsequently sold.

Prior to every transaction with an EU counterparty it is **legally obliged** to check the validity of the VAT number of the counterparty. It is **best practice** to use the VIES website.¹⁰

2.9 Consignment disputes

Suppose that the diamonds that were given on consignment are neither returned nor paid for, or wrong goods have been returned. What are the possible actions that the consignor can then take if the consignee is sufficiently identified (according to title 2.2) and if the consignment can be proven in writing (according to titles 2.3 and 2.5)?

It is **best practice** to take following steps, depending on the situation:

- If goods were returned, first thoroughly check the goods (weight, amount of stones, damage, ...).
- Written notice of default, preferably by registered mail, with the instruction to return the consignment goods immediately to the consignor.
- Complaint to the bourse if the consignee is member of a bourse.
- Immediately inform insurer of possible damage.
- Civil law summons on the merits before the court or sectoral arbitration after mediation within the Federation of Belgian Diamond Bourses (FDBD) or the World Federation of Diamond Bourses (WFDB).
- Seizure of the consignment goods via a lawyer who instructs the bailiff to do so and who can provide the necessary assistance in judicial proceedings.
- Criminal complaint to the police or to the public prosecutor if criminal elements are involved.
- Criminal complaint with civil claim for abuse of trust (Article 491 of the Criminal Code).
- Complete the non-transfer register (and mention the reason if the goods are not returned but for example stolen) (see Annex G)

If there is a suspicion of money laundering, this must in any case be reported to the SPOC AWDC or directly to CFI (Financial Intelligence Unit).¹¹

It is best to seek legal advice in these cases, as legislation and procedural possibilities change regularly.

3. SALE

¹⁰ AWDC 'Q&A on quick fixes', available on the AWDC website.

¹¹ AWDC 'Anti-money laundering policy for the Belgian diamond trader (2019)'.

3.1 Identification of the buyer

A Belgian diamond trader who sells diamonds to a third party must – subject to exceptions by law – identify this third party and verify his identity prior to the commercial transaction in the context of the Belgian anti-money laundering law.¹²

3.2 Written documentation of sale between two parties

It is **best practice to document the sale of diamonds in an as detailed way as possible**. This is useful and necessary for tax, accounting, insurance purposes, but also to be able to provide evidence in case of legal disputes following on the sale.

Since drafting an agreement is often cumbersome and commercially not always feasible as diamond transactions are characterized by how fast they take place, it is recommended to draw up the **sales invoice in an as detailed way as possible, in addition to the legally required elements**. It is also required that certain elements of the invoice are formulated in the Dutch:

- The word 'invoice'
- The identities of the parties
- The description of the goods and services, as well as the amount and price
- The legal clause of any VAT exemption

It is **best practice** to take the following recommendations into account when drawing up a **sales invoice** for diamonds (template in Annex B):

- Sequence number of the invoice (which uniquely identifies the invoice) in the seller's accounting records with place and date of invoice
- Reference to the consignment document if the goods have been given on consignment to the buyer before the invoicing, and to the number of the KP certificate that accompanied the consignment shipment of rough diamonds, if applicable.
- Reference to other invoices when several invoices are issued regarding the same supply
- In case it concerns a credit/debit note to the original invoice, a specific reference to that invoice (e.g. invoice number)
- Clear indication of the full invoicing address, including VAT number and registration number (with the FPS Economy) of the seller and customer and if applicable the delivery address.
- Date of issuance
- Date of handover or shipment of the diamonds (if applicable, unless the delivery is documented in writing in another way).
- Ultimate date of payment (max. 180 days in the diamond industry), including bank account number and Indication that a reference must be added to the payment.
- If the transaction took place abroad (and especially when cash was paid or received and if another cash limit was applicable in this country than the one in Belgium), the written indication of this on the invoice and signature of both parties.
- If applicable, indication that the invoice has been pledged to a financial institution (if that is the case), as well as whether there is an obligation to pay on a particular bank account (if that is the case). The buyer will have to take this into account; if not, he risks having to pay twice.
- Description of the diamonds (to be specified as far as possible):
 - ➔ Carat size (per stone, per lot or total);
 - ➔ Number of lots (if applicable);
 - ➔ Value (total, per lot or per stone) to be indicated in USD (or in other currency) and if not included in the price, any charges such as transport/insurance,...;

¹² Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash. In the AWDC '*Anti-money laundering policy for the Belgian diamond trader (2019)*', more information can be found about the identification and verification of natural persons and legal entities.

- ➔ Type of diamond (polished, rough, synthetic, powder, ...), also taking into account the Diamond Terminology Guideline for synthetic diamonds;
- ➔ Color, cut, clarity of the diamonds (individual description for large diamonds, description of each lot for small diamonds), if this information is available;
- ➔ Certificate number if a certificate is available;
- ➔ If a complete description of the diamonds is not possible on the invoice, add detail lists in annex to the invoice and refer to this on the invoice (both on national level and for import/export).
- Taxable basis per VAT rate or exemption. The unit price exclusive of tax and any discounts or rebates if they are not yet included in the unit price. In case a VAT exemption is invoked, indicate the applicable legal clause.¹³ Tip: Use the AWDC VAT decision tree!
- The VAT rate applied (if applicable, i.e. no exemption applicable) and the total amount of VAT due.
- Goods remain property of the seller until payment of the outstanding amount;
- If applicable, mention that the goods were sold on behalf of an undisclosed principal (possible e.g. in case of a flash title sale by a broker);
- The period within which the buyer can contest with regard to the quality of the goods.
- Consequences in case of late or non-payment (including specifying what the interest rate is, or refer to the Law on Late Payment or another conventional interest rate);
- Sectorial arbitration or competent court and applicable law (Belgian law is recommended, if appropriate excluding referral back to foreign law).
- If the terms and conditions are on the reverse side of the invoice, one should clearly refer to these on the front side of the invoice.
- Signature of the buyer of the goods (if physically present) including date and place, where he explicitly acknowledges and accepts the invoice terms and conditions. (E.g. "By signing this invoice, the buyer acknowledges having read the terms and conditions and accepts these terms and conditions.")¹⁴
- For sales to consumers (diamonds or diamond jewellery), the sellers should inform the buyer of the specifications of the diamond via a separate template.
- Warranties: First check whether you are contractually obliged (by clients, suppliers or bourse membership) to place warranties on your invoices or not. Also note to have the right procedures and systems in place in your company to be able to realize what you claim 100%. If you make a claim, make sure your supplier also at least makes the same claim on his invoice. Possible warranties which can be applicable in the diamond sector¹⁵:
 - ➔ *The diamonds herein invoiced have been purchased from legitimate sources not involved in funding conflict and in compliance with UN resolutions. The seller hereby guarantees that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds.*¹⁶
 - ➔ *"The diamonds herein invoiced have been {sourced}* purchased from legitimate sources not involved in funding conflict, in compliance with United Nations Resolutions and corresponding national laws {where the invoice is generated}**. The seller hereby guarantees that these diamonds are conflict free and confirms adherence to the WDC SoW Guidelines."*
 - **{sourced} - may be used by companies that do not purchase from open market, but source and aggregate diamonds from production facilities that are owned/partly owned by them*
 - ***{where the invoice is generated} - may be used by companies if they specifically want to reference the country of invoice issuance*¹⁷

¹³ The seller must check whether the requirements to apply the VAT exemption are met. If not, the seller can be charged for the VAT himself. For VAT inspections, it is recommended to save a printout of your search through http://ec.europa.eu/taxation_customs/vies/?locale=en as proof that the validity of the VAT number of the counterparty has been checked. In practice, it is advisable to perform the check at least on a regular basis (e.g. monthly). This means that either you should take screenshots of the VIES website or that you can use a system which automates these processes for you

¹⁴ If the goods are shipped to the buyer, another written piece of evidence needs to be provided which proves delivery of the goods to the buyer and acceptance of the invoice terms and conditions. For proof of delivery see title 3.3 of the Best Practice Guide. For acceptance of the terms and conditions, one can request a scanned copy of the signed consignment document to obtain proof of delivery or acceptance of the terms and conditions of the sale per e-mail.

¹⁵ These warranties have also been translated to French. Please get in touch with the AWDC AML & Compliance Helpdesk if you wish to obtain a French translation of these warranties.

¹⁶ Source : Code of Conduct FDBD. Mandatory warranty for bourse members.

¹⁷ WDC warranty in the framework of the (updated) System of Warranties.

- ➔ *"On behalf of [Supplier name], and with its full authority, I declare by way of this written assurance that the diamonds [invoiced/ sent by memo] and contained herein have been tested to industry standards contain(s) no synthetic diamonds or diamonds that have been treated."*¹⁸
- ➔ *"To the seller's best knowledge, diamond supplied under this invoice were not obtained from Zimbabwe or an SDNBP. This warranty is given under Diamond Source Warranty Protocol Release Number 1.0."*¹⁹
- ➔ *"To the Best of our Knowledge and/or written assurance from our suppliers, we state that "diamonds herein invoiced have not been obtained in violation of applicable national laws and/or sanctions by the U.S. department of treasury's Office of Foreign Assets Control (OFAC)."*
- ➔ *"To the Best of our Knowledge, Implemented policies/procedures and written assurance from our suppliers, we state that Diamonds herein invoiced have not originated from the MBADA and Marange resource of Zimbabwe and Democratic Republic of Congo"*
- ➔ *"Diamonds from DTC."*²⁰
- ➔ *The country of mining origin is ..*
- ➔ *declaration to import rough diamonds that are not Russian, polished diamonds: specific declaration required for diamond office [check AWDC website for G7 decision tree]*

3.3 Export and intra-Community supply of diamonds

It is **legally obliged** to be able to document the shipment/delivery of diamonds for sale inside and outside of the EU with the necessary pieces of evidence.

In case of export outside of the EU and of intra-Community delivery (within the EU), a VAT exemption can be applied. The seller needs to be in the possession of pieces of evidence which prove the actual transport or dispatch of the diamonds outside of Belgium.

For export (outside of the EU), the declaration form endorsed by Customs at the EU border (custom declaration) is an important means of proof, demonstrating that the diamonds were exported.

For intra-Community supply (within the EU) evidence of the shipment/delivery outside of Belgium to another EU member state needs to be kept as well. As of 1 January 2020, the evidence rules have been amended and – to a certain extent - harmonized for all EU Member States. The relevant decision trees can be found in Annex H.

With regard to the proof of transport, new rules are applicable as of 1/1/2020. An assumption of intra-Community delivery is introduced, which applies when one can present certain exhaustively listed pieces of evidence. If one has these documents, one is assumed to have indeed done an intra-Community delivery to which one was allowed to apply a VAT exemption.

In case the seller/supplier is in charge of the shipment, he needs to be in the possession of at least the following documents to be able to enjoy the assumption of intra-Community delivery:

- Two items of non-contradictory evidence issued by two independent parties, relating to the dispatch or transport of the goods, such as a signed CMR document or note, a bill of lading, an airfreight invoice or an invoice from the carrier of the goods; OR
- One item as mentioned in the point above, in combination with another item of non-contradictory evidence which confirms the dispatch or transport, such as:
 - An insurance policy with regard to the dispatch/transport of the goods, of bank documents proving payment for this dispatch/transport;
 - Official documents issued by a public authority, such as a notarized confirmation of arrival of the goods;
 - A receipt issued by the warehouse keeper in the member state of destination.

¹⁸ Source : WFDB Charter 24 October 2018. Non-mandatory warranty for bourse members.

¹⁹ The most recent Release of the Diamond Source Warranty Protocol was developed by the following organizations and is published on their respective websites: Jewelers of America: www.jewelers.org Jewelers Vigilance Committee: www.jvclegal.org Diamond Manufacturers & Importers Association of America: www.dmia.net

²⁰ Sight holders and accredited buyers of De Beers Group can use this claim on their invoices if they purchase goods of the 'sight'.

If the seller/supplier makes use of a transporter, he will normally have documents as mentioned above and thus be able to enjoy the assumption of intra-Community delivery. In principle the combination of the transport invoice and the payment document should suffice.

If one cannot provide pieces of evidence as mentioned above (e.g. in case of a personal transport), there is no assumption of intra-Community delivery. This means that one needs to prove with all other pieces of evidence that the goods have indeed been transported to another EU member state. All pieces of evidence can be presented (document of destination²¹, contracts, order notes, transport documents such as train ticket, flight ticket, receipts of gas station, payment documents, invoices which reflect one's stay abroad, signed invoice on which the location is mentioned, document of destination, ...), but no piece is in itself sufficient or indispensable.

It is a **best practice** to always use this document of destination ("bestemmingsdocument") in case of personal transport. Such a document can be drafted for an individual shipment to the trader's counterparty, or it can be drafted on a weekly or monthly basis, giving an overview of the flows of goods (back and forth, as applicable) to that counterparty. This document includes mandatory references, should be signed by the client or customer and should be returned to the Belgian seller within 3 months after the date or period covered by the document (see Annex F). It is very important that both parties (the sending party/seller/consignor and the receiving party/buyer/consignee) sign this document confirming the place and date of dispatch resp. arrival of the goods. Usually, if such a signed document of destination with a clear description of the (flows of the) goods is presented along with corresponding invoices and proofs of payment which can be traced back to the document of destination, no additional pieces of evidence are requested. However, it is important to keep other supporting pieces of evidence too, as additional supporting documentation may nonetheless be requested to prove the transport to another member state.

If the buyer is responsible for the dispatch/transport, in addition to the documents above, the seller also needs to dispose of a written declaration by the buyer in which the latter confirms that the goods were dispatched/shipped for his account and in which the country of destination is mentioned. If a document of destination is used, this declaration can also be mentioned clearly on this document, to cover this requirement.

Finally, prior to every transaction with an EU counterparty it is **legally obliged** to check the validity of the VAT number of the counterparty. It is **best practice** to use the VIES website.²²

3.4 Specific rules for EU distance sales of diamonds (e-commerce in B2C context)

As of 1st of July 2021 a new set of VAT rules were introduced, mainly impacting 'e-commerce sales'. These set of rules concern mainly B2C intra EU (between EU countries) supply of goods made by a taxable person to a non-taxable person (e.g. private person) or a taxable person not obliged to make IC acquisitions. The purpose of these rules is the taxation in the EU Member State of consumption or destination, to modernize VAT rules and to simplify VAT obligations. For more information on this topic, you can contact AWDC.

3.5 Other transactions in the diamond sector

An ordinary sales transaction of diamond between two parties is documented by a detailed invoice (see higher).

However, in the diamond sector, multiple transactions are thinkable which are not ordinary sales between two parties. This chapter briefly discusses situations which can occur in the diamond sector.

It is **best practice to document such transactions in writing** in agreements or in correspondence which proves what the rationale of such transactions is (which can sometimes be very typical for the diamond trade) and who the parties involved are (sometimes two, three or more parties can be involved in a transaction)..

It is **best practice to present** such written documentation **to the financial institution** that will facilitate the transaction before the transaction is executed.

²¹Decision VAT no. E.T.129.460 dating from 01.07.2016. For a template document of destination, see Annex F.

²² AWDC 'Q&A on quick fixes', available on the AWDC website.

For the sake of completeness, we underline that there might be specific obligations and consequences triggered when carrying out the transactions mentioned hereafter. it is always advisable to consult your legal advisor for professional assistance when dealing with such transactions

a. Compensation of receivables for purchases and sales in both directions between two diamond traders

It sometimes happens that two diamond traders are both buyer and seller towards each other. They then (regularly or not) have sales transactions in both directions. This can for example be the case between companies which are part of the same group.

If these diamond traders decide to carry out a compensation between the various purchases and sales, it is **best practice is to document this in a written agreement** in which the compensation (set-off) is specified. (Template in Annex C). Kindly note that this “compensation” does not apply for VAT, therefore invoices should be issued “in both directions” and reported in the VAT returns.

Of course, in this scenario one must ensure that both parties have the right to enforce this set-off and are not restricted to do so by third parties (e.g. banks or other financiers which have stipulated in the credit relationship that such set-offs are prohibited).

b. Assignment of claims

It sometimes happens that a diamond trader wishes to transfer the claim he has on another diamond trader to a third diamond trader.

From the moment the debtor whose claim has been assigned to another creditor, is informed about the assignment of claims or is notified of this by a bailiff, the assignment of claims is enforceable against him and he can only be released from his payment obligation by paying to the assigned creditor²³. The debtor can in principle not protest against this assignment, unless in the main agreement between the debtor and the original creditor it was stipulated otherwise. If he still pays to the original creditor who has assigned his claim (despite the fact that he was informed/notified about the assignment), he risks having to pay a second time to the assigned creditor.

Example: Diamond trader A sells to one or more customers with a payment term of 180 days. However, at a certain point in time, he does not wish to bear the credit risk related to these customers for a longer period of time, or to wait so long for payment of the sales invoices. He transfers his claims to diamond trader B, who then becomes the new creditor of these customers. In this hypothesis, diamond trader A is paid immediately or very quickly by diamond trader B, who pays less to diamond trader A than the full amount of the selling price of A to his customers. However, diamond trader B will have to wait to be paid by the customers, and will have to bear the risk related to the customers.

Example: A debtor could assign one of his claims to his creditor to as such pay off his debt. The creditor does have to agree explicitly, because normally the sales invoice stipulates a money sum needs to be paid to the seller.

It is **best practice to record this in writing** in an agreement between the transferor and the transferee (Template in Annex D) and to inform the debtor about the assignment of claims per registered mail.

There must of course be an economic justification for such a course of action.

c. Double sale without goods flow in Belgium

Example: sale of supplier A in Dubai, UAE to diamond trader B in Belgium, who sells onwards to his client C in India. The Belgian diamond trader B pays his supplier A in Dubai, UAE and B himself is paid by his client C from India. The goods are, on B's request, shipped directly from Dubai, UAE to India. However, the financial institution

²³ Cf. article 5 :174 and ff. new Civil Code.

of B sees incoming and outgoing payments, which it cannot directly link to a goods flow, as the goods do not pass through Belgium.

In such a scenario, it is **best practice** for B to, in addition to the sales invoice of A to B and the sales invoice of B to C, also request a copy of the **shipping documents from A to C** and keep those in his administration to present to the financial institution where appropriate.

There must of course be an economic justification for such a course of action.

d. Joint venture agreement for purchase of goods

It sometimes happens that a diamond trader A concludes a joint venture/partnership with another diamond trader B to purchase certain goods. Multiple situations are thinkable, an example is given below.

Example: Diamond trader A receives a certain amount from diamond trader B to finance diamond trader A's purchase of goods from supplier C. Diamond traders A and B have a mutual agreement on the distribution of the profit or loss after the goods are sold to a customer.

It is **best practice to draw up a written joint venture agreement** in which the most important elements are specified (template in Annex E):

- By whom are the goods purchased?
- Who brings in what?
- What is the compensation for the financing of the goods; is it a loan at a specified interest rate, which may or may not be combined with participation in the profit on the goods, or is it a joint investment where both diamond traders are partners in the goods and in the profit made or loss suffered?
- Division of profit and loss in case of further sale
- Who becomes legal owner of the goods and in whose stock do the goods come?
- Who is liable for risks such as theft and/or loss of the goods?
- Who decides whether the goods will be sold, to which price, to whom and within which term?

There must of course be an economic justification for such a course of action.

e. Loan agreement: diamond traders give each other loans

It is important to also document loans in writing in a loan/credit agreement, in which it is recommended to include the following elements:

- Who is the creditor and who is the borrower?
- Reason why the loan is given and what the loan may be used for
- Period of the loan
- Amount of the loan
- Currency
- Interest rate
- Interest periods
- Payment of interests and repayment
- Consequences of late payments and/or repayments
- Securities
- Information obligations of the borrower
- Other obligations of the borrower
- Clauses related to early repayment
- Taxes, costs and expenses
- Competent courts / arbitration
- Applicable law

3.6 Sales disputes

Suppose that the diamonds that were sold, are not paid for (neither returned). What are the possible actions that the seller can then take if the buyer is sufficiently identified (according to title 3.1) and if the sale can be proven in writing (according to titles 3.2, 3.3 and 3.4)?

Depending on the specific situation, the following steps can amongst others be taken:

- Written notice of default, preferably by registered mail, to the buyer with the instruction to pay.
- If the diamonds remained the property of the seller due to non-payment in case of a sale under reservation of title, the seller can either reclaim the goods or claim payment.
- Complaint to the bourse if the buyer is member of a bourse.
- Immediately inform insurer of possible damage.
- Civil law summons on the merits before the court or sectoral arbitration after mediation within the Federation of Belgian Diamond Bourses (FDBD) or the World Federation of Diamond Bourses (WFDB).
- Seizure of the goods via a lawyer who instructs the bailiff to do so and who can provide the necessary assistance in judicial proceedings, if there is a retention of title in favor of the seller.
- Seizure of (other) assets of the buyer, such as his bank account, via a lawyer who instructs the bailiff to do so and who can provide the necessary assistance in judicial proceedings, if the requirements for seizure are fulfilled (for Belgian judge of attachments: fixed, certain and payable debt and demonstrate urgency) and in cross-border cases, where appropriate, make use of the European procedure for the attachment of bank accounts for preventive bank attachment inside the EU.
- Criminal complaint to the police or to the public prosecutor if criminal elements are involved.
- Criminal complaint with civil claim for abuse of trust (Article 491 of the Criminal Code) if such facts occurred.
- Summons in the bankruptcy of the buyer, if the buyer has meanwhile opened bankruptcy proceedings.

It is **best practice** to seek legal advice in these cases, as legislation and procedural possibilities change regularly and/or depend on the applicable law.

If there is a suspicion of money laundering, this must in any case be reported to the SPOC AWDC or directly to CFI (Financial Intelligence Unit).²⁴

3.7 Securities

a. Clause of retention of title in the invoice terms and conditions

It is **best practice** to include a **clause of retention of title** in the terms and conditions of the invoice. With a clause of retention of title, the seller can reclaim the diamonds which have not been paid.

The retention of title needs to be communicated to the buyer in writing, ultimately on the moment of the delivery of the goods (for consumer-buyers, a written document even needs to be signed).

If the buyer has not paid for the diamonds and yet sells these diamonds to another professional diamond trader, the seller-owner can possibly claim this payment, because the ultimate buyer had the duty to inform himself and to check whether the diamonds he bought himself had already been paid and were therefore owned by his seller. This also means that if you as a diamond trader buy diamonds from a trader, it is **best practice – this is often used as an argument in case law – to make sure that these diamonds are the property of this trader** and that there is no retention of title on them.

The retention of title clause, however, in principle commits only the co-contracting party, i.e. only the buyer. However, if one wants absolute certainty, it is possible to register your retention of title in the Pledge Register, to also make it opposable to third parties.

²⁴ AWDC 'Anti-money laundering policy for the Belgian diamond trade

In the event of judicial reorganization of your customer's business, you must react immediately and reclaim your unpaid goods which are subject to retention of title. If the buyer of the unpaid goods is declared bankrupt, you can also reclaim the sold goods that are still your property, or invoke the prerogative of the unpaid seller on the price. It is best to seek legal advice in these cases, as legislation can change and deadlines can be important.

The retention of title clause is a civil protection for the seller. This clause also provides the seller with the possibility to take criminal action against the buyer of the diamonds with retention of title, since the non-return of diamonds entrusted with retention of title may possibly be considered a crime on the part of the buyer.

b. Additional securities to avoid disputes

In function of a specific situation requiring more certainty, it is **best practice that diamond traders require additional securities from their contracting party (equally possible for consignment)**, including :

- Bank guarantee in favor of the seller in which a bank unconditionally guarantees to pay an amount to the beneficiary.
- Guarantees given by physical persons or companies in favor of the seller. Note that a guarantee only has value if the guarantor actually has assets in his name.
- Pledging with dispossession of the diamonds or other physical goods and/or where appropriate, registration of the pledge in the Pledge Register, which is also opposable to third parties. As a diamond trader, do be vigilant for the pledging of diamonds by the buyer.

It is **best practice** to check whether these diamonds have already been pledged in favor of the buyer's financial institution and/or whether a guarantee already exists. That is, a pledge/guarantee may also mean that the seller competes with other creditors. Note that many diamond traders enjoy financing from a financial institution. The latter usually covers itself by requiring a pledge on the diamond trader's business and by requiring the personal guarantee from the directors of the company they finance.

4. PAYMENTS

In the context of sustainable and transparent cooperation between the diamond sector and financial institutions serving the diamond sector, it is important that payments by bank transfer for the purchase and sale of diamonds are made as transparently as possible.

For the sake of transparency, it is **best practice to take the following recommendations into account when making payments:**

- For each payment, reference is made to an invoice number or other reference number linked to an invoice or contractual documentation.
- The amount of the payment corresponds to the amount on the invoice or contractual documentation referred to.
- The payment is addressed to the diamond company/trader and the bank account number indicated on the invoice or contractual documentation referred to.
- If several payments are made simultaneously, all invoice or reference numbers of the invoices or contractual documentation shall be included in the payment order.
- In the case of a partial payment, it is explicitly mentioned that it is a partial payment of a particular invoice or contractual documentation, with indication of the invoice or reference number of the invoice or contractual documentation referred to.
- If the flow of goods differs from the payment flow or if there is no flow of goods for a particular transaction, this shall be documented and supported (see above).
- The diamond trader is vigilant for changed account numbers of customers and suppliers and, if appropriate, personally contacts the customer/supplier to verify why the account number has changed.
- It is best practice to document a compensation of receivables (set-off) or assignment of a claim by means of an agreement between the parties and, if necessary, to provide the agreement to the financial institution to justify the payment (see Annexes C and D for examples).
- If the buyer signs an invoice stating that the seller of the diamonds has pledged this invoice to a financial institution, the buyer is bound by it. The buyer can then no longer pay to another financial institution of the seller, otherwise he runs the risk of having to pay twice. Nor can the buyer return the purchased and unpaid goods to the seller but he must do so to the financial institution, otherwise he runs the risk of having to pay anyway, notwithstanding the return of the goods to the seller.
- If promissory notes are issued by the buyer in favor of the seller, and these promissory notes have been pledged by the seller to a financial institution, the buyer will receive the offer of these promissory notes from the seller's financial institution. Non-payment of a promissory note will usually lead to protest of the promissory note and a procedure before the court, which can summon the diamond dealer involved to check his financial situation.
- Make sure payments make sense. For example, it does not make sense if you sell to a private person, but he wants to pay you via his company in a tax haven.
- Payments with cryptocurrency such as bitcoins are not recommended because of the anonymity of the payment method, limited regulation and supervision and a high risk of money laundering and financing of terrorism.

A. ANNEX TEMPLATE CONSIGNMENT DOCUMENT

[Consignment Number]

The Undersigned, [Name + address and + registration number and VAT number of company which receives the consignment goods]

Declares to have received following goods in consignment from:

[Name + address and KBO number of company which gives the goods in consignment]

The merchandise described and valued as below is delivered to you for a short term examination and inspection (delivery on sight) only on the following date [.....]

[If applicable and in deviation of the above: The merchandise described and valued as below is delivered to you for a term of... for the following reason....]

The merchandise shall be returned immediately to us on first demand in the same conditions as delivered to you and at the latest on [...].

The merchandise shall remain our property and a sale of this merchandise can only be effected and title will pass only if, as when we said owner, shall agree to such sale and a sales invoice is rendered therefore and paid.

No right or power is given to sell, pledge, put under lien or otherwise dispose of this merchandise. Regarding the consigned goods the undersigned acknowledges that he is not allowed to ... [description of things he is not allowed to do]

Regarding the consigned goods the undersigned shall be allowed to ... [description of things he is allowed to do]

The merchandises, until returned to us are at your own risk from all hazards and you are to insure them properly. The undersigned declares that his insurance policy covers the total value of the merchandise.

This consignment is governed by Belgian law and the courts of Antwerp, Belgium have jurisdiction in case of dispute. If parties or directors of the parties are member of a Belgian diamond bourse the parties will submit to arbitration in the framework of the Federation of Belgian Diamond Bourses and/or international arbitration foreseen by the World Federation of Diamond Bourses.

Reference	Classification (rough, polished, powder, natural, synthetic, ..)	Qty	Size	Carats	Cut	Color	Clarity	Nr. Certificate	Price per carat	Total Cost
TOTAL										

For agreement,

(Signature, Place, Date)

B. ANNEX TEMPLATE INVOICE

FACTUUR / INVOICE (LL***)

[Factuurnummer/Invoice number (LL***) , place, datum/date (LL***) and reference to previous consignment if applicable]

[Name + address + VAT number + registration number seller – all in LL***)]

[Name + address + VAT number + registration number purchaser, if applicable separate delivery address – all in LL***)]

[If applicable, add: “Diamonds invoiced on behalf of undisclosed principal”]

Leveringsdatum/ Delivery date:

The goods will be delivered on ... / have been delivered on ...

Vervaldag/ Payable on: ...Kindly remit the amount of ... to the following bank account number:

Name ...

Bank account number ... BIC: IBAN:

Please mention reference ... on the remittance order.

[If applicable: This invoice is paid in cash in (country) respecting the cash of that country]

[If applicable: This invoice is pledged to [Name of the bank or financial institution]]

Referentie/ Reference	Classificatie/ Classification (rough, polished, powder, natural, synthetic, ..)	Aantal/ Qty	Formaat/ Size	Karaat/ Carats	Slijpvorm / Cut	Kleur/ Color	Helderheid/ Clarity	Nr. Certificaat / Nr. Certificate	Prijs per karaat / Price per carat	Totale prijs / Total Price	B t V
	all in LL***)										
TOTAL											

[If a VAT exemption is applicable, refer to the correct basis for the exemption:

- In case of a sale within Belgium exempted from VAT: “Vrijstelling van de BTW, artikel 42, §4, van het BTW-Wetboek”

- In case of a sale to another EU member state: “Vrijstelling van de BTW, artikel 39bis van het BTW-Wetboek / Exempted from VAT in accordance with article 39bis VAT Code”

- In case of a sale outside of the EU: “Vrijstelling van de BTW, artikel 39 van het BTW-Wetboek / Exempted from VAT in accordance with article 39 VAT Code”]

The above mentioned goods remain the legal property of the seller until the goods have been paid in full.

The buyer must inspect the goods immediately upon delivery. In the event of protest, this must be reported to the seller by registered letter as soon as possible and in any case within three days after delivery.

The invoice must be paid no later than the date stated on the invoice as the date on which it is payable. In the event of non-payment, a default interest of ...% will be payable from the invoice date.

This invoice is governed by Belgian law and the courts of Antwerp, Belgium have jurisdiction in case of dispute. If parties or directors of the parties are member of a Belgian diamond bourse the parties will submit to arbitration in the framework of the Federation of Belgian Diamond Bourses and/or international arbitration foreseen by the World Federation of Diamond Bourses.

The buyer acknowledges and agrees with the General Terms of the Seller mentioned on the front and the reverse side (if applicable) of this invoice

[Signature of the buyer, place and date]

“The diamonds herein invoiced have been {sourced} purchased from legitimate sources not involved in funding conflict, in compliance with United Nations Resolutions and corresponding national laws {where the invoice is generated}**. The seller hereby guarantees that these diamonds are conflict free and confirms adherence to the WDC SoW Guidelines.”*

**{sourced} - may be used by companies that do not purchase from open market, but source and aggregate diamonds from production facilities that are owned/partly owned by them*

***{where the invoice is generated} - may be used by companies if they specifically want to reference the country of invoice issuance*

**** "LL": in local official language, i.e. this piece of information should at least be mentioned in the official language applicable in the territory where the exploitation seat of the company is located (e.g. if the exploitation seat is located in Antwerp, the information should at least be mentioned in Dutch. You are entitled to add a translation (e.g. in English) if you so wish.*

C. ANNEX TEMPLATE AGREEMENT COMPENSATION OF RECEIVABLES (SET-OFF)

AGREEMENT COMPENSATION OF RECEIVABLES / PAYABLES

THIS AGREEMENT IS MADE AND ENTERED INTO

Between

Name + address + company number

And

Name + address + company number

WHEREAS this agreement (the "Agreement") sets out the terms and conditions upon which the abovementioned parties shall compensate certain receivables / payables between each other.

NOW, THEREFORE, the Parties have agreed as follows:

- 1) Between ... and ... the outstanding balance of receivables / payables as mentioned below exist (see also annex ... for details):

- ... has to receive the amount of from ...
- ... has to pay the amount of ... to

- 2) ... and ... will settle aforesaid amounts on a net cash basis i.e. has to receive from ... the net total amount of ... (herein referred to as "Balance")

- 3) By signing this Agreement, ... and ... fully recognize the existence and full validity of the "Balance" and also fully recognize and unconditionally accept the setoff of the "Balance" as per the terms of this Agreement.

- 4) This Agreement shall be governed exclusively by and interpreted according to with the laws of Belgium. Any dispute arising out or in relation to this Agreement shall finally be settled by the Belgian Courts.

If parties or directors of the parties are member of a Belgian diamond bourse the parties will submit to arbitration in the framework of the Federation of Belgian Diamond Bourses and/or international arbitration foreseen by the World Federation of Diamond Bourses.

The Agreement is executed in Antwerp on ... [DATE] , in ... originals, and each party to this Agreement acknowledges having received his own original.

...
Represented by

...

...
Represented by

...

D. ANNEX TEMPLATE AGREEMENT ASSIGNMENT OF CLAIMS/RECEIVABLES

ASSIGNMENT OF RECEIVABLES

THIS AGREEMENT IS MADE AND ENTERED INTO

Between

Name + address + company number (the "Seller"),

And

Name + address + company number (the "Purchaser"),

The Seller and the Purchaser are individually referred to as a "Party" and also collectively as the "Parties".

WHEREAS this agreement (the "Agreement") sets out the terms and conditions upon which the Purchaser shall purchase certain receivables being commercial invoices (Receivables) from Seller.

NOW, THEREFORE, the Parties have agreed as follows:

Article 1 – Receivables assignment – price

The Seller has a receivable commercial invoice ("Receivable") dated ... for an amount of ... fully due and outstanding against debtor ...

The Seller grants, assigns, transfers, and sets over to the Purchaser its entire right, title and interest in and to its invoice ... to the amount of ... including but not limited to all rights benefits and advantages of the Seller derived therefrom and all burdens, obligations and liabilities to be derived thereunder, in consideration of the payment of a purchase price specified hereunder.

The price payable by the Purchaser to the Seller in respect of the assignment and transfer of the Receivable shall be ... and is payable within 30 days of the signature date of this agreement.

Article 2 – Representations and warranties

This Agreement shall be effective as of the signature date of this agreement.

The Seller represents, warrants and covenants that :

- he is the sole owner of the following outstanding receivable(s) on debtor ...
- the receivable is free of any liens and/or encumbrances
- the receivable is undisputed by the debtor ...
- the full amount of the outstanding receivables are due and owing by ...
- the receivables have not been prepaid in full or partly
- it has good right, full power, capacity and authority to assign and sell their rights, title and interest in and to the receivables in accordance with the terms of this agreement and that this agreement does not violate any of its obligations towards any third parties
- he has the power to enter into and perform its obligations under this Agreement and the Seller has taken all necessary action (corporate or otherwise) to authorize the unconditional entry into and performance of its obligations under this Agreement;

Article 3 – Notice to Debtors

The Seller shall immediately send a registered letter to the debtor ... by registered mail to inform him of the fact that the invoice and the claims embodied by such invoice have been transferred to the Purchaser, and shall provide Purchaser with proof that the present assignment and sale have been acknowledged by the debtor ... in accordance with article 5:179 of the new Belgian Civil Code.

Also the Purchaser may require that the Seller issues a notice to all relevant persons, or to such of them as the Purchaser shall direct, informing them of the aforementioned transfer of rights to the Purchaser.

Article 4 – Power of Attorney

By way of security for the performance of the Seller's obligations the Seller irrevocably appoints the Purchaser, and any of its directors, officers and managers, at any time, jointly and each of them severally, as the Seller's true and lawful attorneys, to act as they consider necessary or appropriate in order to secure performance of any of the Seller's obligations under this Agreement.

Article 5 – Indemnity

The Seller shall fully indemnify the Purchaser on demand against all costs, losses and expenses (including legal fees, due diligence fees, valuers' fees and surveyors' fees) properly incurred which it may sustain or incur at any time as a consequence of any or all of the following: any default by the Seller in the due performance of any of its obligations under this Agreement; the negotiation, preparation and execution of this Agreement and any associated documentation or any matter incidental thereto; the granting of any waiver, consent or variation of this Agreement or any associated documentation; and the enforcement, perfection, protection or preservation of any of the Purchaser's rights under this Agreement or any associated documentation.

Article 6 – Further assignment by Seller or Purchaser

6.1. The Seller shall not be entitled to assign or to charge any of its rights or to delegate any of its obligations under this Agreement.

6.2. The Purchaser shall be entitled to assign or novate the whole or any part of this Agreement and the expression "the Purchaser" wherever used in this Agreement shall be deemed to include the assignees and other successors of the Purchaser.

6.3. The Purchaser may disclose to a potential assignee or to any person who proposes to enter into contractual relations with the Purchaser in relation to this Agreement such information about the Seller as has been given to the Purchaser.

Article 7 – Miscellaneous

7.1. This Agreement (and its Annexes) contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements and understandings, whether written or oral, with respect to the same subject matter still in force between the Parties.

7.2. Any amendment to this Agreement, as well as any additions or omissions, can only be agreed in writing with the mutual consent of the Parties.

7.3. Whenever possible, the provisions of this Agreement shall be interpreted so as to be valid and enforceable under applicable law. However, if one or more provisions of this Agreement is found to be invalid, illegal or unenforceable (in whole or in part), the remainder of the provision and of this Agreement shall not be affected and shall continue in full force and effect as if the invalid, illegal or unenforceable provision(s) had never existed. Moreover, in this case, the Parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision which embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).

7.4. Neither Party shall be liable for any failure to perform under this Agreement (except for the payment of any sums due hereunder) if such failure is due to causes beyond its reasonable control ("overmacht/force majeure"), such as, but not limited to, fire, flood, strikes, labour disputes or other industrial disturbances, (declared or undeclared) war, embargoes, blockades, legal restrictions, riots, insurrections, governmental regulations, and the unavailability of means of transportation.

7.5. Any failure or delay by either Party in exercising any right under this Agreement, the exercise, in whole or in part, of any right under this Agreement, or any reaction or absence of reaction by either Party in the event of violation by the other Party of one or more provisions of this Agreement shall not operate or be interpreted as a waiver (whether express or implied, in whole or in part) of any of its rights under this Agreement or under said provision(s), nor shall it preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If one Party has expressly waived

a right in writing following a specific failure by the other Party, this waiver cannot be invoked by the latter Party in favour of a new failure, similar to the previous one, or any other failure.

7.6. *All notices and other forms of communication required under this Agreement must be in writing and delivered or transmitted to the recipient in person through a reputable courier service, by fax with a confirmation sheet or by registered mail (with acknowledgement of receipt) to the address indicated below:*

To the Seller: ...

To the Purchaser: ...

A notice shall be considered delivered to the recipient's address on the date of delivery if delivered in person, the next working day if sent by fax and 3 working days following the date of mailing if sent by registered mail. Either Party may change the address to which notices are to be delivered or transmitted by giving the other Party written notice to this effect in the manner set forth herein.

7.7. *Save as otherwise provided in this Agreement, each Party shall pay the costs and expenses incurred by it in connection with the entering into this Agreement.*

7.8. *This Agreement is executed in 2 separate copies, each of which is deemed to be an original and both/all of which taken together constitute the same agreement.*

7.9. *Any amendment to this Agreement, as well as any additions or omissions, can only be agreed upon in writing with the mutual consent of the Parties and duly signed by the Parties.*

7.10. *Each Party acknowledges that in entering into this Agreement it has not relied on any representation or statement or promise or undertaking, whether oral or in writing, whether or not relating to its subject matter, save such as are expressly incorporated herein and none of any such representations or statements or promises or undertakings can or shall be used or relied upon for the interpretation of this Agreement or any of its provisions.*

7.11. *Any failure or delay by a Party in exercising any right under this Agreement, the exercise or partial exercise of any right under this Agreement, or any reaction or absence of reaction by a Party in the event of breach by the other Party of one or more provisions of this Agreement shall not operate or be construed as a waiver (either express or implied, in whole or in part) of its rights under this Agreement or under said provision(s) or preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver by one Party following a specific failure by the other Party, this waiver cannot be invoked by the other Party in favour of either a new failure, similar to the prior one, or a failure of another nature.*

7.12. *Neither Party shall assign or transfer any of its rights or obligations under this agreement, either in whole or in part, to any third party without the prior written consent of the other party. Any such assignment or transfer without the prior written consent of the other party shall be deemed null and void.*

Article 8 – Applicable Law and Jurisdiction

8.1. *All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this agreement as well as all tort matters and other matters of pre- and extra-contractual liability between the parties shall be governed by and construed in accordance with Belgian law, without giving effect to any other choice of law or conflict-of-laws rules or provisions (Belgian, foreign or international, including the United Nations Convention on Contracts for the International Sale of Goods (1980) ("Vienna Convention") (if applicable)), that would cause the laws of any jurisdiction other than Belgium to be applicable.*

8.2. *Any dispute concerning the validity, interpretation, enforcement, performance or termination of this agreement as well as all tort matters and other matters of pre- and extra-contractual liability between the parties shall be submitted to the exclusive jurisdiction of the Antwerp courts.*

Executed in [place], on [date] in two counterparts, each Party acknowledging having received an original.

*FOR AND ON BEHALF OF THE SELLER
(name, title, date signature)*

*FOR AND ON BEHALF OF THE PURCHASER
(name, title, date signature)*

E. ANNEX TEMPLATE PARTNERSHIP AGREEMENT FOR PURCHASE OF SPECIFIC GOODS (JOINT VENTURE)

To be adapted according to specific situation of the joint venture agreement as each situation is different

[PARTNERSHIP/INVESTMENT/LOAN (to be specified)] AGREEMENT FOR THE SPECIFIC PURCHASE OF CERTAIN GOODS (JOINT VENTURE)

THIS AGREEMENT IS MADE AND ENTERED INTO

Between

Name + address + company and VAT number (hereinafter "Party A")

And

Name + address + company and VAT number (hereinafter "Party B")

Together referred to as the "Parties"

WHEREAS *this agreement (the "Agreement") sets out the terms and conditions upon which the abovementioned parties shall conclude an agreement in connection with the purchase of certain goods.*

NOW, THEREFORE, the Parties have agreed as follows:

Article 1 – [Contribution/Investment/Loan]

[Party A] will [contribute/invest/loan - to be specified as applicable] an amount of [XXXX USD/EUR] to [Party B's] purchase of the following good(s): [detailed description] from [Party X].

Article 2 – Purchase

[Party B] will use his own funds in combination with the [contribution/investment/loan – to be specified as applicable] of [Party A] to purchase the goods described above. The purchase of the goods will take place between [Party B] and [Party X] and the latter will invoice Party B who will be responsible towards Party X for payment. [or specify if other arrangement]

Article 3 – Legal ownership

The legal ownership of the goods will transfer to [Party B] and will come in [Party B's] stock.

[Option : Party B will grant to Party A a pledge on the purchased goods in the amount of XXXX USD / EUR]

[Option: other securities granted by Party B to Party A]

Article 4 – Liability

[Party B] is liable for risks which may occur such as [specify the risks for which the Party is accountable e.g. theft, loss...]

Party A shall insure the abovementioned goods for [specify the risks for which insurance policy needs to be in place, and key conditions may also be specified] with reputed insurers.

Article 5 – [Compensation / profit & loss]

[Party A who has [contributed/invested/lent - to be specified] the amount XXXX USD/EUR will in return for his [contribution/investment/loan - to be specified] to [Party B's – the purchasing party] purchase, receive the following as compensation: [to be specified – is it a loan at a specified interest rate, which may or may not be combined with participation in the profit on the goods, or is it a joint investment where both diamond traders are partners in the goods and in the profit made or loss suffered?].

Article 6 – [Further sale]

[Terms and conditions under which Party B can sell the goods onwards, if applicable, e.g. who decides whether the goods can be sold onwards, against which price, within which term; is there a minimum price for which it needs to be sold, is

there a price for which the sale of the goods can be forced and by which party; are there parties that are excluded as potential buyers for further sale based on certain objective criteria, etc.]

[Are the goods to be sold as a whole or to be divided in lots?; are the goods to be (re)polished? Are the goods to be (re)certified? Etc.]

[Division of profit and loss in case of further sale]

Article 7 – Miscellaneous

7.1. This Agreement (and its Annexes) contains the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes and replaces all prior agreements and understandings, whether written or oral, with respect to the same subject matter still in force between the Parties.

This agreement does not create a legal entity. Neither does this agreement create a “maatschap” under Belgian law.

7.2. Any amendment to this Agreement, as well as any additions or omissions, can only be agreed in writing with the mutual consent of the Parties.

7.3. Whenever possible, the provisions of this Agreement shall be interpreted so as to be valid and enforceable under applicable law. However, if one or more provisions of this Agreement is found to be invalid, illegal or unenforceable (in whole or in part), the remainder of the provision and of this Agreement shall not be affected and shall continue in full force and effect as if the invalid, illegal or unenforceable provision(s) had never existed. Moreover, in this case, the Parties shall amend the invalid, illegal or unenforceable provision(s) or any part thereof and/or agree on a new provision which embodies as closely as possible the purpose of the invalid, illegal or unenforceable provision(s).

7.4. Neither Party shall be liable for any failure to perform under this Agreement (except for the payment of any sums due hereunder) if such failure is due to causes beyond its reasonable control (“overmacht/force majeure”), such as, but not limited to, fire, flood, strikes, labour disputes or other industrial disturbances, (declared or undeclared) war, embargoes, blockades, legal restrictions, riots, insurrections, governmental regulations, and the unavailability of means of transportation.

7.5. Any failure or delay by either Party in exercising any right under this Agreement, the exercise, in whole or in part, of any right under this Agreement, or any reaction or absence of reaction by either Party in the event of violation by the other Party of one or more provisions of this Agreement shall not operate or be interpreted as a waiver (whether express or implied, in whole or in part) of any of its rights under this Agreement or under said provision(s), nor shall it preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If one Party has expressly waived a right in writing following a specific failure by the other Party, this waiver cannot be invoked by the latter Party in favour of a new failure, similar to the previous one, or any other failure.

7.6. All notices and other forms of communication required under this Agreement must be in writing and delivered or transmitted to the recipient in person through a reputable courier service, by fax with a confirmation sheet or by registered mail (with acknowledgement of receipt) to the address indicated below:

To [Party A]: ...

To [Party B]: ...

A notice shall be considered delivered to the recipient’s address on the date of delivery if delivered in person, the next working day if sent by fax and 3 working days following the date of mailing if sent by registered mail. Either Party may change the address to which notices are to be delivered or transmitted by giving the other Party written notice to this effect in the manner set forth herein.

7.7. Save as otherwise provided in this Agreement, each Party shall pay the costs and expenses incurred by it in connection with the entering into this Agreement.

7.8. This Agreement is executed in 2 separate copies, each of which is deemed to be an original and both/all of which taken together constitute the same agreement.

7.9. Any amendment to this Agreement, as well as any additions or omissions, can only be agreed upon in writing with the mutual consent of the Parties and duly signed by the Parties.

7.10. Each Party acknowledges that in entering into this Agreement it has not relied on any representation or statement or promise or undertaking, whether oral or in writing, whether or not relating to its subject matter, save such as are expressly incorporated herein and none of any such representations or statements or promises or undertakings can or shall be used or relied upon for the interpretation of this Agreement or any of its provisions.

7.11. Any failure or delay by a Party in exercising any right under this Agreement, the exercise or partial exercise of any right under this Agreement, or any reaction or absence of reaction by a Party in the event of breach by the other Party of one or more provisions of this Agreement shall not operate or be construed as a waiver (either express or implied, in whole or in part) of its rights under this Agreement or under said provision(s) or preclude the further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver by one Party following a specific failure by the other Party, this waiver cannot be invoked by the other Party in favour of either a new failure, similar to the prior one, or a failure of another nature.

7.12. Neither Party shall assign or transfer any of its rights or obligations under this agreement, either in whole or in part, to any third party without the prior written consent of the other party. Any such assignment or transfer without the prior written consent of the other party shall be deemed null and void.

Article 8 – Applicable Law and Jurisdiction

8.1. All issues, questions and disputes concerning the validity, interpretation, enforcement, performance or termination of this agreement as well as all tort matters and other matters of pre- and extra-contractual liability between the parties shall be governed by and construed in accordance with Belgian law, without giving effect to any other choice of law or conflict-of-laws rules or provisions (Belgian, foreign or international, including the United Nations Convention on Contracts for the International Sale of Goods (1980) ("Vienna Convention") (if applicable)), that would cause the laws of any jurisdiction other than Belgium to be applicable.

8.2. Any dispute concerning the validity, interpretation, enforcement, performance or termination of this agreement as well as all tort matters and other matters of pre- and extra-contractual liability between the parties shall be submitted to the exclusive jurisdiction of the Antwerp courts.

Executed in [place], on [date] in two counterparts, each Party acknowledging having received an original.

FOR AND ON BEHALF OF [Party A]
(name, title, date signature)

FOR AND ON BEHALF OF [Party B]
(name, title, date signature)

[THERE IS NO ONE SIZE FITS ALL AGREEMENT AND THIS DOCUMENT IS ONLY A ROUGH TEMPLATE TO HELP PARTIES TO INCLUDE AT LEAST SOME KEY ELEMENTS IN WRITTEN AGREEMENTS AND DOES NOT CONSTITUTE LEGAL ADVISE, NEITHER DOES IT PURPORT TO BE COMPLETE OR COMPREHENSIVE. SPECIFIC LEGAL ADVISE SHOULD BE SOUGHT FOR EACH PARTICULAR SITUATION. STATUTORY LAWS AND CASE LAW ARE ALSO SUBJECT TO CHANGE. AWDC DECLINES ANY RESPONSIBILITY REGARDING THE USE OF SUCH TEMPLATE]

F. ANNEX TEMPLATE DOCUMENT OF DESTINATION

Confirmation of arrival of intra-community supply of goods within the meaning of article 138, paragraph 1, of the directive 2006/112/EC

Period: *[fill in the period to which this document relates; this document can cover several transactions with the same buyer, but of maximum 3 consecutive months]*

Supplier:

- Name: *[Company name diamond trader]*
- Address: *[Address company diamond trader]*
- VAT number : *[BE XXXX XXX XXX]*

Client:

- Name: *[Company name client]*
- Address: *[Address of the client in another EU member state]*
- VAT number: *[VAT number of the client from another EU member state]*

Delivered goods:

- Invoice number: *[Invoice number of the transaction]*
- Invoice date: *[Date of the invoice]*
- Delivered goods: *[Description diamond: amount, rough/polished, carat etc.]*
- Date of arrival: *[Date of arrival of the diamonds in the member state of destination]*
- Place of arrival: *[City and country of arrival of the diamonds]*
- Price in *[USD or EUR – select one of the two]* of the delivered goods (excl. VAT): *[price in USD or EUR]*

[If this document of destination covers multiple transactions to the same client, during a period of maximum 3 consecutive months, retake all the above information below in this box for every transaction and number each of the transactions separately]

Confirmation of correctness of the document of destination:

- Surname and first name: *[Name of the person who signs for receipt and who is authorized to sign on behalf of the company of the client]*
- Received for: *[Company name client]*
- Date: *[Date of confirmation of receipt]*
- Signature:

G. ANNEX TEMPLATE NON-TRANSFER REGISTER (or consignment register)

Please consult the Excel file for incoming and outgoing consignment shipments available on the AWDC website through this link: www.awdc.be/register-consignments

H. ANNEX TEMPLATE DECISION TREE

