

## ONLINE ONLY SALES Terms and Conditions

1. The Sales management acts only as an agent on all sales and are not responsible for buyer/sellers errors or misunderstanding. ALL RESPONSIBILITY AND GUARANTEES ARE BETWEEN BUYER AND SELLER. All horses are sold "AS IS" without any other express or implied warranties and are not sold to stand a post purchase veterinarian examination, nor is rideability guaranteed. Examine all horses thoroughly prior to purchase.
2. Mares selling in foal must have a completed and signed breeder's certificate or a letter from the stallion owner stating the breeder's certificate will be issued at foaling.
3. R&J Horse Sales (and the entities and/or individuals responsible for conducting same) are merely acting as an auction house as to all sales or potential sales and are not responsible for any error, misunderstanding, misrepresentation, rejection or any particular sale, failure to pay as bid, condition of the horse or any other basis for dispute between the buyer and seller/consignor/owner.
4. The commission will be ten percent (10%) of the selling price. The consignor will have the privilege to "no sale" (pass out) his horse.
5. All horses sold before, during and after the sale will be subject to the 10% sales commission. All consignments must go through the online sale.
6. An individual negative Coggins test (that is current within 12 months) must be provided by the seller/consignor/owner for each horse prior to being offered for sale.
7. Seller/consignor/owner agrees not to withdraw entry except for serious injury or sickness and will furnish R&J Horse Sales with a veterinary statement confirming such condition prior to the horse being offered for sale.
8. Upon execution of this contract, seller/consignor/owner agrees not to dispose of the horse by private sale. Any horse withdrawn from the sale, for any reason other than infirmity will be assessed 10% of the selling price or a \$500.00 penalty, whichever is greater.
9. Any horse selling as Papers in Association will have sale proceeds withheld from the consignor until original registration papers are received in the R&J Horse Sales office.
10. Terms of sale are cash, check, wire transfer and payment in full to be made to R&J Horse Sales immediately after the sale.
11. PICTURES AND VIDEOS ARE WELCOMED AND ENCOURAGED. Our sales are nationally advertised, and buyers travel many miles for the opportunity to buy your horse. All pictures are subject to a selection process and will be approved by Auction Company for publication.
12. Immediately after the horse is sold, it will be the sole risk and responsibility of the buyer thereof, but possession of the horse cannot be obtained by him until payment in full has been made.
13. Buyer to pay one transfer fee
14. Upon receiving payment for a horse, the cashier will issue an order to obtain delivery. Buyers are cautioned not to lose these orders. Buyers assume all expenses and risks on horses after they have left the auction ring. Buyers must make arrangements with the sale company for care of stock until it can be removed.
15. Upon failure of compliance with any of the above conditions, the lot shall be resold by public or private sale, and the deficiency (if any) attending such resale shall be made good by the defaulter immediately. If any person shall purchase a lot and not pay for it as prescribed above, nothing shall prevent the auctioneer or the owner from compelling the purchaser to pay for it if the auctioneer or seller shall so deem fit.
16. Any horse selling as Papers in Association will have sale proceeds withheld from the consignor until original registration papers are received in the R&J Horse Sales office.
17. Checks will be mailed within 5 banking days to consignors unless there is an issue with registration paperwork from consignor on horses sold

# General Conditions of Sale

## How It Works – The Basics

1. Sign-up and register an account on BID.RANDJHORSESALES.COM
  1. This will allow you to be an active bidder on our live auctions.
  2. Welcome to the R&J HORSE SALE Family!
2. Take time to familiarize yourself with our website and the Horses that we have available.
3. When you're ready to make a bid, select the horse that you're interested in and select the "Bid Now" button.
  1. R&J HORSE SALE *Tip*: Use our "Maximum Bid" setting and let our top-class software do the work for you! Further details on this below.
4. Upon "Winning" one of our Live-Auctions:
  1. Congratulations! Thank you for putting your trust in us – we greatly appreciate your business!
  2. Following your Auction-Winning bid, either the seller or a representative from R&J HORSE SALE will be in contact to set up payment & transportation arrangements.
    1. Feel free to reach out directly to the seller if you feel inclined to do so.
5. Upon "Losing" one of our Live-Auctions:
  1. Nothing more to be done on your end. Let's find you another!
  2. Please revisit our Live-Auctions page – We're confident that we have another Horse available and ready to fit your wants & needs.
6. Each of the Auctions with R&J HORSE SALE last for approximately 3 to 10 days.
  1. Within the time that the Auction is open, potential Buyers can communicate directly with Sellers to discuss specifics surrounding each individual horse for sale.
  2. R&J HORSE SALE recommends using this time to communicate with Sellers about specific specs and/or options the horse for auction possesses.
  3. You may also communicate with the Sellers to set-up an in-person viewing prior to purchasing.
    1. Please be cognizant of timing in relation to how long the Auction will remain open. For Example; attempting to set-up a viewing on the day an Auction ends will be incredibly difficult. R&J HORSE SALES recommends setting this up, if needed, as soon as you have interest in the horse for Auction.
    2. ALL AUCTION SALES ARE FINAL AT CLOSEOUT.
      1. Please Arrange for a viewing, if needed, prior to Auction closeout.

For more detailed information on "Getting Started" and R&J HORSE SALES as a whole, please see below

### Getting Started with R&J Horse Sales

Creating an Account with R&J HORSE SALES & Registering to Bid  
- 3-Step Process – Get Started in under 10mins! –

1. **Step 1: Create your Account.**
  1. From the top of the R&J HORSE SALES homepage select the "Sign-Up" Button.
  2. Enter your Full Name, Email address, & choose your password.
    - Please make sure to store your Username & Password in a secure location!

- Please NOTE – You hold *financial responsibility* for **any & all bids** placed with your account Username & Password. Keep this information SAFE & SECURE.
- 2. **Step 2: Registering your Account to Bid.**
  1. After creating your account, Log-In using your newly created Username & Password.
  2. Click on the “Register” button located on our Live-Auctions page.
    - VERIFY all of the contact information for accuracy.
    - Provide Credit Card information.
      1. This information is used to verify and confirm the identity of our Bidders.
      2. **Your CC will NOT be charged under any circumstance unless you have selected the option to “Pay by Credit Card” after winning an auction.**
  3. After you have verified your contact information and entered your Credit Card info, click the “Agree to Terms and Conditions” box located at the bottom of the page.
  4. Then, click the “Confirming: I am 18 or Older” box located at the bottom of the page.
  5. Finally, click the “Register to Bid” button.
  6. Congratulations, you’re ready to go and start bidding on our top-class selection of Equines!
  7. IMPORTANT: UPON REGISTERING TO BID FOR HORSES ON R&J HORSE SALES, YOU ARE HEREBY AGREEING TO R&J HORSE SALES CONDITIONS OF SALE.
- 3. **Step 3: Place your bid!**
  1. Head over to our Live-Auctions page and search for what you’re looking for.
  2. Once finding the horse that meets your wants & needs, click on that specific horse Auction, and then select the “Bid Now” button located on the Auction page.
  3. R&J HORSE SALES *Tip*: Feel free to utilize our “Maximum Bid” setting and allow our software to do the work for you.
    - Automatically keeping up with your open bids in our Live-Auctions and re-bidding should another bidder place a larger bid than yours.
    - This software will continue to re-bid on your behalf up until your “Maximum Bid” amount has been met. Once this happens, our software will no longer bid for you.

## Bidding & Auction Tips from R&J Horse Sales

### Tips for Placing a Bid

1. Start by locating your desired horse from our Live-Auctions page.
2. Select that specific Auction by clicking on the horse.
3. Once on the specific auction page, select the “Bid Now” button.
4. When placing a bid you will see a number identified as “Bid Amount Needed” located next to the “Bid Now” button.
  1. This number identifies the bid amount required to become the current Highest-Bidder in the auction.
  2. Our bidding system is set up to allow for bids to be made only in specific increments.
    1. The “Bid Amount Needed” will be the next highest increment above the last “Highest Bidder”.
5. Please only click ONCE to place your bid.
  1. You will need to refresh your browser page to see your bid in the Live-Auction.

6. Please Note: In the event that multiple bidders place bids for the same amount at the same time, it is the bid that reaches our hosting-servers FIRST that will be represented in the Live-Auction.
  1. Should your bid NOT be the first to reach our hosting-servers, you will be prompted to re-bid at the next highest increment.

R&J HORSE SALES Max Bid Setting – Auto Bid  
*STRONGLY RECOMMENDED*

R&J HORSE SALES provides you with top-class horses and peace of mind through our Live-Auction software.

1. By using our “Maximum Bid” setting you are able to select a maximum bid amount for each individual auction. From there, our software will automatically keep track of the Live-Auction and continue bidding on your behalf up until your Maximum bid amount is reached.
2. In the event an Auction ends and your Winning Bid is for less than your Maximum Bid amount, you will be charged ONLY the amount of the Winning Bid.
3. By using our “Maximum Bid” setting, our software will automatically bid on your behalf to keep you as the Auction’s highest bidder.
  1. No need to continually refresh or return to the auction page to check your bid status. Our software does the work for you.
4. To be clear, your set “Maximum Bid” amount is kept confidential from other bidders.
  1. This is to ensure your privacy and to ensure we hold fair and honest Auctions.
5. Our “Maximum Bid” setting will only bid on your behalf up to your specified Maximum Bid Amount. In the event another bidder places a bid that is beyond your Maximum Bid Amount, *you will be outbid.*
6. Make sure to REVIEW your Maximum Bid Amount BEFORE you select to enter an Auction.

Individual Bidding

1. If you wish to Bid individually, please REVIEW each Bid prior to it being placed.
2. Please Note – Individual Bids do not process as quickly as our Automatic Bidding through our Maximum Bid setting.
3. Because of differing internet connections, mobile connections, and general internet lag, R&J HORSE SALES cannot guarantee that individual Bids placed in the final 15 seconds of an Auction will be processed prior to Auction closeout.
  1. Please make sure to place individual bids with ample time for the bid to be processed
    1. Good Rule of Thumb: At Least 60 seconds before Auction closeout.
4. Due to process times, do not hesitate to place Individual bids.
  1. If you feel a certain Trailer is the one for you, place that Bid right away.
5. Due to the difference in processing times, this is why we *strongly suggest* using our Maximum Bid Setting.

Extended Bidding Times

1. R&J HORSE SALES utilizes what is called a Soft Close on our Auctions.
  1. If a bid is placed in the final 90seconds of an Auction, our software will EXTEND the available bidding time by 2minutes.

2. This will allow for other active bidders to place another bid if they choose to do so.
2. R&J HORSE SALES will not close out an Auction until the Extended Bidding time has passed WITHOUT receiving an additional bid.
  1. Should another bid be placed within the final 90seconds of the Extended Bidding time, an additional 2minutes will be added to the timer.
  2. This process will repeat until the Extended Bidding timer runs out without another bid being placed.

#### Purchase Payments & Release of R&J HORSE SALES

1. Should you be the highest-bidder at Auction close, CONGRATULATIONS – You’ve won your auction!
2. After the Auction has officially closed out, either a Representative of R&J HORSE SALES OR the Seller will be in contact with you.
  1. If you feel inclined to do so, you may also reach out directly to the Seller to begin discussing transportation/pick-up.
3. Please Note: Payment confirmation is REQUIRED within 48 HOURS of Auction close out.
  1. R&J HORSE SALES will NOT allow for transportation/pick-up until payment has cleared.
4. Accepted Forms Of Payment:
  1. Bank Wire Transfer
    1. RECOMMENDED FORM OF PAYMENT.
    2. Wire Transfer Information will be provided by the Seller if you choose to use this form of Payment.
    3. Confirmation of Wire Transfer Payment is required within 48 HOURS of Auction closeout. Necessary prior to transportation/pick-up.
      1. R&J HORSE SALES WILL NOT allow for the movement a horse if payment confirmation has not been received.
  2. Credit Card
    1. Please Note: There is a 3% Processing charge for all Transactions made via Credit Card.
      1. This 3% is charged directly by the CC companies – R&J HORSE SALES does not profit/take funds from this 3%.
    2. Confirmation of Credit Card Payment is required within 48 HOURS of Auction closeout. Necessary prior to transportation/pick-up.
      1. R&J HORSE SALES WILL NOT allow for the movement a horse if payment confirmation has not been received.
  3. Certified Funds (OVERNIGHTED) – Cashiers Check OR Money Order
    1. Please provide a tracking number associated with your shipment of the Certified Funds. Provide to both the Seller and to R&J HORSE SALES.
    2. Tracking #/Confirmation of Certified Funds Payment is required within 48 HOURS of Auction closeout. Necessary prior to transportation/pick-up.
      1. R&J HORSE SALES WILL NOT allow for the movement a horse if payment confirmation has not been received.
  4. Cash
    1. Payments will be made directly to either the Seller or to R&J HORSE SALES.
    2. In the event you choose to make your payment in cash, either the Seller or a representative of R&J HORSE SALES will be in contact with you to arrange for payment of your winning bid.
5. Pick-up / Transportation

1. Upon receipt of Payment Confirmation, you may pick-up your purchase in-person or work directly with the Seller to arrange transport to anywhere in the Continental United States.
6. **ALL WINNING BIDS PLACED ARE CONSIDERED A LEGALLY BINDING CONTRACT. By accepting the Terms and Agreement, you are legally duty bound to pay the final bid price and fulfill his/her promise.**

#### SELLER'S REPRESENTATIONS AND WARRANTIES.

1.1 R&JHORSESALES.COM SIMPLY ACT AS AGENTS OF SALE. R&J HORSE SALES, INC. is an independent contractor regularly engaged in the business of conducting online timed consignment sales of horses and is recognized as "sale management". These sales provide a public means via live, online video and/or timed auctions, to bring together a seller and a buyer for the purpose of completing the sale of a specified horse. R&J HORSE SALES holds no ownership interest in any horse offered for sale, and is not responsible for any liability whatsoever, including, but not limited to, the loss, damage, misrepresentation, injury, death or illness of any item, person or property before, during or after the sale. In the event of any legal dispute between a buyer and owner, R&J HORSE SALES *INC.* will occupy the position of agent for a disclosed principal and stakeholder and will be discharged from all obligation upon delivery of any property and/or funds held, to a court having jurisdiction of such dispute EACH HORSE OFFERED IN THIS SALE IS SOLD "AS IS" AND WITH ALL DEFECTS. OWNERS, BIDDERS AND BUYERS CONSENT TO RECEIVE ELECTRONIC MESSAGES PERTINENT TO ANY AND ALL AUCTION BUSINESS VIA TEXT, EMAIL AND PHONE WHICH MAY BE SENT THROUGH AN AUTOMATIC SYSTEM FROM R&J HORSE SALES AND ITS AFFILIATES.

1.2 WARRANTIES & EXPRESSED LIMITED WARRANTIES BUYERS ARE ENCOURAGED TO PRE-INSPECT AND ARE CAUTIONED TO CAREFULLY EXAMINE ANY HORSE PRIOR TO BIDDING OR PURCHASING - Potential buyers, at their expense, have the option to have a service examination performed on any horse prior to the close of bidding. Owner's permission must be obtained prior to any such examination. BUYERS CANNOT HAVE WHAT IS KNOWN AS A COMPLETE PRE-SALE SERVICE EXAMINATION OF ANY HORSE AFTER PURCHASE. There is no warranty, express or implied, by R&J HORSE SALES or any representative as to the condition, merchantability or fitness for any particular purpose of any trailer offered for sale. It is the position of R&J HORSE SALES that all horses are sold "AS IS" with all existing conditions and defects. Any guarantees announced verbally on behalf of the owner are strictly between owner and buyer. In addition to speaking with the sellers the prospective buyers have the option to go and view any horse before they bid. BEFORE the auction ends is the time to go view the horse out, NOT after you win an auction.

BUYERS CANNOT HAVE A SERVICE SHOP PERFORM WHAT IS KNOWN AS A COMPLETE PRE-SALE SERVICE EXAMINATION OF ANY HORSE AFTER PURCHASE.

1.3. Buyers who fail in any respect whatsoever to pay for any horse under these terms shall be declared in default. Any horse purchased by a defaulter may be resold by the seller at public or private sale without notice for the buyer's account. Costs of such resale will be those of the defaulter. Should such resale fail to satisfy the defaulter's account in full, the defaulter will immediately pay to the seller, the amount owing or be subject to legal suit. The defaulter will be responsible for all costs, including attorney's fees incurred by seller or R&J HORSE SALES in collection of amounts owing for horse(s) purchased, or in enforcement or interpretation of this term of sale.

2.1. SELLER MAKES NO WARRANTIES WHETHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A

PARTICULAR PURPOSE. THE PURCHASE OF THIS HORSE IS SUBJECT TO THE TERMS AND CONDITIONS OF AN "AS IS" SALE.

2.2. Seller is the sole owner of horse and has all authority to enter into this Agreement.

2.3. There is no lien or encumbrance on the horse. And if so, all information will be provided to R&J HORSE SALES.

2.4. Upon Seller's receipt of the Purchase Price, in full, Seller shall provide Buyer with horse's registration & papers, if any, and all other documents necessary to transfer registration of the horse from the Seller to the Buyer.

### 3. RISK OF LOSS.

3.1. Upon the Closing Date as defined in paragraph 3.3 above, Buyer assumes all risk of loss or defect to horse.

### 4. ASSIGNMENT OR TRANSFER.

4.1. No party may assign or transfer this Agreement without the prior written consent of the other party

### 5. ATTORNEYS' FEES.

5.1. In the event that suit or arbitration is brought under or in connection with this Agreement or to enforce the Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, costs and expenses incidental to any such proceedings, including reasonable attorneys' fees incurred in collecting any judgment awarded as a result of liability established pursuant to this Agreement.

### 6. GOVERNING LAW AND VENUE.

6.1. This Agreement shall be governed by the laws of the State of Minnesota.

6.2 Any legal action commenced to enforce or interpret this Agreement shall be brought in state or federal courts with the appropriate jurisdiction, located in Wadena County, Minnesota. The parties here to consent to both venue and jurisdiction.

### 7..STANDING OBLIGATIONS

7.1. There are no standing obligations after the time of payment. At time of sale, the buyer has agreed that the said horse is suitable condition for purchase and agrees so with no ability for a future change in opinion regarding the time of sale. Sale is final and does not comply with any interpretation of a state law of a 30 day guarantee. All marketing materials, including but not limited too, photographs or video footage, may not be redistributed for the private resale or commercial advertisement of this horse in the future. If the buyer choses to use this material, owned by R&J HORSE SALES, outside of personal intent, a fee in the amount of 10% of the sale price of the trailer will be owed for content usage.

### 8. ENTIRE AGREEMENT.

8.1. This Agreement contains the entire agreement among the parties. Any modifications or additions must be in writing and signed by all parties to the Agreement. No oral modifications will be considered part of the Agreement unless reduced to writing and signed by all parties.

### 9. COUNTERPARTS.

9.1. The Agreement may be executed in any number of counterparts, each of which shall be deemed an original. All of which together shall be deemed as one and the same instrument.

# Privacy Policy

Updated March 7, 2024

This privacy policy (“**Privacy Policy**”) tells you how we use your information when you use our **Auction Experience Management Platform** on the website(s) (the “**Site**”) and mobile application(s) (the “**Application**”) made available by **Auction Mobility LLC** (“**we**,” “**us**” or “**our**”) on behalf of [R&J HORSE SALES INC.](#) (the “**Auction House**”). Our [Terms of Use](#) and the Auction House’s [Conditions of Sale](#) are incorporated by reference.

The Site and Application allow you to, among other things use your computer or mobile device(s) to place bids and monitor live auctions (collectively, the “**Services**”). Pursuant to our agreement with the Auction House, the Auction House is the owner of any information collected through the Site, and we act as a processor. **This Privacy Policy is only applicable when users access the Site and the Application and may not be applicable to information collected by the Auction House in other channels (for example, valuation services, subscriptions to catalogues, telephone bid transactions, etc.). We share your information with the Auction House, and by conducting a transaction using the Application, you consent to that sharing. The Auction House may have their own privacy policy, please consult the Auction House’s privacy policy for information on how the Auction House uses it.**

## What types of information does the Site and the Application collect?

We collect and store information that you voluntarily provide to us as well as data related to your use of the Site and Application.

When you register with us and use the Services, we ask that you provide your name, email address, user name and password. You can also choose to provide us with additional information, such as a contact phone number. All of the information listed in this paragraph is collectively referred to as your “**Personal Data**”. This Personal Data is necessary to provide you with the Application and we are processing this Personal Data in accordance with your request.

If you choose to purchase an item at auction, your payment information is processed by a third party payment processor. Please carefully read the section titled “*Processing Payments for Auction Items*” below. All payment information is necessary to process for the purpose of completing the transaction that you have requested with the Auction House.

The Application can also provide you with push notifications of upcoming events, such as sales or auctions. You can opt out of receiving push notifications at any time by using the settings on your mobile device. You can stop all collection of information by the Application by uninstalling the Application. You may use the standard uninstall processes as may be available as part of your mobile device or via the mobile application marketplace or network.

In addition, we automatically collect certain information and analytical data related to your use of the Site and Application (“**Usage Information**”). In the aggregate, this Usage Information is non-personally identifiable or anonymous information about you, including the date and time of your visit, the phone network associated with your mobile device, your mobile device’s operating system or platform, the type of mobile device you use, your mobile device’s unique device ID, location and the features of our Application you accessed (collectively “**Aggregate Information**”). This Aggregate Information is in no way associated with your Personal Data. Usage Information is necessary for the operation and optimization of the Site and the Application.

## How do you use my information, and how long do you keep it?

We use collected information, including Personal Data, to make available and to improve our high standard of reliable services. We use such information to:



- respond to inquiries or service requests and monitor such responses;
- provide information about and market our products or services;
- enable transactions conducted between you and the Auction House using the Application;
- resolve problems; and
- manage the Site and Application and assess usage of the Services.

We will retain Personal Data for as long as you continue to use the Site and/or Application and as long as is necessary thereafter to meet our obligations to the Auction House or other legal obligations. We will retain Aggregate Information for up to 24 months.

## **How do you share my information with others?**

We host the Site and Application and provide the Services in connection with and on behalf of the Auction House. We do not sell or rent your Personal Data to third parties. We share your Individual Information and Usage Information with the Auction House for their business purposes, including marketing purposes. The Auction House may have its own privacy policy and you should consult that for information on how the Auction House uses it.

The ways we may share your Personal Data are outlined below.

### *Processing Payments for Auction Items*

We use third-party credit card processors to process payments for auction items that you choose to make through the Services. To make this possible, your name, billing address and order total are shared via secure (encrypted) means with our third-party payment processors for the sole purpose of completing your order. Please note that your credit card information (number, expiration date, security code) is stored by the third party payment processor and not us. We have entered into agreements (including data processing agreements for our users located in the European Economic Area) with our payment processors to protect and secure your information. If you would like information on our payment processors, please contact us at [legal@auctionmobility.com](mailto:legal@auctionmobility.com).

### *Service Providers*

We may disclose Personal Data to our third party service providers to provide you with the Services, including our third party payment processor. We share Aggregate Information with companies that provide public relations and marketing services for us. Such information will only be shared by us to customize, measure and improve our Site, Application and Services.

### *Legal Processes*

We may disclose information, including Personal Data, which we believe is appropriate to protect our rights, or to cooperate in investigations of fraud or other illegal or inappropriate activity or in response to a subpoena, court order or other comparable legal process. If a subpoena seeks information about an identified user or limited group of users, we'll make reasonable business efforts, if permitted, to contact the user(s) before providing information to the party that requests it. We cannot guarantee that we will be able to contact the user(s) in all cases.

We may disclose Personal Data to your agent or legal representative (such as the holder of a power of attorney that you grant, or a guardian appointed for you) and may request identity verification before disclosing Personal Data in such a case.

As with any other business, it is possible that in the future we could merge with or be purchased by another company. If we are acquired, the company that acquires us would have access to the information maintained by us, including Personal Data, but would continue to be bound by this Privacy Policy unless and until it is amended.

### *Aggregate Information*

We are not limited in our use of Aggregate Information that does not permit direct association with any specific individual, or non-identifiable aggregate information about our users (such as the number of users of our Services, the geographic distribution of our users, the amount of information located and/or removed, etc.).

## **How do I change, delete or access my Personal Data?**

You may view, change, or access your Personal Data at any time by logging into the Services and changing your account information. If you'd like to delete your Individual Information that you have provided in connection with the Services, please contact us at [legal@auctionmobility.com](mailto:legal@auctionmobility.com) and we will forward your request to the Auction House.

## **How do you protect my information?**

We have implemented industry standard information security practices including administrative, physical, and technical measures to protect your Personal Data from loss, misuse, or unauthorized access, disclosure, alteration, or destruction. The security of your account relies on your protection of your password and mobile device(s). You are responsible for maintaining the security of your password. You are solely responsible for any and all activities that occur under your account or on your mobile device. You may not share your password or Services account with anyone. We will never ask you to send your password or other sensitive information to us in an email, though we may ask you to enter this type of information on the Site or the Application interface. If you believe someone else has obtained access to your password, please change it immediately. If you believe that an unauthorized access has already occurred please report it immediately at [legal@auctionmobility.com](mailto:legal@auctionmobility.com). You must promptly notify us if you become aware that any information provided by or submitted to in connection with the Services is lost, stolen, or used without permission.

If you have general concerns or questions regarding the security of information collected, processed or stored by the Site and/or Application, you can contact us at [legal@auctionmobility.com](mailto:legal@auctionmobility.com).

## **How do the Services use cookies or other technologies?**

We collect certain information about your mobile device automatically, such as the type of mobile device you use, your mobile device's unique device ID, the Internet Protocol (IP) address of your mobile device, your mobile device operating system, location, the type of mobile device Internet browser you use, and information about the way you use the Application. If you prefer, you can program your mobile device so that it does not store this information while utilizing the Applications. Certain Application features may only be available through the collection and use of this type of "cache data". We may use cache data to assist in data collection and to track Application usage and trends to help us better serve you.

We may use third party analytics services on our website, such as Google Analytics. The information collected through these means (including IP address) is disclosed to these service providers, who use the information to analyze use of our website. To disable Google Analytics, please download the browser add-on for the deactivation of Google Analytics provided by Google at [Google Analytics Guide](#). We use this information only to improve the Services, but do not combine it with personally identifiable information. See our [Cookie Policy](#) for further information on our use of cookies.

## **Effective Date; Policy Changes**

Each time you use the Services, the current version of the Policy will apply. Accordingly, when you use the Services, you should check the date of this Policy (which appears at the top of the Policy) and review any changes since the last version. Our business changes frequently and this Policy is subject to change from time to time. Unless stated otherwise, our current Policy applies to all information that we have about you. We will not materially change our policies and practices to make

them less protective of Personal Data collected in the past without the consent of affected customers.

## Notice to California Residents

California Civil Code Section 1798.83, known as the “Shine the Light” act, permits customers who are California residents and who have provided us with “personal information” (as that term is defined in Section 1798.83) to request certain information about the disclosure of that information to third parties for their direct marketing purposes. If you are a California resident with questions regarding this, please contact us via email at [legal@auctionmobility.com](mailto:legal@auctionmobility.com) or by mail at:

Auction Mobility LLC  
464 Common Street, Suite 326  
Belmont MA 02478

Under the California Consumer Privacy Act (“CCPA”), Auction Mobility is a “service provider” to the Auction House. The CCPA grants California residents certain rights with respect to disclosure, access, and deletion of personal information collected by a covered business. If you are a California resident with questions about your rights and personal information under CCPA, please contact the Auction House and we will cooperate with the Auction House to address your requests.

## Notice to Nevada Residents

We do not sell, rent, or otherwise share your data to any third-party for a business or commercial purpose, other than the Auction House. By establishing an account via the Auction Mobility Site and the Application, you specifically consent to such disclosure. Pursuant to Section 603A of the Nevada Revised Statutes, residents of Nevada may, at any time, submit a request to an operator of a website in Nevada directing the operator not to make any sale of any personal information the operator has collected or will collect about the consumer. If you are a Nevada resident and want to opt-out of the sale of any personal information at any future time, please submit an email request to [legal@auctionmobility.com](mailto:legal@auctionmobility.com). In your request, please specify that you want to “Opt-Out of Sale of Personal Information in Nevada.” Please allow 60 days for a response.

## For Users Located in the European Economic Area (EEA) or the United Kingdom

If you are located in the EEA or the United Kingdom, you are entitled to certain information regarding your Personal Data and our legal basis for collecting and processing such Personal Data.

Purpose	Examples of Personal Data (please note that the list is not exhaustive)	Legal grounds for processing
To provide you with requested services (for example, bidding, shipping, payment)	Name, contact details (including email address, postal address, telephone number)  Your payment card details  Records of your communications with use (including bidding instructions recorded in online bidding logs)	Performance of a contract
Performance of a contract	Details of your past transactions (including any tax paid or tax withheld) and/or shipments	Compliance with a legal obligation

	(including any permits obtained or duties paid)  Any information relating to a dispute or legal proceeding	
To provide you with details about upcoming auctions or other events from the Auction House	Your name, email address  Your marketing and communication preferences (in your Auction House account)	Legitimate interests
To monitor the performance of our Site and Application and make your user experience better	Your IP address  Your browser type, device ID, and operating system  The resources your access on your Auction House account and the Services  The data obtained from cookies, web logs, and other similar technologies that monitor the use of our Site and Application (please see our Cookies Policy)	Legitimate interests

### Rights of EEA and United Kingdom residents

You may have rights of access, correction, or deletion of your Personal Data. You may access or correct Personal Data at any time through your Auction House account. If you'd like to delete your Individual Information that you have provided in connection with the Services, please contact us at [legal@auctionmobility.com](mailto:legal@auctionmobility.com) and we will forward your request to the Auction House. For all other data subject requests under the General Data Protection Regulation (or comparable UK data protection law), we will cooperate with the Auction House as the controller of your Personal Data.

### Is my Personal Data transferred out of the EEA or the United Kingdom?

We are located in the United States and provide our Services from the United States, and as such, your Personal Data will be held in our servers located in the United States. The United States does not have the same data protection laws as in the EEA or the United Kingdom.

We provide the Services to the Auction House as a data processor pursuant to instructions and a data processing agreement, including the EU Commission approved "standard contractual clauses." [More details about typical standard clauses can be found here.](#) Auction Mobility complies with the EU-US Privacy Shield Framework as set for the by US Department of Commerce regarding the collection, use, and retention of your Individual Information transferred from the European Union and the United Kingdom to the United States. To read Auction Mobility's Privacy Shield Statement [click here](#). To learn more about the Privacy Shield program, and to view Auction Mobility's certification, please visit <https://www.privacyshield.gov/list> and search for Auction Mobility LLC.

### Contact Us

To contact us with your questions or comments regarding this Policy or the information collection and dissemination practices of the Application, please email us at [legal@auctionmobility.com](mailto:legal@auctionmobility.com) or contact us by mail at:

Auction Mobility LLC  
464 Common Street, Suite 326  
Belmont MA 02478

If you have questions about the Auction House's use of your Personal Data, please refer to the Auction House's privacy policy and contact the Auction House directly.

# Terms of Use

Updated March 7, 2024

THESE TERMS OF USE (THESE “**TERMS OF USE**”) DEFINE THE RELATIONSHIP BETWEEN **R&J HORSE SALES INC.** (THE “**COMPANY**”, “**WE**”, “**US**” OR “**OUR**”) AND YOU, THE PERSON ACCESSING OUR AUCTION EXPERIENCE MANAGEMENT PLATFORM OVER THE WEB AT [HTTPS://BID.RANDJHORSESALES.COM/](https://bid.randjhorse-sales.com/) (THE “**SITE**”) AND/OR DOWNLOADING OR USING OUR AUCTION EXPERIENCE MANAGEMENT PLATFORM MOBILE APPLICATION(S) (THE “**APPLICATION**”) AND REGISTERING FOR OUR SERVICES (“**YOU**” OR “**YOUR**”). WE MAKE THE SITE AND APPLICATION AVAILABLE TO YOU ON BEHALF OF [R&J HORSE SALES INC.](#) (THE “**AUCTION HOUSE**”). BY USING THIS SITE AND APPLICATION, YOU AGREE TO BE BOUND BY THE AUCTION HOUSE'S CONDITIONS OF SALE, [VERNDALE, MN](#), WHICH ARE INCORPORATED BY REFERENCE. YOU ACKNOWLEDGE THAT WE ARE NOT A PARTY TO YOUR PURCHASE OF ITEMS FROM THE AUCTION HOUSE, AND THAT THE PURCHASE AND SALE OF ITEMS IS A TRANSACTION CONDUCTED EXCLUSIVELY BETWEEN YOU AND THE AUCTION HOUSE, AND NOT BETWEEN YOU AND AUCTION MOBILITY. YOU MAY USE THE SERVICES (DEFINED BELOW) ONLY IF YOU CAN FORM A BINDING CONTRACT WITH US AND ARE NOT A PERSON BARRED FROM RECEIVING THE SERVICES UNDER THE LAWS OF THE UNITED STATES OR OTHER APPLICABLE JURISDICTION. IF YOU CANNOT CONFIRM THE FOREGOING, THEN YOU MUST NOT ACCEPT THESE TERMS OF USE AND MAY NOT DOWNLOAD OR USE THE SITE OR APPLICATION OR USE THE SERVICES. YOU MAY USE THE SERVICES ONLY IN COMPLIANCE WITH THESE TERMS OF USE AND ALL APPLICABLE LAWS AND REGULATIONS.

## Binding Arbitration

ANY CLAIM, DISPUTE OR CONTROVERSY OF WHATEVER NATURE ARISING OUT OF OR RELATING TO THESE TERMS OF USE SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE SECTION TITLED “BINDING ARBITRATION AND APPLICABLE LAW” BELOW. PLEASE READ THE SECTION TITLED “BINDING BILATERAL ARBITRATION AND APPLICABLE LAW” CAREFULLY.

## Services

We may amend these Terms of Use at any time by posting the revised Terms of Use on the Site and Application. We may terminate these Terms of Use at any time by suspending or terminating access to the Services and/or notifying you. You can see when these Terms of Use were last revised by referring to the “Updated” legend above. The Site and Application allow you to place bids, monitor live auctions and perform other related activities in connection with the Auction House (collectively, the “**Services**”). Your continued use of the Services after we have posted revised Terms of Use signifies your acceptance of such revised Terms of Use. No amendment or modification of these Terms of Use will be binding unless in writing and signed by our duly authorized representative or posted to the Site and/or Application by our duly authorized representative.

## Agreement with Respect to Terms of Use

These Terms of Use constitute a legally binding agreement between the Company and you. You acknowledge that you have read these Terms of Use, and accept, understand and will be bound by such terms and conditions. You further acknowledge that these Terms of Use, together with the Privacy Policy (defined below) and terms governing any individual section of the Site or Application, represent the complete and exclusive agreement between us, and supersede any proposal or prior agreement oral or written, and any other communications between us relating to the Site, Application and Services.

## Registration and Privacy

To register with us and use the Site or Application, we require that you provide certain information, including your name, email address, username and password (collectively, your “Account Information”). If you provide any information that is untrue, inaccurate, not current or incomplete, or if you impersonate someone else, or we have reasonable grounds to suspect so, we may terminate your account and refuse any and all current or future use of the Site and Application by you.

We are committed to your privacy, and our privacy policy (the “Privacy Policy”) explains how we use, store and protect your Account Information and other information you provide to us.

You are solely responsible for maintaining the confidentiality of your user name and password. You must notify us immediately of any unauthorized use of your Account Information. We will not be responsible for any losses arising out of the unauthorized use of your account and you will indemnify and hold us harmless from and against any losses, damages, claims or liabilities relating to the improper, unauthorized or illegal uses of your account.

If you are a user accessing Services from the European Union, Asia, or any other region with laws or regulations governing personal data collection, use, and disclosure, that differ from United States laws, please be advised that through your continued use of the Services, which is governed by U.S. law, you are transferring your personal information to the United States and you consent to such transfer.

## Use and Restrictions

### Content

All text, videos, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, artwork and computer code, including but not limited to design, structure, “look and feel” and arrangement of the content available on the Site and Application (collectively, “**Content**”) is owned, controlled or licensed by or to us, and is protected by trade dress, copyright, patent and trademark laws, and various other intellectual property rights and unfair competition laws.

The Application and Services are licensed, not sold. The Content, Site and Application, and all related intellectual property, are solely and exclusively owned by us and/or our licensors and suppliers. We grant you a personal, limited, nontransferable license to download, display and use the Application and use the Services available through the Site strictly in accordance with these Terms of Use. This license does not allow you to use the Application on any device that you do not own or control. You may not copy, reproduce, republish, post, publicly display, translate or distribute the Application or Content in any way, except as specifically authorized by the features and functions of the Services (such as posting to or sharing images with certain social media sites). We grant you no license by implication or estoppel, and reserve all rights not expressly granted in these Terms of Use. The license granted to you pursuant to these Terms of Use is solely for your personal use (but not for resale or redistribution) as a user of the Services, and may not be used for any other purposes. You shall not reverse engineer, de-compile, or otherwise translate, in any way, the Content and user interface(s) made available from, on or through the Application or Site. You have no right or claim of right to the Content or any unique ideas found on the Application or Site.

### Links to Other Sites

The Application and Site contain links to other independent third-party web sites, and we provide links to third-party websites as part of the Services (in all cases “Linked Sites”). These Linked Sites are provided solely as a convenience to you and based upon your Account Information or the Content you elect to view. Such Linked Sites are not under our control, and we are not responsible for and do not endorse the content of such Linked Sites, including any products, information or materials contained on such Linked Sites. You will need to make your own independent judgment regarding your interaction with these Linked Sites. Some of the content served by us will be from affiliated merchant sites, and sales through these affiliated sites may generate a commission payable to us. We accept no responsibility for reviewing changes or updates to, or the quality,

content, policies, nature or reliability of third party web sites, including, without limitation, Linked Sites and websites linking to the Application and/or Site. You should review applicable terms and policies, including privacy and data gathering practices, of third party web sites, and should make whatever investigation you feel necessary or appropriate before proceeding with any transaction with any third party.

### **Prohibited Uses**

You may not use the Application, Site or Services for illegal or unlawful or malicious activities or for activities that we deem improper for any reason whatsoever in our sole judgment. While using the Application, Site and Services, you may not: (a) impersonate any person or entity, falsely state or otherwise misrepresent your affiliation with any person or entity, or use or provide any fraudulent, misleading or inaccurate information; (b) defame, abuse, harass, stalk, intimidate, bully, threaten or otherwise violate the rights of others, including without limitation others' privacy rights or rights of publicity; (c) access or use (or attempt to access or use) another user's account without permission, or solicit another user's login information; (d) transmit any software or materials that contain any viruses, worms, trojan horses, defects, or other items of a destructive nature; (e) modify, adapt, sublicense, translate, sell, reverse engineer, decompile or disassemble any portion of the Application, Site or Services; (f) "frame" or "mirror" any portion of the Application, Site or Services; (g) use any robot, spider, site search/retrieval application or other manual or automatic device or process to retrieve, index, "data mine" or in any way reproduce or circumvent the navigational structure or presentation of the Application, Site or Services; (h) harvest or collect information about or from other users of the Application, Site or Services; (i) use the Application, Site or Services for any illegal activity; (j) probe, scan or test the vulnerability of the Application or Site, nor breach the security or authentication measures on the Application or Site or take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Application or Site, such as a denial of service attack; (k) access or use any portion of the Content or Services if you are a direct or indirect competitor of the Company, or provide, disclose or transmit any portion of the Content to any direct or indirect competitor of the Company; (l) use or distribute any Content to directly or indirectly create or contribute to the development of any database or product; or (m) facilitate or encourage any violations of this Section.

## **Warranties, Disclaimers and Limitations of Liability**

### **Your Warranties**

You represent and warrant to us that (a) all information, including, without limitation, Account Information, that you provide to us is accurate and truthful, (b) you have the authority to share Account Information with us and to grant us the right to use Account Information as provided in these Terms of Use and Privacy Policy and (c) your use of the Services pursuant to these Terms of Use does not violate any applicable law or other contract or obligation to which you are a party or are otherwise bound.

### **Disclaimer of Warranties**

ALTHOUGH WE MAKE EFFORTS TO PROVIDE AN ACCURATE APPLICATION AND SITE, THE APPLICATION, SITE AND ALL PARTS THEREOF ARE PROVIDED "AS IS", "WITH ALL FAULTS", AND "AS AVAILABLE" TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE COMPANY AND ITS LICENSORS AND SUPPLIERS DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND WITH RESPECT TO THE APPLICATION, THE SITE, THE SERVICES, AND ANY INFORMATION OR DATA WE PROVIDE TO YOU, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION (1) AS TO TITLE, MERCHANTABILITY, FITNESS FOR ORDINARY PURPOSES AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, (2) THE QUALITY, ACCURACY, TIMELINESS OR COMPLETENESS, (3) THOSE ARISING THROUGH COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND (4) THAT ACCESS TO OR USE OF THE APPLICATION, SITE, CONTENT OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE



OR COMPLETELY SECURE. ANY RELIANCE UPON THE APPLICATION, SITE AND SERVICES IS AT YOUR OWN RISK.

IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES, OR WITH THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE AND UNINSTALL THE APPLICATION.

Please note that we do not have control over, and cannot guarantee the existence, quality, safety or legality of any item offered by the Auction House, the truth or accuracy of Auction House representations, or the ability of Auction House to sell any item.

Your reliance upon the information available on the Application and/or Site or through use of the Services and your interactions with third parties identified through the Services is SOLELY AT YOUR OWN RISK. The Services may be subject to limitations, delays, and other problems inherent in the use of the Internet, mobile devices and electronic communications and mail delivery systems. We are not responsible for any delays, delivery failures or other damages resulting from such problems. We reserve the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Application, Site and Services, or any portion thereof; and (2) to interrupt the operation of the Application, the Site and/or provision of Services, or any portion thereof, as necessary to perform routine or non-routine maintenance, error correction, or other changes, or to comply with laws.

Some jurisdictions do not allow the above disclaimer of warranties, so such disclaimers might not apply to you.

## **Limitations of Liability**

**IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE SITE, APPLICATION OR THEIR RESPECTIVE CONTENT, WITH THE DELAY OR INABILITY TO ACCESS OR USE THE SITE, THE APPLICATION OR RELATED SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY CONTENT, SOFTWARE, PRODUCTS AND SERVICES MADE AVAILABLE OR OBTAINED THROUGH THE SITE, THE APPLICATION OR THEIR RESPECTIVE CONTENT, OR OTHERWISE ARISING OUT OF THE USE OR ACCESS OF THE SITE, USE OF THE APPLICATION OR USE OF THE SERVICES, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. ANY SERVICES OR CONTENT MADE AVAILABLE OR OBTAINED THROUGH THE USE OF THE SITE OR THE APPLICATION, AND ALL OTHER USE OF THE SITE OR APPLICATION, IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS THEREFROM.**

**THE AGGREGATE AND CUMULATIVE LIABILITY OF COMPANY TO YOU OR ANY THIRD PARTY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS OF USE SHALL NOT EXCEED ONE HUNDRED DOLLARS (\$100).**

**IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SITE, THE APPLICATION OR THEIR RESPECTIVE CONTENT, OR WITH ANY OF THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE AND UNINSTALL THE APPLICATION.**

Some jurisdictions do not allow the above limitation of liability and/or exclusion of damages, so such limitations and exclusions might not apply to you.

## Release

If you have a dispute with the Auction House, you release Company (and its affiliates and subsidiaries, and its and their respective officers, directors, employees and agents) from any and all claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute. **IN ENTERING INTO THIS RELEASE YOU EXPRESSLY WAIVE ANY PROTECTIONS (WHETHER STATUTORY OR OTHERWISE) THAT WOULD OTHERWISE LIMIT THE COVERAGE OF THIS RELEASE TO INCLUDE ONLY THOSE CLAIMS WHICH YOU MAY KNOW OR SUSPECT TO EXIST IN YOUR FAVOR AT THE TIME OF AGREEING TO THIS RELEASE.**

## Indemnification

You will indemnify and hold the Company and its Affiliates harmless with respect to any suits or claims arising out of (i) your breach of these Terms of Use, including, but not limited to, any infringement by you of the copyright or intellectual property rights of any third party; (ii) your fraudulent or malicious use of the Site, the Application and/or Services or your misuse or abuse of the Site, Application and/or Services or (iii) your violation of applicable laws, rules or regulations in connection with your use of the Site, Application or Services. **YOU AGREE TO INDEMNIFY AND HOLD THE COMPANY, ITS THIRD-PARTY VENDORS, CORPORATE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY AND ALL CLAIMS AND DEMANDS, INCLUDING, BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, MADE BY ANY THIRD-PARTY DUE TO OR ARISING OUT OF ANY CONTENT SUBMITTED, POSTED, OR OTHERWISE PROVIDED BY YOU TO THE COMPANY AND/OR ITS PARTNERS AND ANY BREACH BY YOU OR YOUR AFFILIATES, EMPLOYEES, AGENTS AND REPRESENTATIVES OF THESE TERMS OF USE.**

## Consent to Electronic Notice

By using the Site, the Application or the Services, you agree that Company may communicate with you electronically regarding administrative, security and other issues relating to your use of the Site, Application and Services. You agree that any notices, agreements, disclosures or other communications that Company sends to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The foregoing does not affect your statutory rights.

## Governing Law

You agree that, except to the extent inconsistent with or preempted by federal law, the laws of the Commonwealth of Massachusetts, United States, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute between you and Company.

## Binding Bilateral Arbitration and Applicable Law (Continued from Section titled "Binding Arbitration" above)

**PLEASE READ THIS SECTION CAREFULLY. You and Company agree that any claim or dispute at law or equity that has arisen or may arise between us relating in any way to or arising out of this or previous versions of the Terms of Use, your use of or access to the Site, Application and Services, or any products or services sold or purchased through the Services, will be resolved in accordance with the provisions set forth in this Section.**

### 1. Agreement to Arbitrate

**You and Company each agree that any and all disputes or claims that have arisen or may arise between you and Company relating in any way to or arising out of this or previous versions of the Terms of Use, the relationship between you and Company, your use of or access to the Site, Application or Services, or any products or services sold, offered, or purchased through the Services (a "Dispute") shall be resolved exclusively through final and binding arbitration, and not in court.**

Notwithstanding the choice of law provision governing the Terms of Use above entitled “Governing Law”, the Federal Arbitration Act governs the interpretation and enforcement of this Agreement to Arbitrate to the maximum extent possible and to the exclusion of any conflicting federal or state laws. The Terms of Use and this Agreement to Arbitrate contemplate a transaction involving interstate commerce.

## **1. Prohibition of Class and Representative Actions and Non-Individualized Relief**

**YOU AND COMPANY AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. YOU THEREFORE AGREE TO WAIVE THE RIGHT TO A JURY TRIAL AND THE RIGHT TO FILE, COMMENCE OR PARTICIPATE IN ANY CLASS ACTION OR CLASS ARBITRATION AGAINST COMPANY OR ANY PUTATIVE CLASS ACTION OR CLASS ARBITRATION AGAINST COMPANY. UNLESS BOTH YOU AND COMPANY AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON’S OR PARTY’S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, CLASS, OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY’S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS.** If a court decides that applicable law precludes enforcement of any limitations in this Agreement as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court, subject to your and Company’s right to appeal the court’s decision. All other claims will be arbitrated.

## **2. Arbitration Procedures**

Notwithstanding any contrary provision in the FAA or the applicable AAA rules, all issues in a Dispute are for the arbitrator to decide.

The arbitration will be conducted by the American Arbitration Association (“AAA”) under its rules and procedures, including the AAA’s Consumer Arbitration Rules (as applicable) (“AAA Rules”), as modified by this Agreement to Arbitrate. The rules promulgated by the AAA concerning class arbitration shall not apply. The AAA Rules will govern the number of arbitrators that may preside over an arbitration conducted under this Agreement to Arbitrate. The AAA Rules are available online at [adr.org](http://adr.org), by calling the AAA at 1-800-778-7879, or by writing to Company at the Notice address below. You acknowledge that you have access to the AAA Rules and consent to them and that you can obtain a printed copy of the AAA Rules from Company or AAA. In the event of any conflict between the AAA Rules and this Agreement to Arbitrate, this Agreement to Arbitrate shall control and the arbitrator is bound by the terms of this Agreement to Arbitrate.

A party who intends to seek arbitration must first send to the other, by certified mail, a completed form Notice of Dispute that identifies your name, contact information, a description of the dispute, and your requested relief (“Notice”). The Notice to Company should be sent to Auction Mobility, attn. President, 192 South St., Suite

600, Boston, Massachusetts 02111, United States. Company will send any Notice to you to the physical address we have on file associated with your Company account, with a copy to your email address on file; it is your responsibility to keep your physical address and email address up to date.

If you and Company are unable to resolve the claims described in the Notice within 30 days after the Notice is sent, you or Company may initiate arbitration proceedings. A form for initiating arbitration proceedings is available on the AAA's site at [www.adr.org](http://www.adr.org). In addition to filing this form with the AAA in accordance with its rules and procedures, the party initiating the arbitration must mail a copy of the completed form to the opposing party. You may send a copy to Company at Auction Mobility, attn. President, 192 South St., Suite 600, Boston, Massachusetts 02111, United States. If Company initiates an arbitration against you, it will send a copy of the completed form to the physical address we have on file associated with your Company account, with a copy to your email address on file. Any settlement offer made by you or Company shall not be disclosed to the arbitrator.

The arbitration hearing shall be held in Boston, Massachusetts, United States.

The arbitrator will decide the substance of all claims in accordance with applicable law, including recognized principles of equity, and will honor all claims of privilege recognized by law. The arbitrator shall not be bound by rulings in prior arbitrations involving different users, but is bound by rulings in prior arbitrations involving the same Company user to the extent required by applicable law. The arbitrator's award shall be final and binding and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

The arbitrator shall have the authority to compel adequate discovery for the resolution of the Dispute and to award such relief as would otherwise be permitted by law; provided, however, that in no event shall the right to discovery granted to the parties exceed 25 interrogatories, 35 documents requests, 10 third-party subpoenas, and three depositions (of not more than seven hours each), including third-party depositions, per side. The parties may submit such pre-arbitration and post-arbitration briefs (including briefs during arbitration) as they choose, provided that no party shall submit briefing exceeding a reasonable page limitation to be set by the arbitrator. If any party submits a motion, the arbitrator shall consider the motion and either deny it or request opposition briefing by the non-moving party, which shall not be required until requested by the arbitrator. The arbitrator may not grant a motion without allowing the opposing party an opportunity to oppose. The total length of the arbitration hearings on the merits shall not exceed 25 hours of hearing time, to be divided equally between the opposing sides. All discovery shall be completed no later than one hundred 120 days after appointment of the arbitrator. The hearing shall be concluded no later than 180 days after appointment of the arbitrator, unless the arbitrator's schedule requires a later hearing. The arbitrator may only extend these limits at the request of a party when the arbitrator finds exceptional cause for the extension. The parties may extend these limits upon their agreement.

### **3. Costs of Arbitration**

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Agreement to Arbitrate.

### **4. Severability**

With the exception of any of the provisions in Section 1 above (“Prohibition of Class and Representative Actions and Non-Individualized Relief”), if an arbitrator or court decides that any part of this Agreement to Arbitrate is invalid or unenforceable, the other parts of this Agreement to Arbitrate shall still apply.

## 5. Opt-Out Procedure

**IF YOU ARE A NEW COMPANY USER, YOU CAN CHOOSE TO REJECT THIS AGREEMENT TO ARBITRATE (“OPT-OUT”) BY MAILING COMPANY A WRITTEN OPT-OUT NOTICE (“OPT-OUT NOTICE”). THE OPT-OUT NOTICE MUST BE POSTMARKED NO LATER THAN 30 DAYS AFTER THE DATE YOU ACCEPT THE TERMS OF USE FOR THE FIRST TIME. YOU MUST MAIL THE OPT-OUT NOTICE TO** Auction Mobility, attn. President, 192 South St., Suite 600, Boston, Massachusetts 02111, United States.

Your Opt-Out Notice must include your name, address (including street address, city, state and zip code), and the user ID(s) and email address(es) associated with the Company account(s) to which the opt-out applies. You must sign and date the Opt-Out Notice for it to be effective. This procedure is the only way you can opt out of the Agreement to Arbitrate. If you opt out of the Agreement to Arbitrate, all other parts of the Agreement and its Legal Disputes Section will continue to apply to you. Opting out of this Agreement to Arbitrate has no effect on any previous, other, or future arbitration agreements that you may have with Company.

This Agreement to Arbitrate shall survive termination of this Agreement.

## 2. Judicial Forum for Legal Disputes

Unless you and Company agree otherwise, if the Agreement to Arbitrate above is found not to apply to you or to a particular claim or dispute, either as a result of your decision to opt out of the Agreement to Arbitrate or as a result of a decision by the arbitrator or a court order, you agree that any claim or dispute that has arisen or may arise between you and Company must be resolved exclusively by a state or federal court located in Boston, Massachusetts, United States. You and Company agree to submit to the personal jurisdiction of the courts located within Boston, Massachusetts, United States for the purpose of litigating all such claims or disputes.

### Interpretation

These Terms of Use are intended to be interpreted in the English language, and any translation is made for the convenience of the parties only. In the event of a conflict between the English and the translated versions, the English version will control and supersede.

You agree that no joint venture, partnership, employment, or agency relationship exists between you and the Company as a result of these Terms of Use or accessing or using the Site, the Application or their respective contents. The Company’s performance under these Terms of Use is subject to existing laws and legal process, and nothing contained in these Terms of Use is in derogation of the Company’s right to comply with governmental, court and law enforcement requests or requirements relating to your access or use of the Site and/or Application or information provided to or gathered by the Company with respect to such use.

If any part of these Terms of Use is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations contained herein, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable

provision that most closely matches the intent of the original provision and the remainder of the Terms of Use shall continue in effect. A printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to the Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. Except as otherwise specified in these Terms of Use, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email. Notices to us must be sent in writing to the following address: Auction Mobility, attn. President, 192 South St., Suite 600, Boston, Massachusetts 02111, United States, and notices to you will be sent to the email address you provide to us, which addresses may be updated from time to time upon written notice to the other party. No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach. You may not assign any of your rights or obligations hereunder, whether by operation of law or otherwise. We may assign our rights and privileges under these Terms of Use (including your user registration), without your consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets, or to an affiliate, or in connection with a change in control. Subject to the foregoing, these Terms of Use shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

#### **Term and Termination**

The term of these Terms of Use will continue for as long as you access and use the Application, Site and/or Services. Sections titled "Content," "Warranties, Disclaimers and Limitations of Liability," "Applicable Law and Jurisdiction," "Interpretation," and "Indemnification," and this Section shall survive any termination or expiration of these Terms of Use.