

# PROXIBID UNIFIED USER AGREEMENT

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## PROXIBID UNIFIED USER AGREEMENT

Please read this Unified User Agreement ("Agreement") carefully, as the Agreement constitutes a legally binding contract between you and Proxibid. This Agreement contains the terms and conditions that will govern your use of our platform, which includes our website (Proxibid.com), services, and any of our integrated product offerings. By creating a Buyer's or Seller's account, you're acknowledging that you have read, understand, agree to, and accept this Agreement. It is your responsibility to carefully read this Agreement before using our platform. If you do not wish to be bound by this Agreement, you may not use the services offered on our platform.

### 1. Definitions

The following terms are defined for use in this Unified User Agreement, and their meaning in this Agreement is limited to the given definition.

"APN" means Auction Payment Network, LLC, a subsidiary of Proxibid, Inc.

"ATG Pay" means the payment services Proxibid provides to Sellers and Buyers to coordinate and facilitate a Buyer's purchase of Property from the Company in connection with an Event.

"Buyer" means an individual or entity that creates a Buyer account on the Proxibid website (regardless of such User's purpose for creating the Buyer account and whether such Buyer account is ever utilized to place a bid).

"Claim" means a challenge to a payment that a User files directly with Proxibid.

"Customer Experience" means Proxibid's customer support department who can be contacted via the channels on the [Contact Us](#) page.

"Default Event Terms" means the set of default terms and conditions set forth under Section 5 of this Agreement, which governs the relationship between a Buyer and Seller unless otherwise stated in Seller's Special Terms of Sale.

"Information" means any confidential and/or personally identifiable information or other information related to an Account or User, including but not limited to the following: name, email address, billing/shipping address, phone number, and financial information.

"Proxibid," "we," "us," and "our" means Proxibid, Inc.

"Proxibid Platform" means all our products and services and any other features, technologies, and/or functionalities offered by us on our website, by telephone (including support services), or through any other means.

"Seller" means the independent entity conducting or sponsoring the event, including, but not limited to auction houses auctioneers, or auction companies.

"Special Terms of Sale" means a Seller's Terms of Sale and any Special Terms which modify and/or supplement the Default Event Terms set forth under Section 5.

"You," "your," and "User" means the individual or entity using the Proxibid website, whether as a Buyer, Seller, or otherwise.

### 2. Overview of Proxibid's Services

Proxibid provides online event services in a variety of capacities. For auction-style events, Buyers who

cannot be physically present at an event site have an opportunity to participate in the live event through real-time webcast online bidding (live bidding). Buyers who are unable to personally monitor the live event webcast can participate in the event by entering an absentee bid (pre-bidding).

Proxibid also provides timed online event services.

All events are operated by independent Sellers. Sellers are solely responsible for running each event and regulating each sale. While this Agreement contains a set of default terms governing the relationship between a Buyer and Seller, each Seller has the discretion to alter those terms for their event and may impose Special Terms of Sale for participation. (See Default Event Terms under Section 5 below).

Sellers have the ultimate discretion over approving or rejecting Buyers for each event. Creating an account as a Buyer with Proxibid does not automatically guarantee that a Buyer will be approved for any of the events hosted by Proxibid.

Many Sellers have their websites and their Special Terms of Sale which modify and/or supplement the Default Event Terms set forth under Section 5 below and may or may not contain the same level of protection as the terms of this Agreement. Before participating in an event, a Buyer must review and accept the Special Terms of Sale governing the event, if any. A Seller shall not make any material changes to the Special Terms of Sale governing an open event unless the Seller has provided written notice to all Buyers participating in the event. Any participating Buyer who does not receive such notice shall have the right to retract the Buyer's bid.

Because the internet occasionally experiences disruptions, Proxibid cannot guarantee the Proxibid Services will be available 100 percent of the time. Although Proxibid strives to provide the most reliable services possible, interruptions and delays in service are unavoidable and Proxibid disclaims any liability for damages resulting from such disruptions. Thus, you use this website at your own risk.

Proxibid reserves the right to not conduct business with any individual Seller or Buyer or groups of Sellers or Buyers at any time for any reason, and to cancel any scheduled event at any time and for any reason. Proxibid may terminate or deny access to this website at any time at our sole and absolute discretion. Proxibid will not be liable for any direct, indirect, or consequential damages that result from such actions.

### **3. Buyer Obligations**

3.1. **Payment to Seller.** Placing a bid in an auction-style event is a legally binding obligation. If you are the successful Buyer, you agree to pay the amount of your bid plus all applicable taxes and charges in the time and manner designated by the Seller. Failure to make such payment shall be deemed a breach of this Agreement. Buyers may not re-list or attempt to sell (on Proxibid or any other site) any item awarded on Proxibid before the Seller receives payment in full. Buyers and Sellers shall be solely responsible for collecting and remitting all applicable sales and other taxes resulting from any transactions through the Proxibid Platform, and shall indemnify Proxibid for losses related to failure to do so.

3.2. **Payment to Proxibid.** The parties acknowledge and agree that Proxibid is paid a percentage, to be solely determined by Proxibid based on the event, of any successful bid/purchase utilizing the Proxibid Services ("Proxibid Premium"), and the Seller incorporates such Proxibid Premium into the total purchase price due from the successful Buyer. Buyer acknowledges and agrees that its payment of the Proxibid Premium to Proxibid is in consideration for Buyer's use of the Proxibid Services to become the successful buyer and such payment obligation is not contingent upon the consummation of the sale transaction between Buyer and Seller. Accordingly, notwithstanding and without limiting Buyer's payment obligation to Seller outlined in Section 3.1 above or Section 5 below (a Seller's Special Terms), in the event for any reason the transaction between the Buyer and the Seller is not consummated or the Buyer otherwise does not make payment of the total purchase price owed to Seller for the successful bid/purchase offer, within fifteen (15) days of the date of the bid/purchase offer, the successful Buyer agrees to pay the Proxibid Premium directly to Proxibid. Any default in payment will be subject to interest and collection fees as set

forth under Section 27 below.

3.3. Absentee Bids. Buyers who are unable to personally monitor the event can participate in the event through the pre-bidding process. Under the bidding process in an auction-style event, a Buyer may not remove an absentee bid (pre bid) without the approval of the Seller or Proxibid, which may be granted or denied in each of their sole discretion. Proxibid retains the right to take any adverse action, including without limitation termination of a Buyer's account, against Buyers who are deemed to be abusing bid-retractions. Buyers expressly acknowledge and agree that Proxibid makes no guarantee or representation regarding the effectiveness or success of pre-bids. By placing a pre-bid, a Buyer expressly authorizes Proxibid to begin bidding and continue bidding on Buyer's behalf at any price more than the opening bid (determined by the Seller in its discretion) up to the amount of the maximum pre-bid. Buyer expressly acknowledges that Proxibid owes no duty to Buyer to obtain the lowest possible price on behalf of the Buyer and Buyer may be able to enter a successful bid at a lower price if Buyer were to actively participate in the event.

3.4. Disclosure of Maximum Pre-bids to Seller. Buyer acknowledges and agrees that a Seller may have access to and knowledge of Buyer's maximum pre-bid and may determine the starting bid based in whole or in part on the amount of the Buyer's maximum pre-bid; as long as the Buyer will be provided notice that such access to maximum pre-bids has been enabled by the Seller before Buyer's submission of the maximum pre-bid.

3.5. Due Diligence. Proxibid is not responsible for any errors or omissions in titles, descriptions, images, or videos of items provided on this website or in Proxibid's bidding application. Buyers are solely responsible for verifying the condition and description of any items when considering placing bids or making purchases on this website. Buyers also expressly agree to comply with all applicable laws or regulations when engaging in and concluding transactions on Proxibid.

3.6. User ID and Password. Buyer agrees to keep Buyer's user identification and password confidential, and Buyer is solely responsible for any activity generated utilizing its account with Proxibid. Buyer represents and guarantees that all information supplied by Buyer to Proxibid is accurate. Buyer may not use any alias or other means to mask their identity.

3.7. Financial Obligations. The Buyer and Seller agree that any payments, refunds and/or deposits for the items purchased are the sole responsibility of such parties, and that Proxibid is not directly or indirectly involved in or responsible for such payments, refunds, or deposits.

3.8. Payments. Proxibid provides Buyers the ability to pay Sellers through: (i) Proxibid invoicing; and (ii) Credit and Debit Card Payments. If you utilize a credit or debit card to make payment for any fees you owe, Proxibid or its agent may request preauthorization for a card transaction for validation purposes and/or to ensure there are sufficient funds available in your account. You acknowledge and agree that all payments shall be subject to ATG Pay Terms and Conditions for Buyers, and you agree to the terms by accepting this Agreement or by using the payment services. Please see the ATG Pay Terms & Conditions for Buyers that describe payments options and obligations in more detail here: <https://discover.proxibid.com/buyerpaymentsterms>. Proxibid may require you to separately register for the ATG Pay services.

#### **4. Seller Obligations**

4.1. Seller Requirements and Approval. Sellers must be approved by Proxibid, in its sole discretion, before they can use Proxibid's website. Sellers must be licensed, bonded (if required by the state where Seller is located) and have a federal tax identification number. When deciding whether to approve a Seller, Proxibid will also consider (1) Seller's outcry auction experience; (2) any professional designation which Seller may have; and (3) Seller's association memberships (state, national, or both).

4.2. Fees and Taxes.

(a) Fee Schedule - Auction Events. Seller agrees to pay Proxibid the fees and expenses for each event

for which Seller engages Proxibid to provide Proxibid Services (each an "Auction Event") as outlined in Proxibid's then-current rate card (which has been provided to Seller and Seller acknowledges receipt thereof) ("Rate Card") or as otherwise outlined in this Agreement or otherwise agreed upon in writing between Seller and Proxibid, and any taxes related to the Auction Event. Buyers and Sellers shall be solely responsible for collecting and remitting all applicable sales and other taxes resulting from any transactions through the Proxibid Platform, and shall indemnify Proxibid for losses related to failure to do so.

(b) Fees for Additional Services. In the event Proxibid provides additional services according to a separate statement of work, purchase order, or otherwise agreed upon in writing between the Seller and Proxibid ("Additional Services"), Seller shall pay the fees and expenses associated with such Additional Services agreed upon between Seller and Proxibid. Seller acknowledges and agrees such Additional Services shall be considered Proxibid Services subject to the terms and conditions of this Agreement.

(c) Due Date. Unless alternate payment arrangements have been agreed to in writing by Proxibid, payment in full is due to Proxibid no later than fifteen (15) days after the date of Proxibid's invoice ("Due Date"). Any request for alternative payment arrangements must be submitted by Seller to Proxibid within ten (10) days following the Auction Event. Any amount due to Proxibid which is not paid by Seller by the Due Date shall be subject to interest and collection costs as outlined in Section 27 below.

(d) Credit or Debit Card Payment Authorization. If Seller has provided to Proxibid a designated credit or debit card for payment to Proxibid hereunder, Seller hereby represents and warrants to Proxibid that Seller is the authorized owner of such credit or debit card account and hereby authorizes and directs Proxibid to make recurring charges to such credit or debit card in payment of all amounts due to Proxibid under this Section 4.2, and, if necessary, initiate adjustments for any transactions credited or debited in error. This authority shall remain in effect for so long as Seller maintains an account with Proxibid or until Proxibid is earlier notified by Seller in writing to cancel such authorization in such time and manner as to afford Proxibid a reasonable opportunity to act upon it. Seller agrees to notify Proxibid fifteen (15) days before Seller's next Auction Event of any changes made to Seller's designated account, including but not limited to closed status, bank ownership changes, account changes, and changes in the expiration date of the card. If any charge authorized hereunder is rejected by Seller's credit card company or bank for any reason (including without limitation insufficient funds or a closed account), Seller agrees to pay Proxibid before the Due Date the amount of the declined charge plus, at Proxibid's discretion, an additional fee up to fifty dollars (\$50).

(e) Reactivation or Recapture Fee. In the event Seller's account is disabled by Proxibid upon Seller's nonpayment or another breach of this Agreement, and Proxibid agrees in its discretion to reactivate Seller's account, then Seller may be required to pay Proxibid a reactivation (as determined by Proxibid in its sole discretion).

(f) Non-Refundable. Seller acknowledges that all fees paid to Proxibid are non-refundable, and that under no circumstances will Seller be entitled to a return of any fees paid to Proxibid.

#### 4.3. Auction Events.

(a) Selling Options. Sellers can list an item in two ways: (1) through a fixed price event, or (2) through an auction-style event.

(b) Cancellation. If any Auction Event is canceled by the Seller during the seventy-two (72) hour period immediately preceding the scheduled start of the Auction Event, Seller will be charged an amount equal to the standard event fee or per lot fee (as applicable) for such type of Auction Event as outlined in Proxibid's then-current Rate Card. If any Auction Event is canceled by the Seller before such seventy-two (72) hour period, Proxibid may in its discretion charge Seller an amount equal to the standard event fee or per lot fee (as applicable) for such type of Auction Event as outlined in Proxibid's then-current Rate Card. Once a Timed Auction Event has started, Seller may not cancel, add, or remove any lots or modify the end time of the Auction Event unless Seller has obtained Proxibid's prior written approval (which may be withheld in Proxibid's sole discretion and may require an additional fee paid by Seller).

(c) Catalog. Seller must submit to Proxibid substantially all of the content for the catalog not less than twenty-four (24) hours before the scheduled Auction Event. If Seller fails to do so, Proxibid may in its discretion cancel the Auction Event and charge Seller an amount equal to the standard event fee or per lot fee (as applicable) for such type of Auction Event as outlined in Proxibid's then-current Rate Card. Supplemental auction content may be submitted up to one (1) hour before the scheduled Auction Event.

(d) Passed Lot Fee. If Seller conducts bidding for any lot within an Auction Event without allowing Buyers the opportunity to bid using the Proxibid Services ("Passed Lot"), Proxibid may in its sole discretion charge Seller a fee per Passed Lot.

(e) Listing Policies and Prohibited Items. Items offered on the site may need to meet certain listing requirements or in some cases, are considered prohibited and cannot be listed. When listing items, Seller expressly agrees to follow and comply with all requirements, including but not limited to, those referenced under Seller Obligations and Proxibid's Marketplace Guidelines.

No item may be listed for sale if its sale would violate applicable federal, state, or local laws or regulations. All listings and sales must comply with applicable federal, state, and local laws and regulations, which may impose requirements over and above those policies enumerated in this document.

Items subject to the International Traffic in Arms Regulations (ITAR) under United States Munitions List (USML) Categories I, II, III & V may not be listed for sale. This prohibition extends to all firearms using caseless ammunition, machine guns, precision-guided firearms, silencers (suppressors, mufflers), machine gun conversion kits, magazines holding more than 50 rounds of ammunition, grenade launchers, military flamethrowers, linked ammunition, and other defense articles as listed in Categories I through III. Only firearms, parts, and ammunition regulated by the U.S. Export Administration Regulations are permitted, provided the Seller complies with applicable law regarding sales and transfers and meets Proxibid's listing policies.

Sellers may not offer to ship firearms internationally or offer to export firearms to customers.

Imitation and toy firearms (including airsoft guns) manufactured on or after May 5, 1989, may be listed for sale only if (a) marked with a permanently affixed, blaze orange muzzle plug or tip, (b) constructed of entirely transparent materials, or (c) colored entirely in white or a bright color or a combination of those shades. Sales of non-firing collector replica antique firearms, BB guns, pellet guns, air guns, paintball guns, or other guns that expel projectiles through the force of compressed air or gas, or via mechanical spring action, are excluded from these limits on imitation and toy firearms.

Any products subject to the ITAR under USML Category V (including explosives, energetic materials, propellants, and incendiary agents), and explosives in general, as regulated under the Organized Crime Control Act of 1970 and the Safe Explosives Act of 2002, may not be listed for sale. This prohibition does not apply to the following items exempt from regulation under the ITAR and 27 C.F.R. § 555.141(a)(4) and (b): small arms ammunition (other than caseless), small arms ammunition components (including smokeless powder), and black powder in quantities of 50 pounds or less. Sellers are encouraged to review their ability to meet shipping restrictions and carrier requirements before listing ammunition or black and smokeless powders for sale.

(f) Catalytic converters and test pipes may not be listed for sale.

#### 4.4. Marketing and Accuracy of Materials.

(a) Generally. Proxibid is not responsible for any errors or omissions in titles, descriptions, images, or videos provided to us for use on this website. Also, Proxibid is not liable for any damages resulting from the photographs it takes or information that is collected at the event location. Seller guarantees that the information provided to Proxibid by Seller (or any agent of Seller) is accurate. Seller is responsible for the content and accuracy of any listing, catalog, or other promotional materials of any kind created for or by

Seller in conjunction with any event. Seller shall not knowingly misrepresent any items.

(b) Description. All catalog descriptions must accurately describe items for sale and include original images. The use of stock images is strictly prohibited.

(c) Independent Appraisal or Authentication. If Seller posts the appraised value or any statement of authenticity of a product, such appraisal or authentication must be performed by an independent third-party appraiser or authenticator. Seller shall not operate as the appraiser or authenticator of any products posted by Seller for sale through the website. Proxibid reserves the right to request supporting documentation for any appraisal or authentication published by Seller and Seller agrees to promptly provide such supporting documentation.

(d) Fair Market Value. If Seller lists the value of a product, the stated value must be the fair market value of the product as determined in good faith using reasonable valuation methods. Proxibid reserves the right to request supporting documentation for such valuation and Seller agrees to promptly provide such supporting documentation. Proxibid may also in its discretion require a Seller to change or delete a posted value or remove the listed product from the website.

(e) Enforcement. Proxibid does not evaluate the quality of the items auctioned/sold or verify the claims made by Seller regarding your auctioned/sold items. However, Proxibid reserves the right, at its sole and absolute discretion to (1) prohibit Seller from promoting and/or selling certain items; (2) replace any image or content on this website; (3) require a Seller to update or remove any items from this website; and/or (4) act in accordance with our Proxibid Actions on Accounts policy for violations of Prohibited Uses of Website and Prohibited Actions policies.

(f) Marketing. Proxibid may, at its sole and absolute discretion, market or advertise any of Seller's items or events, and use any content Seller provides to Proxibid for marketing and advertising.

(g) Charitable Campaigns. Seller acknowledges and agrees that charitable fundraising and solicitation is subject to federal, state, and local laws and regulations. If Seller lists any item for sale with a representation that the purchase of goods listed will benefit a charitable organization or purpose (a "Charitable Campaign"), the Seller must:

- a. be soliciting donations on behalf of a charitable organization which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code and is recognized as a public charity by the Internal Revenue Service ("Charity"),
- b. have in place a written agreement with the Charity authorizing the Seller to conduct the fundraising campaign,
- c. provide a copy of such written agreement or a written consent on a Charity's letterhead and signed by an authorized officer of the Charity, to the Proxibid Risk team in advance of the event being posted and;
- d. state the dollar amount or percent per unit of goods purchased that will benefit the Charity in the Description and Terms of the event.

Seller acknowledges that there may be additional legal requirements applicable to the Charitable Campaign (including without limitation disclosures, registration, and bonding requirements) and Seller expressly represents that Seller complies and will continue to comply with all such legal requirements.

4.5. Seller acknowledges and agrees that Seller is licensed under all applicable federal, state, and local laws and regulations to conduct the activity described herein, including but not limited to acting as a Seller or Auctioneer, and holding a Federal Firearms License and ITAR Brokering Registration (if applicable). When using this website, Seller must obey all applicable federal, state, and local laws. Any use of this website that violates any applicable laws will be grounds for discontinuing your rights to this website. This

website was created and will be operated from the United States.

4.6. Competitors. If Seller engages another online event service provider during any period when Seller is utilizing the Proxibid Services, (a) Proxibid may in its discretion increase the fees owed by Seller in connection with Seller's Auction Events above the standard rates outlined in Proxibid's Rate Card, and (b) to the extent the Rate Card imposes any maximum on the amount of Auction Event fees a Seller may be required to pay in a given period (sometimes referred to as an "Event Fee Cap"), Proxibid may determine in its discretion that such Event Fee Cap shall not apply to such Seller.

4.7. Reconciliation. Seller must reconcile its event and invoice successful Buyers within twenty-four (24) hours of the end of each event. For any adjustments or corrections to the initial reconciliation, please contact [reconcile.manager@proxibid.com](mailto:reconcile.manager@proxibid.com).

4.8. Recognition of Proxibid. For every event a Seller conducts utilizing Proxibid, Seller agrees to reference online bidding Powered by Proxibid in a prominent position on Seller's site, as well as to include Seller's custom Proxibid URL in all marketing materials related to events on Proxibid, as appropriate.

4.9. Compliance with Laws Related to Sale of Certain Products. Seller acknowledges and agrees that the promotion, advertising, sale, and distribution of certain products are subject to varied laws and regulations based on jurisdiction or geographic location.

Each Seller expressly represents that Seller is presently in full compliance with and shall continue to comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations relating to the licensing, distribution, and sale of any products Seller promotes or sells through Proxibid ("Regulations").

Each Seller offering firearms, firearms parts, ammunition, or accessories, or imitation firearms, for sale expressly acknowledges and agrees that the sale, transfer, and shipping of those items shall be conducted in compliance with all applicable federal, state, and local laws, statutes, ordinances, and regulations applicable to the Seller and the Buyer, including any applicable requirements for Seller or Buyer licensing, transfer approvals, and brokering and export approval. This means, for instance, that Sellers must comply with minimum age requirements, interstate transfer processes (e.g., shipping handguns only to FFLs), and special destination requirements (such as "assault weapon" prohibitions).

Any Seller who lists firearms for sale expressly acknowledges and agrees to provide proof to Proxibid that Seller holds a current FFL, or proof that a third-party FFL will complete the transfer of the listed firearms in compliance with applicable federal, state, and local requirements. Sellers who provide Proxibid with acceptable proof of holding an FFL shall not be required to re-certify compliance with this Section 4.9 until they undergo a change in FFL status (such as issuance of a renewed or amended FFL).

Sellers are reminded that Proxibid listing policies prohibit offering international shipments for firearms, even where and when those exports might be legally permissible under the U.S. Export Administration Regulations.

Seller further acknowledges and agrees the role of Proxibid with respect to the sale of products is limited to providing a conduit through which a prospective purchaser can purchase items or participate in events without physically being present; Proxibid does not review or evaluate the products auctioned or sold or verify the claims made by Seller regarding the products.

Seller hereby agrees that the Seller shall at all times defend, indemnify and hold harmless Proxibid, its shareholders, officers, directors, employees, successors and assigns, from and against any and all liabilities, losses, damages, awards, penalties, fines, costs and expenses (including, without limitation, reasonable attorney's fees), causes of action, suits, claims, demands, and judgments of any nature or kind, arising under or resulting from: (1) the use, sale, or distribution of any products in violation of any Regulations; (2) Seller's use of Proxibid in connection with the sale of any products subject to any Regulations; and (3) Seller's alleged or actual violation or breach of any Regulations.



Seller shall not engage in activities that require Proxibid to be registered as a broker under the Arms Export Control Act of 1976. If Seller's activities invite any enforcement inquiry involving Proxibid on the question of brokering defense articles or defense services, Seller shall at all times defend, indemnify, and hold harmless Proxibid from and against any and all losses, penalties, fines, costs and expenses (including, without limitation, reasonable attorney's fees), causes of action, suits, claims, demands, and judgments of any nature or kind.

4.10. PCI Compliance. The Payment Card Industry ("PCI") Compliance Standard is a set of requirements designed to ensure that all companies that process, store, or transmit credit card information maintain a secure environment. All events on Proxibid that require access to the full credit card number for invoicing require the Seller to view this information through the Auction Payment Network (auctionpaymentnetwork.com) client application. No Winning Buyer Report will be available. This downloadable application is the only method of accessing credit card information for payment processing for Proxibid-run events. These changes are required to ensure we provide all Sellers with a safe and secure payment system that is PCI Compliant.

## 5. Default Event Terms

Unless and except as expressly set forth in any Special Terms of Sale, Buyers and Sellers agree to the following Default Event Terms:

5.1. Seller agrees that all goods and property sold "AS IS" (attempting to disclaim implied warranties) shall include a clear and conspicuous description of any known defect(s) of the product (for example: "broken," "missing parts," "for parts only").

5.2. Buyers are encouraged to bid or make an offer to purchase an item only after they are completely satisfied as to origin, authenticity, and condition. Questions regarding any item being sold should be directed to the event staff at least 48 hours prior to the event.

5.3. For auction-style events, the Seller is allowing the Buyer to participate in the event through Internet pre-bidding and live bidding. The Buyer acknowledges and understands that such services may or may not function correctly the day of the event. Under no circumstances shall the Buyer have any kind of claim against the Seller or anyone else if the Internet service fails to work correctly before or during the live event. The Seller will not be responsible for any missed bids from any source. Buyers, who desire to increase the chance that their bid is acknowledged during a live event, should use the pre-bidding feature.

5.4. For an auction-style event, if the Seller determines that any opening bid is not commensurate with the value of the article offered, the Seller may reject that opening bid and withdraw the article from sale; and, if having acknowledged an opening bid, the Seller decides that any advance thereafter is not of sufficient amount, the Seller may reject the advance.

5.5. Due to the complexity of modern electronics and digital photography, it is often impossible to get an exact and consistent reproduction of color. Therefore, the only flawless manner to assess the color saturation and detail of any graphic is by personally viewing the subject. The Seller will not be responsible for any variation between the catalog image and the actual piece.

5.6. The Seller may postpone or cancel the event, withdraw any property from the event, or change any terms of the event or conditions of sale prior to the event.

5.7. All announcements made on the day of the event supersede all printed material.

5.8. Certain items in the sale are being offered subject to a reserve, which is the confidential minimum price below which such lot will not be sold.

5.9. Items may be offered with a minimum bid, in which case, the Seller agrees to sell the item to the Buyer who bids at or above the minimum bid price.

5.10. The Buyer's premium is set by the Seller and will be added to the high bid to determine the total purchase price paid by the Buyer.

5.11. If Escrow Services are not utilized, once a Buyer has won the bid, ownership of the item immediately passes to the Buyer who thereupon (a) assumes full risk and responsibility, therefore, and (b) shall pay the full purchase price therefore or such part as Seller may require. The item(s) becomes the full and sole responsibility of the Buyer at this point, and the Buyer assumes all risk of loss and damage. The record of sale, kept by the auctioneer and clerk, will be taken as absolute and final in all disputes.

5.12. If Escrow Services are selected by the Seller, the Seller shall be responsible for payment of the Escrow Fee. If the Buyer and Seller do not opt for a period whereby the goods are inspected before the release of the escrowed funds, the escrowed funds shall be released to the Seller's account once the escrow account is fully funded.

5.13. Delivery of the purchased items is the responsibility of the Buyer unless shipping is offered by the Seller.

5.14. Items sold must be picked up or shipping arranged within a reasonable amount of time or the Buyer may be subject to removal and storage fees.

5.15. The value of an item purchased at the event is unrelated to the cost of shipping/ packing. A Buyer who is a reseller of items should take this into consideration and be aware of shipping charges before bidding.

5.16. Buyer must submit payment to Seller for all purchased items within thirty (30) days following receipt of an invoice. Such payment is subject to the terms of the invoice.

5.17. If, within a reasonable amount of time, Buyer gives notice in writing to Seller that the lot so sold is a counterfeit and after such notice, the Buyer returns the lot to Seller in the same condition as when sold and establishes to the satisfaction of Seller that the returned lot is, in fact, a counterfeit, Seller as agent for the Consignor will rescind the sale and refund the purchase price.

5.18. These Default Event Terms shall constitute a legally binding contract between Buyer and Seller, which contract shall be construed and enforced in accordance with the laws of the state in which the Seller is located, without giving effect to the conflicts of laws principles of such state. In the event of any conflict or inconsistency between these Default Event Terms and any Special Terms of Sale, the Special Terms of Sale shall prevail and govern.

Each Seller acknowledges and agrees that Proxibid makes no guarantee or representation concerning the enforceability or merit of these Default Event Terms and that these Default Event Terms may not be enforceable or otherwise suitable for use in each state and for each Seller and event. Sellers are strongly encouraged to engage an attorney licensed in Seller's state to represent Seller and modify the Default Event Terms for Seller's needs and specific state law.

User acknowledges and agrees that Proxibid has no responsibility or obligation to police or enforce compliance by Buyers or Sellers with the Default Event Terms or Special Terms of Sale.

## **6. Disputes Between Buyers and Sellers**

6.1. Seller's Return Policy and Privacy Policy. Every Seller must have a published return policy and a published privacy policy in the Seller's Special Terms of Sale, even if that policy is that returns are not permitted.

6.2. Seller's Liability. Seller is responsible for all reversals, chargebacks, claims, fees, fines, penalties, and other liability incurred by Proxibid, a User, or a third-party caused by or arising out of Seller's breach of

this Agreement, the Default Event Terms, or any Special Terms of Sale, and/or Seller's use of the Proxibid Services. Seller agrees to indemnify and hold harmless Proxibid, other Users, or a third-party for any and all such liability.

6.3. Disputes Between Users. In the event of a dispute between you and another User that does not involve escrow services, you agree to use good faith efforts to resolve the dispute, including contacting the other User by reasonable means and allowing the other User a reasonable time to respond.

Open a Dispute - If you are a Seller, you must open a dispute case within ten (10) business days from the date of the event for the item(s) at the subject of the dispute. The Buyer is notified of a dispute via an email from Proxibid, stating that the Seller has a dispute with the transaction. Proxibid facilitates the direct email exchange between the Buyer and Seller to resolve the dispute. If the Buyer does not resolve the dispute with the Seller, they may be blocked from participating in future auctions on the Proxibid Platform. While Proxibid will not be directly involved in negotiating or providing terms for the resolution, it may monitor the communication between the Buyer and Seller to ensure a resolution.

If you are a Buyer, disputes should be directed and made to the Seller for resolution. Buyers may file a dispute notice regarding a Seller with Proxibid's Customer Experience team. Buyer acknowledges and agrees that any dispute notice filed with Proxibid will not affect the dispute between the Buyer and Seller, but Proxibid may use the dispute for its internal purposes.

Respond to Proxibid's Requests for Information in a Timely Manner - During the dispute process, Proxibid may require Users to provide documentation to support their position. Users may be asked to provide receipts, third-party evaluations, police reports, or any other information or documentation that Proxibid specifies.

Dispute Resolution - Proxibid may make a decision on a dispute within 3-5 business days from the day the dispute is opened, however, the decision may take up to ten (10) business days.

6.4. Assumption of Rights. If Proxibid pays out a claim, reversal, or chargeback that you file against a recipient of your payment, you agree that Proxibid assumes your rights against the recipient and third parties related to the payment, and may pursue those rights directly or on your behalf, at Proxibid's discretion.

6.5. Release of Proxibid. If you have a dispute with one or more Users, you release Proxibid (and our officers, directors, agents, joint ventures, and employees) from any and all claims, demands, and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes.

## **7. Information Collected by Proxibid**

Collection and use of personal information is governed by our Privacy Policy. You hereby accept the terms of our Privacy Policy, which can be accessed on our website at <http://www.proxibid.com/asp/PrivacyPolicy.asp>.

## **8. Ownership of the Website**

Proxibid, Inc. owns and retains all rights to this website, and all content and materials contained on this website, including text, graphics, logos, audio clips, software server information, files, images, photos, works of authorship, links, or other materials. You acknowledge and agree that this website and the content and materials on this website are protected by copyrights, trademarks, service marks, patents, trade secrets, or other proprietary rights and laws. Except as expressly authorized by Proxibid, you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit, or create derivative works from the content or materials on this website. Use of the content or materials on this website for any purpose not expressly permitted in this Agreement is prohibited.

## **9. Relationship Between Proxibid and Sellers**

Proxibid has no affiliation with or control over the Sellers or their operation of the actual events. Proxibid provides a service to Sellers and Buyers by facilitating the connection between the Seller and the Buyer. Proxibid is not responsible for the content of any Seller's postings and (i) does not review or evaluate the quality or origins of the items sold or verify the claims made by each Seller regarding its items, and (ii) does not guarantee the accuracy of any of the postings or content on the website. No User has a claim against Proxibid for relying on these postings or content.

Proxibid has the right to monitor the Sellers' postings but is under no obligation to do so. If Proxibid determines, in its sole discretion, that any content posted on the website is inappropriate, Proxibid reserves the right to delete such content from the website and to terminate or suspend the posting Seller's account and/or use of this website.

9.1. **Event Assistance Policy.** Proxibid reserves the right to regularly monitor events to ensure they are running at peak performance. Proxibid may in its sole discretion (but shall not be obligated to) assume the role of software operator when it is determined by our staff that Seller's online Buyers are suffering a poor experience for any reason and/or instances where the software operator demonstrates an inability to properly run the software application. In such an event, Seller will be charged the then-current rate for such additional services.

9.2. **Real Estate Auctions.** The role of Proxibid in the sale of real property is limited to providing a vehicle for interested potential purchasers to utilize when they desire to bid at real estate auctions. Proxibid does not broker, sell, purchase, exchange, or lease real or personal property. No brokerage relationship or sales relationship of any kind is created between Proxibid and any seller or buyer of real estate. Proxibid merely provides a conduit through which a prospective buyer can participate in a real estate auction without physically being present.

9.3. **MarketGuard®.** MarketGuard® is Proxibid's proprietary risk-assessment software that relies on third-party partners, as well as a Buyer's history with the Proxibid's platform, to determine a Buyer's "eligibility". Proxibid may limit eligibility for certain events to Buyers that meet certain criteria.

Buyer acknowledges and agrees that Buyer may be identified in Proxibid records by the Buyer's MarketGuard® results. Buyer further agrees that each time Buyer attempts to participate in a Seller's event, Buyer may be granted or denied access to such event based on Buyer's MarketGuard® results.

Any breach of this Agreement by Buyer may negatively impact Buyer's MarketGuard™ results.

## **10. Prohibited Uses of This Website**

When using this website, you must obey all applicable federal, state, and local laws. Any use of this website that violates any applicable laws will be grounds for discontinuing your rights to this website. This website was created and will be operated from the United States.

You are prohibited from utilizing this website for any illegal or unauthorized purpose or contrary to Proxibid's policies and procedures (as published on the website periodically), including but not limited to the following:

- a. **Fraud/Deception** - You may not engage in fraudulent, deceptive or intentionally disruptive, or malicious activity of any kind;
- b. **Intellectual Property Infringement** - You agree not to post any content to the website which infringes on any patent, trademark, trade secret, copyright, the right of publicity, or another proprietary right of any party;
- c. **Offensive Content** - You agree not to post any content to the website which is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's

privacy, tortuous, contains obscene language or obscene references, contains explicit or graphic descriptions or accounts of sexual acts, or otherwise violates Proxibid's rules or policies;

d. **Compromise/Disruption of Website** - You are prohibited from engaging in activity that compromises the Proxibid website, including but not limited to: any hacking, distribution of malicious software, spamming, mail bombing, or crashing. You agree not to post any content to the website which contains software viruses or any other computer code, files, or programs that are designed or intended to disrupt, damage, or limit the functioning of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third-party;

e. **Impeding** - You may not engage in any activity designed to impede the use of the Proxibid website by other Users. You are prohibited from engaging in any activity that jams this website, including overloading and flooding;

f. **Unauthorized Linking** - You may only link or create links from Proxibid's website back to your website. You cannot link or create or facilitate any other links without Proxibid's written permission;

g. **Framing/Deep Linking** - You are prohibited from framing or deep linking to the Proxibid website, without our express written permission. You are not to place hyperlinks in your postings;

h. **Unauthorized Access** - Any access to the Proxibid website using any unauthorized process, including but not limited to manually scraping or utilizing spiders, bots, or any similar devices, is prohibited unless Proxibid consents to such access use in writing;

i. **Copying or Modifying Website Content** - Any duplication of the pages or modification of this website or the content of this website, without the advance written permission of Proxibid, is a violation of this Agreement;

j. **Illegal Activity** - You may not use the website or Proxibid's services for any purpose or in any manner which violates any local, state, national, or international laws and regulations;

k. **Bidding by Seller or Seller's Agents** - Sellers or Sellers' agents may bid in the Sellers' auctions under Section 2-328 of the Uniform Commercial Code. Further, Sellers acknowledge that Buyers are granted certain rights and remedies in these instances if advance notice of Seller bidding is not provided to Buyers. If we, Proxibid, identify this activity and advance notice is not provided to Buyers, we reserve the right to require that it be added by Sellers or to administratively do so. To the extent that a bid on Seller's behalf is the highest bidder, Sellers agree that they are liable for the purchase price and Proxibid reserves all rights and remedies, including the right to collect or retain any associated expenses for any items sold.

l. **Manipulation** - Manipulation of the Seller Rating system is prohibited, including but not limited to making purchases to try to measurably increase or decrease the seller's rating using a buyer account.

## **11. Risk**

11.1. **Prohibited Actions.** In connection with your use of our website, your account, or Proxibid Services, or during your interactions with Proxibid, other Users, or third-parties, you will not:

a. Breach this Agreement or any other agreement or policy that you have agreed to with Proxibid;

b. Violate any laws, statutes, ordinances, or regulations (e.g. - those governing financial services, consumer protection, unfair competition, anti-discrimination, false advertising, or the Uniform Commercial

Code);

- c. Use our sites, services, or tools if you are not able to form legally binding contracts, are under the age of 18, or are temporarily or indefinitely suspended from using our sites, services, or tools;
- d. Infringe Proxibid's or any third-party's copyright, patent, trademark, trade secret or other intellectual property rights, or rights of publicity or privacy;
- e. Sell counterfeit goods;
- f. Act in a defamatory manner, threatening, harassing, or libelous (including personal information);
- g. Provide false, inaccurate, or misleading information;
- h. Send or receive what we reasonably believe to be potentially fraudulent funds;
- i. Refuse to cooperate in an investigation or provide confirmation of your identity or any Information you provide to us;
- j. Attempt to double dip during a dispute by receiving or attempting to receive funds from the Seller, bank, or credit card issuer for the same transaction;
- k. Use an anonymizing proxy;
- l. Control an account that is linked to another account that has engaged in any of these Prohibited Actions;
- m. Conduct your business or use Proxibid Services in a manner that results in or may result in complaints, disputes, reversals, chargebacks, fees, fines, penalties, and other liability to Proxibid, other Users, or third parties;
- n. Integrate the Proxibid Services in a manner inconsistent with Proxibid integration guidelines; Use your account, Proxibid Services, or APN, in a manner that Proxibid, Visa, MasterCard, American Express, Discover, or any other electronic funds transfer network reasonably believes to be an abuse of the card system or a violation of card association or network rules;
- o. Provide yourself a cash advance from your credit card (or help others to do so) through APN;
- p. Access Proxibid Services from a country that is sanctioned;
- q. Use Proxibid Services in a manner that violates, or in furtherance of a violation of, import and export laws applicable to a Seller or Buyer.
- r. Disclose or distribute another User's Information to a third-party, or use the Information for marketing purposes unless you receive the User's express consent to do so;
- s. Distribute or post spam, unsolicited, or bulk electronic communications, chain letters, pyramid schemes to a User or use the Proxibid Services to collect information or data for sending, or assisting in sending, unsolicited email to third parties;
- t. Take any action that imposes an unreasonable or disproportionately large load on our infrastructure;
- u. Facilitate any viruses, Trojan horses, worms, or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data, or information;

- v. Use any robot, spider, another automatic device, or manual process to monitor or copy our website without our prior written permission;
- w. Use any device, software, or routine to bypass our robot exclusion headers or file, or interfere or attempt to interfere with our website or Proxibid Services, or the interests or property of Proxibid Users;
- x. Take any action that may cause us to lose any of the services from our internet service providers, APN, or other suppliers;
- y. Use the Proxibid Services to test credit card behaviors;
- aa. Post content or items in an inappropriate category or areas on our sites and services;
- bb. Fail to pay for items purchased by you, unless the Seller has materially changed the item's description after you bid, a clear typographical error is made, or you cannot authenticate the Seller's identity;
- cc. Fail to deliver items purchased from you, unless the Buyer fails to meet the posted Special Terms of Sale, or you cannot authenticate the Buyer's identity;
- dd. Manipulate the price of any item or interfere with other Sellers' listings;
- ee. Circumvent or manipulate our fee structure, the billing process, or fees owed to Proxibid;
- ff. Take any action that may undermine the feedback or rating systems (such as displaying, importing, or exporting feedback information off the sites or using it for purposes unrelated to Proxibid);
- gg. Transfer your Proxibid account (including feedback) and User ID to another party without our consent;
- hh. Export or re-export any Proxibid tools except in compliance with the export control laws of any relevant jurisdictions;
- ii. Fail to use good faith to attempt to resolve a dispute with another User, in accordance with Section 6 above entitled "DISPUTE RESOLUTION".
- jj. Sell "mystery items" for which Seller does not specifically identify the contents, number, quality, condition or provide pictures of the item or items for sale.
- kk. Make offers to buy or sell items outside of Proxibid; or
- ll. Circumvent or manipulate our user authentication or security features (including MarketGuard®, our proprietary risk assessment software), including by creation of additional or alias user accounts with different names, addresses, phone numbers, or other account information.

(collectively, "Prohibited Actions").

11.2. Marketplace Guidelines. Users agree to comply with all applicable Marketplace Guidelines, as may be updated from time to time and available here: <https://discover.proxibid.com/wp-content/uploads/2021/01/Prohibited-Items-Policy-V.01.04-2021.pdf>.

11.3. Proxibid Action on Accounts. If we have reason to believe you have engaged in any Prohibited Uses or Actions, in addition to our termination rights and all other remedies we may have under this Agreement, we may take various actions to protect Proxibid, APN, other Users, other third parties, or you from complaints, chargebacks, disputes, fees, fines, penalties, and any other liability. The actions we may take include but are not limited to the following:

- a. We may close, suspend, or limit your access to your account or the Proxibid Services (such as limiting access to posting catalogs, use of your payment methods, and/or your ability to send or receive money through APN or remove financial Information);
- b. We may administratively remove or retract items, catalogs, bids, or offers from the site;
- c. We may ask and require that you supply additional information or documents to authenticate the details you supply to us to maintain an account or for any activity, you engage in on our site.
- d. We may contact Users who have purchased goods or services from you, contact your bank or credit card issuer, and/or warn other Users, law enforcement, or impacted third parties of your actions;
- e. We may update inaccurate Information you provided us;
- f. We may refuse to provide the Proxibid Services to you in the future;
- g. We may take legal action against you;
- h. We may remove some or all Seller Badges, except for the APN Badge;

#### 11.4. Proxibid - Banned Parties and Countries Policy

To buy or sell through Proxibid, you must comply with all applicable laws, including trade control laws of the United States and other jurisdictions. The United States government and many other countries forbid or restrict transactions with parties (i.e., individuals, entities, countries, governmental regimes) identified as engaging in terrorism, narcotics trafficking, weapons proliferation, and other activities that threaten those countries' national security, foreign policies or economies (Banned Parties). Banned Parties include, but are not necessarily limited to, the parties listed on the sanctions lists maintained by the U.S. Department of the Treasury's Office of Foreign Asset Control (OFAC).

Sellers who ship internationally and those who sell items manufactured outside of the United States should regularly review current information regarding Banned Parties on the OFAC website. Proxibid does not do business with or otherwise engage in or facilitate transactions involving Banned Parties. You may not use Proxibid's products or services to facilitate transactions with Banned Parties, including shipping to, selling to, or buying from any Banned Parties.

Proxibid also does not engage in business with or facilitate transactions involving parties from countries on the OFAC lists, as well as those that Proxibid considers high risk. Proxibid does not engage in business with or facilitate transactions with individuals or entities from the following countries:

Albania	Kosovo	Sudan
Belarus	Lebanon	South Sudan
Burundi	Libya	Syria
Cuba	Macedonia	Ukraine
Congo (DRC)	Nigeria	Venezuela
Iran	North Korea	Yemen
Iraq	Somalia	Zimbabwe

You may not use Proxibid's products or services to facilitate transactions with parties from any of the above-listed countries, including shipping to, selling to, or buying from such parties. Furthermore, you may not access Proxibid's services from any of the above-listed countries.



You must ascertain and comply with any additional sanctions compliance requirements that apply to your transactions, including updates to U.S. law. Non-compliance with U.S. sanctions laws and regulations can result in civil monetary penalties and/or criminal monetary penalties and imprisonment.

#### **11.5. Export and Import Controls**

To buy or sell through Proxibid, you must comply with all applicable laws, including trade control laws of the United States and other jurisdictions. These laws include but are not limited to, requirements for import and export licenses, import certificates, customs declarations, registrations as importers, exporters, and brokers, and advance transaction approval, depending on the item at issue and the location of the Seller and Buyer.

Sellers, particularly those who ship internationally, and non-U.S. person Buyers, wherever located, should regularly review current information regarding restrictions applicable to their ability to bid on, purchase, receive, transfer, or possess the items being offered for sale.

Sellers are reminded that Proxibid listing policies prohibit offering international shipments for firearms, even where and when those exports might be legally permissible under the U.S. Export Administration Regulations. (See 4.3(e) and 4.9.)

Sellers have the discretion to limit bidders for entire auctions or select lots to U.S. persons only, or to specify applicable import, export, or other transfer restrictions applicable to an entire auction or individual lot. Because Proxibid does not control what is offered for sale on its website, Proxibid is not responsible for notifying Sellers or Buyers as to the export or import status of any item advertised on its website or as to the licenses, permits, or other requirements that might attend a sale to a foreign bidder or by a foreign Seller.

Non-compliance with import and export laws and regulations can result in civil monetary penalties and/or criminal monetary penalties and imprisonment, as well as the loss of export and import privileges.

#### **12. System Integrity**

You may not use any device, software, or routine to interfere or attempt to interfere with the proper working of this website or any transaction conducted on our website. You may not take any action which imposes an unreasonable or disproportionately large load on our infrastructure. You may not disclose or share your password with any third parties or use your password for any unauthorized purpose. The website contains robot exclusion headers, and you agree that you will not use any robot, spider, another automatic device, or manual process to monitor or copy our pages or the content contained herein without our prior written consent. You agree that you will not use any device, software, or routine to interfere with the proper working of the website.

#### **13. Intellectual Property**

The software and source codes used on this website are the intellectual property of Proxibid. Any modification or attempt to modify or acquire this website through duplication, transfer, reverse engineering, disassembly, or otherwise is prohibited. Users may not create derivative works from this website. Users may not attempt to access or duplicate the software available through the Proxibid website to sell or transfer any rights in such software.

#### **Trademarks**

The trademarks and service marks found on the Proxibid website are the property of Proxibid, whether registered or unregistered. Proxibid does not permit you to use these trademarks or service marks. You should not interpret anything in this website as granting a license or right in these trademarks. Licenses should not be considered granted on theories of implication or estoppel. The Proxibid logo and the

trademark Proxibid may not be used in any way without express written permission from Proxibid.

## Copyright

Any content contained within this website is covered by Proxibid's registered copyright. Proxibid does not release its legal copyrights in any way, either by implication, estoppel, or otherwise. Any attempt to modify or subvert the content of this website is a violation of Proxibid's copyright. This copyright extends to the software programs and the source codes contained within this website.

## 14. Indemnification

You agree to indemnify, defend and hold Proxibid, its officers, directors, employees, agents, shareholders, partners, affiliates, representatives, and agents ("Indemnified Parties") harmless from any claims, causes of action, lawsuit, or damages (including attorney's fees) incurred by or imposed against the Indemnified Parties resulting from your use or misuse of the website or Proxibid Services or breach of this Agreement. Proxibid reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with Proxibid in asserting any available defenses.

## 15. Disclaimers of Warranty

ALL MATERIALS, INFORMATION, SOFTWARE, AND PRODUCTS INCLUDED ON OR AVAILABLE THROUGH THIS WEBSITE ("CONTENT") AND ALL PROXIBID SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR YOUR USE. THE CONTENT AND PROXIBID SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. PROXIBID DOES NOT WARRANT THAT THE CONTENT AND PROXIBID SERVICES ARE ACCURATE, RELIABLE OR CORRECT; THAT THE WEBSITE WILL BE UNINTERRUPTED, ERROR-FREE, OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED, OR THAT THE CONTENT IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOUR USE OF THE WEBSITE AND PROXIBID SERVICES IS SOLELY AT YOUR RISK. BECAUSE SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF CERTAIN WARRANTIES, THESE EXCLUSIONS MAY NOT APPLY TO YOU.

## 16. Limitation of Liability

UNDER NO CIRCUMSTANCES SHALL PROXIBID BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF PROXIBID HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) RESULTING FROM YOUR USE OF OR INABILITY TO USE THE WEBSITE OR PROXIBID SERVICES. UNDER NO CIRCUMSTANCES WILL PROXIBID'S AGGREGATE LIABILITY, ON ANY FORM OF ACTION WHATSOEVER IN CONNECTION WITH YOUR USE OF THE WEBSITE OR PROXIBID SERVICES EXCEED THE FEES ACTUALLY PAID BY YOU IN CONSIDERATION FOR THE PROXIBID SERVICES.

Because certain jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damages, Proxibid's liability in such jurisdictions shall be limited to the extent permitted by law.

## 17. Third-Party Sites

This website may provide links to other third-party websites. These third-party websites are not under the control of Proxibid, and you acknowledge and agree that Proxibid is not responsible for the accuracy, copyright compliance, legality, decency, or another aspect of the content of such sites. The inclusion of such a link does not imply endorsement of the site by Proxibid or any association with its operators.

## **18. Termination**

Proxibid reserves the right, at its sole and absolute discretion, to terminate this Agreement or your access to all or part of the Website or Proxibid Services for any reason and at any time effective immediately, or to discontinue temporarily or permanently providing the Proxibid Services, with or without notice. In the event of termination by Proxibid in connection with your breach of this Agreement, Proxibid may pursue any remedy that may be available, at law or in equity, with respect to such breach. Regardless of the reason for any termination, upon the termination of the Agreement, you agree to pay Proxibid for all Services performed through the date of termination.

## **19. Electronic Means**

You and Proxibid desire to facilitate certain transactions pursuant to this Agreement by exchanging documents, records, and signatures electronically or by utilizing electronic agents. The use of electronic facilities or agents shall be in accordance with procedures established by Proxibid and governed by the applicable provisions of the Uniform Electronic Transactions Act as adopted in the State of Nebraska.

## **20. Amendment of Terms and Conditions**

Proxibid has the right to amend this Agreement at any time. Any amendment will be accomplished by updating the pages you are looking at now. Please visit this page periodically to monitor any changes that may have been made to this Agreement, particularly before you participate in an event. Every time you use this website, you are agreeing to the Unified User Agreement as it exists at that time. In the event of any material amendment to the User Agreement which would adversely impact your rights or obligations hereunder, you will be required to affirmatively accept the amended User Agreement to continue to use the website or Proxibid Services.

## **21. Integration and Severability**

This Agreement constitutes the entire agreement between you and Proxibid with respect to the website and Proxibid Services and supersedes all prior or contemporaneous communications and proposals (whether oral, written, or electronic) between you and Proxibid with respect to the website and Proxibid Services, including without limitation all prior versions of this document referred to as "Terms and Conditions of Use of Proxibid website." If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

## **22. Disputes Between You and Proxibid**

If a dispute arises between you and Proxibid, our goal is to learn about and address your concerns and, if we are unable to do so to your satisfaction, to provide you with a neutral and cost-effective means of resolving the dispute quickly. Disputes between you and Proxibid regarding Proxibid Services may be reported by contacting our Customer Experience team.

## **23. Arbitration**

23.1. For any claim arising under this Agreement (excluding claims for injunctive or other equitable relief), (i) where the total amount of the award sought is less than \$10,000.00 USD, Proxibid may elect to resolve the dispute cost-effectively through binding non-appearance-based arbitration; and (ii) where the total amount sought is more than \$50,000.00 USD and where one of the parties resides outside the United States, Section 23.2 shall apply exclusively. Pursuant to clause (i), if a party elects arbitration, that party will initiate such arbitration through an established alternative dispute resolution (ADR) provider mutually agreed upon by the parties. In any arbitration under clause (i) or (ii), the ADR provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties, and c) any judgment on the award rendered by the arbitrator may be entered

in any court of competent jurisdiction.

23.2. For international transactions, any dispute, controversy or claim arising out of or relating to this Agreement (Dispute), shall be submitted to mandatory, final and binding arbitration before the International Chamber of Commerce, in accordance with the Rules of the International Chamber of Commerce (Rules) in effect at the time of filing of the demand for arbitration, with the arbitration administered by the International Chamber of Commerce, subject to the provisions of this Section 23.2. There shall be one arbitrator, who will be agreed to by the parties within 30 days of receipt by respondent of a copy of the demand for arbitration. If the parties cannot agree on an arbitrator within the time period specified then, at the request of either party, such arbitrator shall be appointed by the International Chamber of Commerce in accordance with the Rules. The language of the arbitration shall be English. The place of arbitration shall be New York, New York, U.S. A. The arbitration shall be the sole and exclusive forum for resolution of the Dispute, and the award shall be in writing, state the reasons for the award and be final and binding. Judgment thereon may be entered by any court of competent jurisdiction. Each party hereby irrevocably waives any present or future objection to any such venue, and irrevocably consents and submits unconditionally to the exclusive jurisdiction for itself and in respect of any of its property of any such arbitral court. Each of the parties hereto hereby irrevocably waives any and all right to trial by jury in any judicial proceeding permitted under this agreement. Arbitral awards shall be rendered within nine (9) months of the commencement of the arbitration unless such time limit is extended by the arbitrator. The prevailing party, as determined by the arbitrator, shall be entitled to recover reasonable costs and attorney's fees incurred in arbitration and in any action or proceeding to enforce rights under this Agreement. Consistent with the expedited nature of arbitration, pre-hearing information exchange shall be limited to the reasonable production of relevant, non-privileged documents explicitly referred to by a party for the purpose of supporting relevant facts presented in its case. Arbitration shall be conducted by telephone, online video conferencing, and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration. Arbitration shall not involve any personal appearance by witnesses unless otherwise mutually agreed by the parties. The prevailing party, as determined by the arbitrator, shall be entitled to recover its reasonable costs and, attorneys' fees and costs from the non-prevailing party. This agreement shall be governed the laws of the state of Nebraska and without regard to the United Nations Convention on Contracts for the International Sale of Goods.

#### **24. Improperly Filed Litigation**

All claims you bring against Proxibid must be resolved in accordance with this Agreement. All claims filed or brought contrary to this Agreement shall be considered improperly filed a breach of this Agreement. Should you file a claim contrary to this Agreement, Proxibid may recover attorneys' fees and costs (including in-house attorneys and paralegals); provided that Proxibid has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

#### **25. Insolvency Proceedings**

If any proceeding by or against you is commenced under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, Proxibid will be entitled to recover all reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the enforcement of this Agreement.

#### **26. Choice of Law and Forum**

This Agreement shall be governed by the laws of the state of Nebraska and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Concerning claims or actions not brought under Section 23.1(ii), except as to Proxibid's right to elect non-appearance-based-arbitration for certain claims under Section 23.1(i), you expressly agree that the exclusive jurisdiction for any claim or action involving Proxibid which arises out of or relates to this Agreement or your use of the website or Proxibid Services shall be filed only in the state or federal courts located in Douglas County, Nebraska, and you further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigation of any such claim or action.

## **27. Payments and Proxibid**

Unless another due date is provided herein, any payment due to Proxibid (by Buyer or Seller) must be paid within fifteen (15) calendar days of receipt of an invoice. Any amounts not paid when due shall be subject to a late payment fee of \$35 per invoice and Proxibid's cost of collection (including reasonable legal fees and costs) and shall accrue interest at a rate equal to (i) 1.5 percent per month or (ii) the highest rate permitted under applicable law, on the unpaid balance, commencing on the due date. Also, if any amount due to Proxibid is not paid by the Due Date, Proxibid may, at its sole discretion, terminate or suspend the non-paying User's account and/or withhold from the User further Proxibid Services until full payment is made. Notwithstanding any such cessation or suspension of Proxibid Services, the User shall continue to be obligated under this Agreement to pay the remaining balance (including accrued interest) due to Proxibid.

## **28. Notices and Procedure for Making Claims of Copyright Infringement**

Pursuant to Title 17, United States Code, Section 512(C)(2), notifications of claimed copyright infringement should be sent to Proxibid's Designated Agent. For more information, contact:

Proxibid  
3555 Farnam Street, Suite #1105, Omaha, NE 68131 [useragreement@proxibid.com](mailto:useragreement@proxibid.com)

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