

# TERMS & CONDITIONS FOR ONLINE BUYERS

## 1) Binding Agreement

- a) These Terms of Use (this "Agreement") forms a legally binding agreement between you and NextLot, Inc., a Delaware corporation and NextLot Europe B.V. ("Auction Software Providers"), with whom AUCTIONEER ("Seller") has contracted to provide an auction website to be used for prebidding, timed auctions, webcast auctions, liquidations and related services and governs: (a) your use of the Seller's auction website (the "Website") and (b) any transactions, auctions, bids, purchases or offers you may make, receive or agree to on the Website.
- b) PLEASE REVIEW THIS AGREEMENT CAREFULLY BEFORE USING THE WEBSITE. By either clicking on the "I Agree" button or using the Website after having the opportunity to read this Agreement, you agree to be bound by this Agreement. IF YOU DO NOT ACCEPT THIS AGREEMENT, YOU MAY NOT USE THE WEBSITE.
- c) Auction Software Provider may change the terms and conditions contained in this Agreement at any time in its sole discretion, and any such changes shall be effective upon being posted to the Website. By continuing to use the Website after such changes are effective, you accept those changes and agree to be bound by the revised Agreement.
- d) As used in this Agreement, "You" and "Your" refer to you, the user of the Website and to your employer or principal on whose behalf you use the Website. "Buyer" refers to a legal person who buys, or attempts to buy, items on the Website. The word "item" refers to every thing which may be sold or offered for sale on the Website including, without limitation, tangible property, real property, intellectual property, legal rights and services.
- e) Each Seller using the Website may have its own terms and conditions, which would govern your interaction with that Seller. If the terms or conditions offered by a Seller conflict with this Agreement, this Agreement shall govern.
- f) The Website is only available to persons with the legal capacity to enter into this Agreement, and you represent that you are at least 18 years old. Auction Software Provider may, at its sole discretion, refuse to accept any registration and may, at any time after accepting registration, rescind or revoke such acceptance and refuse to permit your continuing use of the Services and the Website for any reason.

## 2) Privacy

Any information that you provide to Auction Software Provider through your use of this Website is subject to our [Privacy Policy](#), which governs our collection and use of your information. You understand that through your use of the Services you consent to the collection and use (as set forth in the [Privacy Policy](#)) of this information, including the transfer of this information to the United States and/or other countries for storage, processing and use by Auction Software Provider. As part of providing you the Services, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services and your user account, which you may not be able to opt-out from receiving.

## 3) Website Usage

a) The Website exists solely as a facilitator of transactions between Sellers and buyers. Auction Software Provider is not a party to any transactions entered into between you and any Seller(s). Auction Software Provider is not an agent of either you or any Seller. Auction Software Provider does not have the right, duty or power to transfer any item, or title to any item, from a Seller to you.

## 4) Registration

- a) You must register before offering to buy any items for sale through the Website. You warrant that the information you provide in registration is accurate at the time you register and you agree to notify us when any such information changes. You agree that as of the time you place any offer to buy any item on the Website, your registration information is up to date.
- b) After you register to use the Website, you will be prompted to select a username and a password. You are solely responsible for maintaining the confidentiality of your username and password. You agree to complete those transactions that occur using your username and password, without regard to whether you have authorized such transactions. You agree that you shall immediately notify Seller of any unauthorized use of your username or password.

## 5) Terms of Sales

a) Unless a Seller specifically lists other terms (in which case such terms shall apply solely to such Seller and not to Auction Software Provider), all sales are final and all products are sold as-is, where-is, with all the faults, imperfections, omissions and errors in the written description and photography. Neither Auction Software Provider nor any Seller is responsible for any errors or omissions in the description or photography provided on this Website. You agree that you are solely responsible for verifying the condition and description of each item before buying it.

## 6) Operation of Website

a) Auction Software Provider does not warrant that the Website will be available at all times or at any particular time or that when it does operate, that it will operate without errors. Auction Software Provider may make all or portions of the Website unavailable from time to time in its sole discretion. Auction Software Provider disclaims any liability due to unavailability or errors of the Website, and you agree to waive all claims.

## **7) Warranties of Buyers and Sellers**

By using the Website to offer to buy such items, you warrant that in connection with your use of the Website, you shall:

- a) Not violate any applicable local, state, national or international law, statute, ordinance, rule or regulation;
- b) Not intentionally buy any items not lawfully offered for sale or purchase in or from the United States or in the jurisdiction where you would receive such item
- c) Not import or export any items from the United States in violation of U.S. law or other applicable law.
- d) Not interfere with or disrupt computer networks connected to the Website;
- e) Not impersonate any other person or entity, or misrepresent your employment by, or affiliation with, any other person or entity;
- f) Not disguise the origin of any information or to make communications to or from you appear to have originated or terminated it a different location;
- g) Not interfere with or disrupt any other user's use of the Website, stalk, threaten, or in any manner harass another user, or send emails to other users who have not requested them;
- h) Not upload, post, transmit, publish, or distribute any material or information which contains a computer virus, or other code, files or programs intending in any manner to disrupt or interfere with the functioning of the Website or other computer systems;
- i) Not access the Website by means of an automated process, spider, bot, or any similar device, (other than by a search engine which makes its results freely available to the public without charge or registration) without Auction Software Provider's consent;
- j) Not copy any content on the Website or modify content of the Website without written permission from Auction Software Provider;
- k) Not use the Website in such a manner as to gain unauthorized entry or access to the computer systems of Auction Software Provider or others or to any information stored on such computer systems;
- l) Not upload, post, transmit, publish or distribute any material or information which constitutes or encourages conduct that would constitute a criminal offense, give rise to other liability, or otherwise violate applicable law;
- m) Not upload, post, transmit, publish, or distribute any material or information that is unlawful, or which may potentially be perceived as being harmful, threatening, abusive, harassing, defamatory, libelous, vulgar, obscene, or racially, ethnically, or otherwise objectionable;
- n) Not upload, post, transmit, publish, or distribute any material or information for which you do not have all necessary rights and licenses, including any copyright, trademark, patent, rights of privacy or publicity or any other proprietary right; or
- o) Not upload, post, transmit, publish, or distribute any unauthorized or unsolicited advertising, solicitations, offers for the sale of services, unsolicited communications, or offers for any "investment opportunities".

By placing a bid on an item on the Website, you warrant that you have the ability and authority to enter into and close the transaction pursuant to the terms and conditions of Sale and in accordance with this agreement.

## **8) Auctions**

- a) Bids may be placed at some auctions by the Seller, an employee of the Seller, the consignor, or an agent on the consignor's behalf. You should consult the auction's terms and conditions because the terms and conditions control the conduct of each auction. Auction Software Provider has no role in setting the terms and conditions under which an auction is conducted.
- b) Sellers, in their discretion, may charge a "Buyer's Premium" in addition to the winning bid on an item by fully disclosing such premium in their auction listing. If you are the winning buyer, you agree to pay the Buyer's Premium in addition to your winning bid.
- c) If you place a bid on an item which is offered for sale in an auction format, your bid is irrevocable until such time as you have been out-bid.
- d) You are responsible for paying all amounts owed for all winning bids, including without limitation all applicable taxes and Buyer's Premiums.
- e) All forms of shill bidding (directly or indirectly bidding on an item that you have listed for sale as a Seller), bid manipulation and collusion between users are forbidden. You may not place bids under a false name or with an invalid credit card or other invalid payment method.
- f) Sellers may specify a reserve price for each auction item, but may choose not to disclose the reserve price to potential buyers. The reserve price specifies a minimum price for the auction. Bids below the reserve price will be recorded, but shall not obligate the bidder to purchase the auctioned item. Sellers may also add additional conditions to the sale of an item by placing a notice in an item's listing.

## **9) Intellectual Property**

- a) The Website (including, without limitation, text, graphics, logos, button icons, brands, trademarks, images, audio clips and software) and the collection, assembly and arrangement of material on the Website (but excluding any material provided by the Website's users) are the property of Auction Software Provider and are protected by U.S. and international copyright laws, except where otherwise indicated. Except for information which is in the public domain or for which you have been given express written permission by Auction Software Provider, you may not copy, modify, publish, display or sell any such information, except as authorized by law.
- b) By placing any material on the Website, you warrant that you are either the owner of the copyright of such material, or that your placing such material on the Website is authorized by the owner of the copyright in such material, its agent, or the law.
- c) The trademarks and service marks found on the Website, or to which the website directs you, are property of Auction Software Provider and/or Sellers, whether registered or unregistered, and may not be used without permission of its respective owner.

## **10) Indemnification.**

- a) You agree to defend, indemnify and hold harmless Auction Software Provider, its affiliates and subsidiaries, and their respective directors, officers, employees, agents, shareholders, co-branders, partners, successors and assigns (collectively, "Indemnified Parties"), from and against any claim, loss, damage, liabilities, judgments, fees and expenses related thereto (including, without limitation, reasonable attorney's fees) incurred by any of the Indemnified Parties arising from or related to (1) any breach or violation by you of these Terms and Conditions; (2) any claims arising out of or related to the goods or services which you sell, sold, or attempted to sell through the Website; or (3) any claims arising out of or related to your non-performance of your obligations including but not limited to the obligation to complete transactions, to pay all amounts owed, and to deliver goods or services; (4) any content which you cause to be displayed on the Website.

## **11) Disclaimer of Warranties.**

- a) AUCTION SOFTWARE PROVIDER DOES NOT PROVIDE ANY WARRANTY OR REPRESENTATION OF ANY KIND RELATED TO ANY ITEM OFFERED FOR SALE BY A SELLER ON THE WEBSITE. AUCTION SOFTWARE PROVIDER DOES NOT PROVIDE ANY WARRANTY OR REPRESENTATION THAT ANY SELLER HAS THE RIGHT TO SELL ANY ITEM LISTED ON THE WEBSITE, OR THAT ANY BUYER HAS THE RIGHT TO PURCHASE ANY ITEM LISTED ON THE WEBSITE. AUCTION SOFTWARE PROVIDER DOES NOT PROVIDE ANY WARRANTY THAT ITEMS OFFERED FOR SALE EXIST OR WILL EXIST AT ANY TIME, OR THAT THE DESCRIPTION OF SUCH ITEMS ON THE WEBSITE IS ACCURATE. AUCTION SOFTWARE PROVIDER MAKES NO WARRANTY THAT ANY SELLER OR ANY BUYER IS WILLING, ABLE, OR HAS LEGAL CAPACITY TO COMPLETE ANY TRANSACTION ENTERED INTO THROUGH THE WEBSITE. AUCTION SOFTWARE PROVIDER MAKES NO WARRANTY THAT ANY ITEMS LISTED ON THE WEBSITE DO NOT INFRINGE ON ANY INTELLECTUAL OR PRIVACY RIGHTS OF ANY THIRD PARTY. AUCTION SOFTWARE PROVIDER DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED OR EXPLICIT RELATED TO ANY ITEM LISTED ON THE WEBSITE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND THOSE ARISING FROM USAGE IN THE TRADE OR PRIOR DEALINGS. YOUR RECOURSE FOR ANY CLAIMS RELATED TO ANY TRANSACTIONS ENTERED INTO THROUGH THE WEBSITE IS SOLELY AGAINST THE BUYER OR SELLER WITH WHOM YOU ENTERED INTO SUCH TRANSACTION.
- b) THE WEBSITE AND ALL SERVICES MADE AVAILABLE THEREON, INCLUDING ALL CONTENT, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE WEB SITE, ARE PROVIDED ON AN "AS IS", "WHERE IS", "AS AVAILABLE" BASIS "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AUCTION SOFTWARE PROVIDER DOES NOT WARRANT THAT THE WEBSITE OR THE FUNCTIONS, FEATURES OR CONTENT CONTAINED THEREIN, INCLUDING WITHOUT LIMITATION ANY THIRD-PARTY SOFTWARE, PRODUCTS OR OTHER MATERIALS USED IN CONNECTION WITH THE SERVICES OR THE WEB SITE, WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. AUCTION SOFTWARE PROVIDER MAKES NO WARRANTY THAT THE WEBSITE OR THE SERVICES WILL MEET THE REQUIREMENTS OF ITS USERS, AND EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES THAT BY POSTING ANY ITEM ON THE WEBSITE, THE POSTED ITEM WILL BE SOLD. AUCTION SOFTWARE PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE WEBSITE OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES OF THE WEB SITE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM AUCTION SOFTWARE PROVIDER OR THROUGH THE SERVICES OF THE WEB SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. AUCTION SOFTWARE PROVIDER EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR ANY MISREPRESENTATIONS OR BREACHES COMMITTED BY ANY USER SELLERS ARE SOLELY RESPONSIBLE FOR FINAL INVOICING OF ITEMS PURCHASED. NOTIFICATION OF AUCTION BIDS, WINS AND PURCHASES AUTOMATICALLY SENT BY THE WEBSITE AND BIDS REPORTS THAT ARE ACCESSIBLE WITHIN THE WEBSITE ARE PROVIDED SOLELY FOR REFERENCE AND NOT AS FINAL INVOICES OR CONFIRMATIONS OF WINNING BIDS.
- c) If you are dissatisfied with the Website, your sole remedy is to discontinue your use of the Website.

## 12) Limitation of Liability.

- a) IN NO EVENT SHALL AUCTION SOFTWARE PROVIDER BE LIABLE FOR ANY DAMAGES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO THE USE OF, OR THE INABILITY TO USE THE WEBSITE OR THE CONTENT, MATERIALS AND FUNCTIONS RELATED THERETO, INCLUDING WITHOUT LIMITATION, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS, LOST GOODWILL, OR LOST SALES, EVEN IF SUCH PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE FORESEEN SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL LIABILITY OF AUCTION SOFTWARE PROVIDER TO A USER FOR ALL DAMAGES, LOSSES, CLAIMS AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) ARISING FROM THIS AGREEMENT OR THE USE OF THE SERVICES OR THE WEB SITE EXCEED, IN THE AGGREGATE, FIFTY DOLLARS (\$50.00).
- b) THE FOREGOING LIMITATION SHALL APPLY AND SURVIVE NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

## 13) Miscellaneous.

- a) **Taxes.** Auction Software Provider is not responsible for the calculation or payment of any taxes or the reporting or remittance of any taxes to any taxing authority. You expressly agree to comply with any and all applicable laws and regulations, including without limitation, those with respect to taxes. You agree to defend, indemnify, and hold harmless Auction Software Provider from and against any and all damages, penalties, costs and expenses incurred by or imposed upon Auction Software Provider resulting from your failure to comply with applicable tax laws.
- b) **No Relationship.** You are not an agent, representative, broker, employee, partner, or joint venturer of Auction Software Provider. This Agreement shall not be interpreted or construed to create an association, joint venture, agency, franchise or partnership between you and Auction Software Provider or to impose any partnership obligation or liability upon either party.
- c) **Links to Third Parties.** The Website may provide links to the Websites or services of others ("Third-Party Services"). Links to such Third-Party Services, or any do not constitute an endorsement or guarantee by Auction Software Provider of such Third-Party Services, or the products, content, materials or information presented or made available by such Third-Party Services. You agree that Auction Software Provider is not responsible for any damages or losses caused or alleged to have been caused by any third party or the use of any Third-Party Services, or from the products, content, material, services or information presented by or made available through such Third-Party Services.
- d) **Choice of Law; Consent to Jurisdiction.** This Agreement, and all questions with respect to the interpretation of this Agreement, shall be governed by and construed in accordance with the internal laws of the State of North Carolina, without regard for conflict of laws provisions. The parties submit to the exclusive jurisdiction of and venue in the federal and state courts located in Durham County, North Carolina. Each party hereby waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule. If court proceedings are required to enforce any provision of this Agreement, the prevailing party shall be entitled to an award of reasonable costs and expenses of litigation and any appeal, including reasonable attorneys' fees.
- e) **Notices.** Notices shall be given:
- i) **To Auction Software Provider:** To be valid, notices must be sent by email ([info@nextlot.com](mailto:info@nextlot.com)) and by certified mail, return receipt requested, to NextLot, Inc.; Attention Scott Finkelstein; 807 Village Crossing Dr., Chapel Hill, North Carolina 27517 or to such other address as may be designated from time to time in the most recent version of this Agreement.
- ii) **To User:** Notices to you will be sent by email to the email address reflected in your registration information. Notices to you shall be deemed to have been received 24 hours after the email is sent. Notices to Auction Software Provider shall be deemed to have been given three days after the date of mailing by certified mail, return receipt requested.
- f) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible so as to effect the intent of this Agreement, and the remainder of this Agreement shall continue in full force and effect.
- g) **Waiver.** Failure to exercise or enforce any right or provision of this Agreement will not be deemed a waiver of such right or provision.