

# PayMac, Inc.

## Agreement for Payment Processing

PayMac, Inc. ("**PayMac**", "**We**" "**Us**") processes payments made by buyers of all types ("**Buyers**") for surplus goods and other property and assets sold by a governmental body or other party ("**Seller**" or "**You**") through online bid boards, auctions and stores, and other online transactions on [www.publicsurplus.com](http://www.publicsurplus.com) and other websites (collectively, the "**Site**") operated by our affiliate, The Public Group, LLC, a Utah limited liability company that sometimes does business as "Public Surplus" ("**Public Surplus**").

If elected by You, PayMac will agree to receive and process payments made by Buyers and forward to You the amounts paid, in accordance with the terms set forth below. As a condition to accessing and using the Site and receiving the benefit of the payment processing services provided through the Site and otherwise (the "**Services**"), PayMac requires that You review and accept this Agreement for Payment Processing (this "**Agreement**").

BY REGISTERING TO USE THE SITE AND THE SERVICES, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ACCEPT THIS AGREEMENT, YOU MAY NOT ACCESS THE SITE OR OTHERWISE USE THE SERVICES OR THE SITE. YOU AGREE THAT YOU HAVE RECEIVED GOOD AND VALUABLE CONSIDERATION IN EXCHANGE FOR ENTERING INTO THIS AGREEMENT.

### 1. ACCESSING THE SITE AND USING THE SERVICES

**1.1. Eligibility.** You may only use the Services if You are at least 18 years of age, are mentally competent, and can form legally binding contracts under applicable law. You may not assign or transfer Your account or user identification to any other party.

**1.2. Seller Agreement with Public Surplus.** By using our Site and the Services, You acknowledge, agree, and confirm that You have agreed to the form of the separate Seller Agreement with Public Surplus on the Site that is required to be accepted by you upon registration upon the Site (the "**Seller Agreement**"). In the event of any inconsistency between the provisions of this Agreement and the Seller Agreement, this Agreement will govern.

**1.3. Seller Affirmations in Connection with Offers and Sales.** In using the Site and Services, You agree as follows:

- a. You will be responsible for delivering property sold using Your username and password.
- b. You are fully capable of transferring title to the property offered for sale in a timely manner.
- c. You are a real person or entity, with a verifiable address, telephone number and email address as provided to Us.
- d. You are dealing in good faith and are not attempting to defraud, cheat, or wrong PayMac or any Buyer.

**1.4. Accuracy and Nature of Your Information.** You are solely responsible for all information You provide to Us or other users on the Site ("**Your Information**"). We act as a passive conduit for the online distribution and publication of Your Information. You agree that Your Information (i) will not be false, inaccurate, or misleading; (ii) will not violate any law, statute, ordinance or regulation; and (iii) will not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing. In providing Your Information, You grant to Us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable (through multiple tiers) right to use and exercise the copyright, publicity, and database rights You have in Your Information for purposes of facilitating the communications and transactions made through the Site.

**1.5. Fees.** Fees apply for the Services available through the Site. Our fees may change from time to time as specified on the Site or by written communication to You (by e-mail or otherwise). You are responsible for paying all fees and any applicable taxes associated with transactions effected through the Site in a timely manner and with a valid payment method. You agree that the fees and any taxes due may be deducted and retained by Us from any payment amounts processed by Us. If Your payment method fails or Your account is past due, We may collect the fees and taxes owed using other collection mechanisms.

**1.6. No Disruption to The Site or Services.** You agree not to attempt any action that may disrupt the Site or the Services. Among other things, You agree that (i) Your Information and all other input on the Site will not contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other software, devices, files or routines that may damage, interfere with, copy, reproduce, intercept or expropriate any system, data or personal information; (ii) You will not create liability for Us or cause Us to lose (in whole or in part) the services of our Internet Service Providers or other vendors; (iii) You will not use the Site to obtain e-mail addresses for bulk e-mail solicitations or otherwise; (iv) You will not reverse engineer any of the Services, programs, or infrastructure; (v) You will not use any robot, spider, other automatic device, or manual process to monitor, copy or reproduce the Site or the content contained herein without our prior express written permission; and (vi) You will not take any action that imposes an unreasonable or disproportionately large load on the Site infrastructure.

**1.7. User Password.** During the registration process, You will select a username and a password. You agree that You are solely responsible for preserving the confidentiality of Your username and Your password, and You will be responsible for all activities and charges related to the use of Your username and password, including unauthorized use. You agree not to furnish Your username, password or other information to any other party for use of the Site and the Services. You agree to notify PayMac immediately of any unauthorized use of Your personal password or username and any other breach of security regarding the Services.

**1.8. Obligation to Ensure Compliance with this Agreement.** You agree that You will take all steps necessary to ensure that Your employees, contractors, and agents comply with the covenants, terms and provisions of this Agreement, including but not limited to the covenants contained in sections 1.6 and 7.8 of this Agreement. You acknowledge that You will be responsible and liable for any damages, claims, liabilities, and expenses of any kind suffered by PayMac arising from any and all actions or failures to act taken by any party using Your username and password or taken by Your employees, contractors, or agents, whether or not in accordance with the terms or intent of this Agreement.

**1.9. Electronic Signature.** You are notified by this statement that Your consent to these terms and conditions by checking the box indicating Your agreement to be bound to these terms, meets the requirements of Section 101(c) (1) (C) (ii), the

Consumer Consent Provision, of the Electronic Signatures in Global and National Commerce Act (ESIGN). You may print these terms and conditions, but they are subject to change by Us. Changes to the terms and conditions will be effective from the time they are placed on the Site, in the terms and conditions section of the Site, or any other section where they may appear.

## 2. SELLER UNDERSTANDINGS AND OBLIGATIONS

In listing or offering items for sale on the Site or otherwise accessing the Site and Services in any way, You represent, warrant and agree to the following:

- 2.1. Shipment.** At the close of an auction in which You have a winning bidder, You agree to make the property available for prompt pickup and/or shipment.
- 2.2. Deposits.** Public Surplus and PayMac reserve the right to require an earnest money deposit prior to or during the listing on certain items at their sole discretion. Any such deposits will be retained and applied in their discretion.
- 2.3. Legal Compliance.** You will comply with all applicable laws, statutes, ordinances and regulations regarding Your use of the Site and Services and the offer and sale of property. Offering property for sale with the intent not to complete the transaction, causing disruption to the sale process on the Site, and not completing transactions will be considered in most jurisdictions as fraud and may be prosecuted to the fullest extent of the law.

## 3. PAYMENT PROCESSING SERVICES

**3.1. Scope of Payment Processing Services.** In the event that You elect to have Us receive and process on Your behalf payments made by Buyers, You agree to the provisions set forth in this Agreement relating thereto. You understand and agree as follows:

- a. The Services do not include risk or fraud management, dispute management, collection agency services, or electronic checks;
- b. We will not perform Services with respect to transactions prohibited by the applicable laws or by bank, financial institution, or credit card association bylaws or rules;
- c. We will not provide Services with incomplete transaction information or if transaction information cannot be confirmed;
- d. We will only perform Services for domestic credit cards; and
- e. You will not engage any other person to perform Services while we are providing them under this Agreement.

**3.2 Buyer Steps & Procedures for Payment.** We will receive and process payments on Your behalf only if Buyers make the payments by following the steps, instructions, and procedures included on the Site and sent by e-mail to winning Buyers and in compliance with applicable laws and bank, financial institution, or credit card association rules and procedures (including but not limited to PCI Security Standards). Among other things, the payment for each successful bid must be made (a) to Public Surplus or PayMac, (b) by certain means (credit cards, wire transfers, etc.) specified on the Site that vary based upon the amount of the payment, (c) in a timely manner as specified on the Site, and (d) in a single payment by a single authorized means (no partial payments, multiple payments, or payment by two different means allowed).

**3.3. Sales Tax Processing.** If You elect, We will under the conditions specified in this Agreement, agree to receive sales tax payments made by Buyers and remit the sales tax payments to the applicable sales tax authority in the state in which You are located (the "**State**"). You understand and agree as follows:

- a. We will receive and remit to the State sales tax amounts paid by Buyers only if and to the extent of the amount of sales tax with respect to a particular transaction is added to the price and other payments otherwise payable by the Buyers.
- b. We rely on You to inform us of the applicable sales tax rate and to provide us with Your applicable tax identification number. You hereby authorize and direct Us to remit payment of the sales tax amounts directly to the applicable sales tax authority in the State using the tax identification number that You provide to Us.
- c. Except for remitting funds we receive as payment for sales tax to the extent such funds exceed the price and other payments due from the Buyers, We will have no responsibility or liability for ensuring that payments are received and collected as required under all applicable laws or for making payment to any governmental body or authority entitled to sales or use tax payments.
- d. We will receive and process sales tax payments on Your behalf only if Buyers make the payments by following the steps, instructions, and procedures included on the Site and sent by e-mail to winning Buyers and in compliance with applicable laws and bank, financial institution, or credit card association rules and procedures.

**3.4. Liability and Risk of Loss for Failure to Pay, Charge Backs, and Other Items.** You will bear the burden and risk of any and all loss, liability, and exposure arising from any of the following circumstances: (a) a Buyer does not make a payment, (b) a charge back occurs with respect to a payment made, (c) a payment is not made in good funds, (d) a check does not clear, (e) a refund to a Buyer is made, (f) fraud, deception, misrepresentation, or any other impropriety occurs with respect to a transaction or a payment, (g) the action, inaction, refusal, or delay of any bank, financial institution, or credit card association in processing any payment transaction, (h) the assessment of any fees, fines, or penalties by a bank, financial institution, or credit card association relating to a charge back or other matter, or (i) any other cause results in payment not being credited for a transaction involving Your property. Because PayMac is merely processing payments for You, You understand that We assume no responsibility, burden, or risk of loss whatsoever for any of such circumstances. You expressly agree that We may offset the amounts arising from any such circumstances against other amounts payable by Us to You. You also agree that we may charge an extra processing fee if we make refunds relating to sales of Your property. You

understand that the level of charge backs, fraud, or other circumstances may cause Us to decide to terminate rendering the Services under this Agreement.

**3.5. PayMac Not A Seller, Nor A Collection Agency; No Consignment.** You acknowledge and agree that PayMac does not (a) assume the role of seller of Your property, (b) make any representations or statements about Your property, (c) act as a collection agency to collect monies unpaid by Buyers, (d) take consignment of Your property, nor (e) undertake or assume any other role or responsibility not contemplated by this Agreement. You agree that You and Your employees and representatives will not make any statements or act in any way inconsistent with PayMac's limited role under this Agreement.

**3.6. PayMac Payment to You.** PayMac will keep records of all amounts received in good funds on Your behalf. Except as provided in paragraph 3.7, PayMac will make payment to You monthly (unless otherwise agreed) of amounts received (net of fees, offsets, and any taxes). Unless otherwise agreed by Us, You agree that payment will only be made by Automated Clearing House (ACH) deposits to an account specified and properly maintained by You. You agree to provide promptly the authorizations needed for such ACH deposits and to be responsible and liable for any and all fees relating to such ACH deposits. You also agree to monitor the account and the deposits therein. You will bear the burden of any and all loss, liability, and risk of loss arising from any fraud, theft, mistake, or deception involving such ACH deposits, unless they arise from fraud, mistake, or deception by Us or our employees or agents.

**3.7. Minimum Amount Required for Payment.** PayMac will make payment to You, as set forth above, of all amounts received (net of fees, offsets, and any taxes) on Your behalf, so long as the total amount received exceeds \$100. We will not make payments to You of \$100 or less. Where any amount or amounts received on Your behalf do not exceed \$100, payment will be made to You upon receipt of additional funds that bring Your balance in excess of \$100. PayMac will own the interest on any balance held because it does not exceed \$100. However, when You close Your account with Public Surplus and Us, any remaining balance will be paid to You, regardless of the minimum balance requirements stated above.

## 4. LIABILITY LIMITATIONS AND RELEASES

**4.1. Absence of Liability.** You will not hold PayMac responsible for actions or inactions of Buyers or other users, including the failure of a Buyer to take delivery or make payment for an item. You acknowledge that We and Public Surplus are not traditional auctioneers and We are not the Buyer of property sold through the Site. Instead, the Site provides a marketplace for users to offer, sell, and buy items of all kinds in a variety of pricing formats and venues. We are not involved in the actual transaction between You and Buyers. We have no control over and do not guarantee such things as the quality, safety, or legality of items advertised, the truth or accuracy of listings, the ability of Buyers to purchase and make payment for items, or the completion of a sale by You, even upon a successful bidding and acceptance process. Without limitation of the generality of the foregoing, We will not be liable for lost profits or any special, incidental, or consequential damages arising out of or in connection with the Site, the Services, or this Agreement.

**4.2. Disclaimer of Warranties.** THE SITE AND SERVICES, INCLUDING ALL CONTENT, FUNCTIONS, MATERIALS AND INFORMATION ON OR ACCESSED THROUGH THE SITE OR SERVICES, ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS. PayMac DISCLAIMS ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, DATA ACCURACY, SYSTEM INTEGRATION, OR QUIET ENJOYMENT. PayMac DOES NOT WARRANT THAT THE SERVICES, FUNCTIONS, FEATURES OR CONTENT WILL BE FUNCTIONAL, TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. PayMac MAKES NO WARRANTY THAT SALES WILL BE COMPLETED THROUGH THE SITE OR THAT THE SITE OR SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, AND EXPRESSLY DISCLAIMS ANY WARRANTIES OR GUARANTEES THAT BY LISTING THE LISTED ASSETS, THE LISTED ASSETS WILL BE SOLD. PayMac MAKES NO WARRANTY OF ANY KIND REGARDING ANY LISTED ASSETS OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES. PayMac EXPRESSLY DISCLAIMS ANY ENDORSEMENT OR WARRANTY OF ANY LISTED ASSETS SOLD ON OR THROUGH THE SITE OR THE SERVICES, AND ANY RESPONSIBILITY FOR ANY MISREPRESENTATIONS OR BREACHES COMMITTED BY ANY BUYER OR OTHER USER.

**4.3. Interruption of Service.** PayMac is not responsible for any damages or losses related to any system errors or interruptions affecting its Site and the processing of any solicitations, requests, offers, bids, auctions, or sales. You understand and acknowledge that the Site and the Services may be unavailable unexpectedly.

**4.4. Third Party Links.** The Site may contain links to other websites or resources for Your convenience in locating related information and services. You acknowledge and agree that PayMac is not responsible or liable for (i) the availability or accuracy of such sites or resources, or (ii) the content, advertising or products on or available from such sites or resources. The inclusion of any link on the Site does not imply that PayMac endorses the linked site. You use the links at Your own risk.

**4.5. Release.** If You have a dispute with a Buyer or any other Seller or user of the Site, You release Us (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such disputes. You will settle all disputes with other users of the Site without our involvement, and We will have no liability whatsoever arising from communications made or transactions effected through the Site. If You are a California resident, You waive California Civil Code §1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

**4.6. Indemnity.** You agree to indemnify, defend and hold harmless PayMac from and against any and all debts, liabilities, obligations, claims, suits, judgments, damages, expenses, including attorney's fees, and demands, made or incurred by any third party arising out of Your breach or alleged breach of this Agreement or Your violation or alleged violation of any applicable law or any rights of a third party.

## 5. PRIVACY

We do not sell or rent Your personal information to third parties for their marketing purposes without Your explicit consent. We use Your information only as described in Public Surplus' Privacy Policy. We view protection of privacy as a very

important community principle. We store and process Your information on computers located in the United States that are protected by physical as well as technological security devices. You can access and modify the information You provide Us. For a complete description of how We use and protect Your personal information, see Public Surplus' Privacy Policy. If You object to Your Information being transferred or used in this way please do not use the Services.

## 6. TERMINATION OR SUSPENSION

PayMac reserves the right to suspend or terminate Your access to the Site and Services for any reason or no reason and without notice. Among other reasons, We may suspend or terminate Your access to the Services if (a) You breach any of the provisions of this Agreement; (b) We suspect that You have engaged in fraudulent activity of any kind in connection with the Site; (c) You manipulate the price of any item or interfere with another user's communications or transactions; (d) We are unable to verify or authenticate any information You provide to Us; or (e) We believe that Your actions may cause legal liability for You, our users or Us.

## 7. MISCELLANEOUS

**7.1. Changes to Site and Services.** PayMac may modify, suspend, or terminate any aspect of the Site and Services, including, but not limited to, content, auction features, news and information, and product categories without notice.

**7.2. Record Keeping.** PayMac cannot guarantee the preservation or maintenance of records relating to historical auction transactions and bidding activity and encourages You to keep individual records and an accounting of all activity conducted through the Site.

**7.3. Notice and Communication.** Unless stated otherwise, all notice and communication with You will be provided by e-mail to the e-mail address provided by You in Your registration application or via posting on the Site. Notice will be deemed to have been provided 24 hours after the e-mail was transmitted by PayMac or the information was posted on the Site.

**7.4. Governing Law and Jurisdiction.** This agreement is governed by the laws of the State of Nevada without regard to any conflict of law provisions. Any right to trial by jury with respect to any claim, action, suit or proceeding arising out of this agreement or any of the matters contemplated hereby is waived. You further agree to the exercise of personal jurisdiction in the State of Nevada in connection with any dispute or claim involving PayMac.

**7.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

**7.6. Waiver.** The failure of PayMac to exercise or enforce any right or provision of this Agreement will not be deemed a waiver of such right or provision in the future.

**7.7. Independent Contractor Relationship.** The relationship between You and PayMac is that of an independent contractor. No agency, partnership, joint venture or franchise relationship is implied, intended or created by this Agreement.

**7.8. Intellectual Property.** All inventions, know how, improvements, discoveries, methods, processes, concepts, designs, ideas, prototypes, samples, drawings, blueprints, specifications, computer or intellectual property programs, methods of doing business, **data in Public Surplus' databases (including but not limited to databases containing bidders, buyers and other users of the Site and their names and contact information)**, systems, copyrights, trademarks, trade names, software and/or other works conceived of and/or reduced to practice or writing or otherwise relating in any way to the Site or the Services are the exclusive intellectual property of Public Surplus (the "**Public Surplus IP**"). In addition, all content contained on the Site is Public Surplus IP that is copyrighted material, and Public Surplus retains and reserves all rights and interests in the content. Public Surplus IP may be created by one or more of Public Surplus' employee(s) alone or jointly with a user or users of the Site or Services arising from the users' use and development of the Services or as a result of feedback regarding the Site or Services ("**Feedback**"). All right, title, and interest in any Public Surplus IP will belong to Public Surplus and will be subject to the conditions of this Agreement. You hereby irrevocably assign to Public Surplus all right, title, and interest You may acquire in any Public Surplus IP, whether or not generated from Feedback. Public Surplus may, at its option, file an application for intellectual property protection for Public Surplus IP. If any such Public Surplus IP is created with Your participation or Feedback, You agree to cooperate with Public Surplus to assure that such application(s) will cover, to the best of Your knowledge, all related assets, including all features of commercial interest and importance. Public Surplus IP is the sole and exclusive property of Public Surplus and may not be used, copied, reproduced, modified, published, transmitted, distributed, displayed, or sold, or derivative works created, without the prior written consent of Public Surplus. Furthermore, You may not provide access to, or information from, the Site to any other party without Public Surplus' prior written consent.

**7.9. Copyrights.** The Site may contain copyrighted, trademarked, or other proprietary materials that belong to third parties and are used with the owner's permission. You agree not to copy, modify, distribute, or create any derivative work from such materials without prior written consent from the owner. You will indemnify and hold Us harmless, as provided for previously in this Agreement, from any claim or demand made by a third party due to or arising out of your violation of any law or rights of a third party.

**7.10. Trademarks.** The Site and PayMac' tradenames, domain names and logos found on the Site are trademarks or service marks of PayMac. No display or use of such marks may be made without the express written permission of PayMac.

**7.11. Assignment.** This Agreement may not be assigned by You or by operation of law to any other person, persons, firms or corporations without the express written approval of PayMac. Any purported assignment in violation of this provision will be void. However, You agree that this Agreement and all incorporated agreements may be assigned and delegated by PayMac in our sole discretion to any party and will be assigned and delegated automatically in the event of a merger of PayMac with another party.

**7.12. Entire Agreement.** This Agreement constitutes the entire agreement between You and PayMac, and supersedes any previous agreements, whether oral or in writing, between You and PayMac relating to the subject matter hereof. PayMac may, at its sole discretion, remove or change any aspect of this Agreement at any time by providing notice to You.

**7.13. Survival.** The warranties, covenants and representations of the parties to this Agreement will survive termination of this Agreement.

**7.14. Headings.** Headings are for reference purposes only and in no way affect the interpretation of this Agreement.

**7.15. Oral Statements by Representatives.** Any oral statement or representation by any representative of PayMac changing or supplementing this Agreement or any terms of bidding or sale on the Site, is unauthorized and ineffective and confers no right on You and may not be relied upon by You. No interpretation or purported amendment or change of any provision of this Agreement, including applicable performance requirements, is binding on PayMac unless agreed to, in writing, by PayMac.