

Public Surplus Buyer Agreement

This Buyer agreement is a contract between you ("you" or "your") and The Public Group, LLC, a Utah limited liability company acting through its Public Surplus division ("Public Surplus", "We" or "Us"), and governs your use of www.publicsurplus.com and related websites (collectively, the "Site") and the services provided through the Site and otherwise (the "Services"). As a condition to accessing and using the Site and Services, Public Surplus requires that you review and accept this agreement.

BY REGISTERING TO USE THE SITE AND THE SERVICES, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT WITH PUBLIC SURPLUS. IF YOU DO NOT AGREE TO ACCEPT THIS AGREEMENT, YOU MAY NOT ACCESS THE SITE OR OTHERWISE USE THE SERVICES OR THE SITE.

1. BIDDING AND PURCHASING

1.1. Eligibility. You may only use our Services if you are at least 18 years of age, are mentally competent, and can form legally binding contracts under applicable law.

1.2. Buyer Affirmations in Connection with Bids or Purchases. In using our Site and Services, you agree as follows:

- (a) No contingency to your bid exists other than those stated in the listing at the time of sale.
- (b) You may not retract, amend or modify a bid without prior approval by the Seller.
- (c) You will be financially responsible for any bids placed using your username and password.
- (d) You are capable of removing the property from its location within the required time frame.
- (e) You have or can readily obtain the Trade Security Control (TSC) clearance to buy any property that requires a clearance.
- (f) You are a real person or entity, with a verifiable address, telephone number and email address as provided to us.
- (g) You are dealing in good faith and are not attempting to defraud, cheat, or wrong Public Surplus or any Seller.
- (h) You have inspected every item prior to placing a bid or you waive the need for inspection.
- (i) Except as otherwise stated in writing by the Seller on the Site, you understand that all items are sold "as is, where is" without warranty.

1.3. Accuracy and Nature of Your Information. You are solely responsible for all information you provide to us or other users on our 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.

1.4. Fees. Public Surplus charges no fees for you to register to make bids or purchases on the Site. However, if you bid on an item, are the successful bidder, and do not purchase the item, you may, at our option, be assessed a service fee equal to \$200 or 40% of your successful bid price, whichever is greater. Other fees apply for other Services as shown on the Site. Our fees may change from time to time. You are responsible for paying all fees and applicable taxes associated with the Site in a timely manner with a valid payment method. If your payment method fails or your account is past due, we may collect fees owed using other collection mechanisms.

1.5. No Disruption to Our Site or Services. You agree not to attempt any action that might disrupt our Site or our Services. Among other things, you agree that (i) Your Information and all other input on our Site will not contain any viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other software, devices, files or routines that might damage, interfere with, copy, 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 our Site to obtain e-mail addresses for bulk e-mail solicitations or otherwise; (iv) You will not reverse engineer any of our Services, programs, or infrastructure; (v) You will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages 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 our infrastructure.

1.6. User Password. Upon the approval of your registration, 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 all activities and charges related to the use of your 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 Public Surplus immediately of any unauthorized use of your personal password or username and any other breach of security regarding the Services.

1.7. Consent to E-Mail Correspondence from Public Surplus. You hereby agree that we may send future correspondence to you via electronic mail ("e-mail") that notifies you of auction items that we believe might interest you. Any e-mail correspondence to you (i) shall be clearly and conspicuously identified as sent by Public Surplus; and (ii) shall clearly and conspicuously display a functioning return e-mail address to enable you to reply to Public Surplus.

1.8. Electronic Signature. Prospective bidders 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 our web site, in the terms and conditions section of the site, or any other section where they might appear.

2. BUYER UNDERSTANDINGS AND OBLIGATIONS

In bidding or purchasing items on our Site or otherwise accessing our Site and Services in any way, you represent, warrant and agree to the following:

2.1. Payment and Shipment. At the close of an auction in which you have a winning bid, you agree to make immediate payment for the total amount due, including the stated Buyer's Premium, shipping costs and all duties and taxes if applicable, using payment methods provided by Public Surplus. As a winning bidder, you also will make immediate arrangements to take delivery of the goods.

2.2. Deposits. We reserve the right to require an earnest money deposit prior to or during bidding on certain items at our sole discretion or at the discretion of the Seller. Any such deposits from you will be retained and applied to the pending invoice or to any past due balances owed by you. Any deposits taken from non-winning bidders will be returned.

2.3. Failure to Complete Purchase. If you fail to complete a purchase of property for which you submitted a winning bid, you agree to any and all of the following remedies:

- (a) you will be required to pay a fee to Public Surplus equal to the greater of \$200 or 40% of the final bid price;
- (b) you may be required through specific performance to complete the purchase and/or you may be sued for damages;
- (c) your access to our Site and Services may be suspended or terminated;
- (d) the Seller may sell or otherwise dispose of the property and charge all losses and expenses incidental thereto to you;
- (e) any bid deposit will be immediately forfeited and applied against any such losses, expenses, penalties, and fees; and
- (f) if you refuse shipment or delivery upon arrival to the location specified, you will be responsible for the associated shipping charges.

2.4. Legal Compliance. You will comply with all applicable laws, statutes, ordinances and regulations regarding your use of our Services. Bidding on an asset with the intent not to complete the transaction or bidding on multiple assets causing disruption to the process and not completing the transactions will be considered in most jurisdictions as fraud and may be prosecuted to the fullest extent of the law.

3. LIABILITY LIMITATIONS AND RELEASES

3.1. Absence of Liability. You will not hold Public Surplus responsible for actions or inactions of Sellers or other users, including the quality or condition of property or the information posted. You acknowledge that we are not a traditional auctioneer and we are not the Seller of property sold through our 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, such as stores, fixed price formats and auction-style formats. We are not involved in the actual transaction between you and Sellers. We have no control over and do not guarantee the quality, safety or legality of items advertised, the truth or accuracy of listings, the ability of Sellers to sell items, or the actual completion of a sale to you, even upon a successful bid by you.

3.2. 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. PUBLIC SURPLUS 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. Public Surplus 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. Public Surplus MAKES NO WARRANTY THAT THE LISTED ASSETS, 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. PUBLIC SURPLUS MAKES NO WARRANTY OF ANY KIND REGARDING ANY LISTED ASSETS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICES OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICES. Public Surplus 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 SELLER OR OTHER USER.

3.3. Interruption of Service. Public Surplus is not responsible for any damages or losses related to any system errors or interruptions affecting its Site and the processing of any bids, auctions, or sales. You understand and acknowledge that the Site and our Services might be unavailable unexpectedly.

3.4. Third Party Links. The Site might contain links to other websites or resources for your convenience in locating related information and services. You acknowledge and agree that Public Surplus 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 Public Surplus endorses the linked site. You use the links at your own risk.

3.5. Release. If you have a dispute with a Seller or any other Buyer or user of our 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. If you are a California resident, you waive California Civil Code Â§1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3.6. Resolution of Disputes by Arbitration. You shall resolve any dispute or claim involving Public Surplus through binding arbitration and not in court. Arbitration will be conducted by the American Arbitration Association according to its rules, and must take place in Salt Lake or Utah County, Utah. Arbitration will be conducted only on an individual basis and not as a class, consolidated or representative action.

3.7. Indemnity. You agree to indemnify, defend and hold harmless Public Surplus 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.

4. 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 the Public Surplus Privacy Policy. We view protection of Buyers' 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 the Public Surplus Privacy Policy. If you object to Your Information being transferred or used in this way please do not use our services.

5. TERMINATION OR SUSPENSION

Public Surplus reserves the right to suspend or terminate your access to our Site and Services for any reason or no reason and without notice. Among other reasons, we may suspend or terminate your access to our 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 our 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 might cause legal liability for you, our users or us.

6. MISCELLANEOUS

6.1. Changes to Site and Services. Public Surplus may modify, suspend or terminate any aspect of our Site and Services, including, but not limited to, content, auction features, news and information, and product categories without notice.

6.2. Record Keeping. Public Surplus 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 our Site.

6.3. Notice and Communication. Unless stated otherwise, all notice and communication with you shall be provided by e-mail to the e-mail address provided by you in their registration application or via posting on the Site. Notice shall be deemed to have been provided 24 hours after the e-mail was transmitted by Public Surplus or the information was posted on the Site. If Public Surplus receives a message that your e-mail is disconnected or is no longer valid, notice shall be deemed to have been provided 72 hours following the mailing of a letter to your address contained in your registration application

6.4. Governing Law. Utah law, without regard to any conflict of law principles, governs this agreement and any dispute or claim you might have with Public Surplus .

6.5. 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. But if disregarding the unenforceable provisions would deprive either party of an essential purpose of this contract, the entire contract is to be held unenforceable.

6.6. Waiver. The failure of Public Surplus 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.

6.7. Independent Contractor Relationship. The relationship between you and Public Surplus is intended to be that of an independent contractor. No agency, partnership, joint venture or franchise relationship is implied, intended or created by this agreement.

6.8. 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, 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 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 in the content. Public Surplus IP might be created by one of 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 might acquire in any Public Surplus IP. 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, modified, published, transmitted, distributed, displayed, or sold without the prior written consent of Public Surplus.

6.9. Copyrights. The Site might 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.

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

6.11. 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 Public Surplus. However, you agree that this agreement and all incorporated agreements may be assigned by Public Surplus to any party. This agreement and all incorporated agreements may be automatically assigned by Public Surplus, in our sole discretion, to a third party in the event of a merger or acquisition.

6.12. Entire Agreement. This agreement constitutes the entire agreement between you and Public Surplus, and supersedes any previous agreements, whether oral or in writing, between you and Public Surplus. Public Surplus may, at its sole discretion, remove or change any aspect of this agreement at any time by providing notice to you.

6.13. Survival. The warranties, covenants and representations of the parties to this agreement will survive termination of the agreement.

6.14. Headings. Headings are for reference purposes only and in no way affect the interpretation of this agreement.