

Terms & Conditions

ONLINE Terms and Conditions – SMC AUCTIONS

ONLINE Terms and Conditions - SMC Auctions

Last Updated: 8/1/2021

PLEASE READ THIS ONLINE TERMS AND CONDITIONS AGREEMENT (“AGREEMENT”) CAREFULLY, AS IT CONTAINS THE TERMS AND CONDITIONS THAT WILL GOVERN YOUR RIGHTS AND RESPONSIBILITIES. This Agreement constitutes a legally binding agreement between you (as defined below) and SMC Auctions, an Iowa limited liability company. SMC Auctions and its services may only be used by persons who can enter legally binding contracts under applicable law for the purchase of goods. Consequently, persons under the age of 18 may not use SMC Auctions or its services, and may not register. Your clicking on the button marked “I have read and AGREE to the Online Terms and Conditions” or your ongoing use of the SMC Auctions website and SMC Auctions services indicates your acknowledgement that you have read, understand, agree to, and accept this Agreement. It is your responsibility to carefully read this Agreement before using any of the SMC Auctions services, including this website. If you do not wish to be bound by this Agreement, do not register or continue to use the services or this website.

1. DEFINITIONS. The following terms are defined for use in this Agreement.

- (a) “Auction Item,” “Item,” or “Lot” means the piece or pieces of equipment that are included in the auction.
- (b) “Bidder” means an individual or entity that creates an account with SMC Auctions or obtains a bidder number, regardless of such user’s purpose for creating the account and whether or not such account is ever utilized to place a bid.
- (c) “Buyer’s Premium” means that additional cost or fee charged on the winning bid that a Purchaser must pay.
- (d) “SMC Auctions” means SMC Auctions.
- (e) “Purchaser” means a Bidder that has made an offer to purchase an item that has been accepted by SMC Auctions.
- (f) “Seller” and “Owner” refer to the person or entity that has enlisted the services of SMC Auctions to facilitate the sale of their item.
- (g) “You” and “User” refer to the individual and/or entity agreeing to these terms and conditions to permit use of SMC Auctions’ services.

2. IDENTIFICATION. You are required to provide SMC Auctions with a full name, address, and all other required information prior to placing a bid. SMC Auctions, at its sole discretion and for any reason or no reason, may revoke or deny registration to any User.

3. DEPOSIT. A cash deposit may be required to register, or may be required to continue bidding after a monetary threshold has been reached. The determination as to the amount and timing of such a cash deposit is at the sole discretion of SMC Auctions. Failure to make a required deposit may result in suspension of bidding privileges, the disqualification of your bid, revocation of your registration, or any combination together.

4. BID OPERATION. By hosting an auction, SMC Auctions is soliciting offers from Bidders for the sale of certain items. By submitting a bid, you are making an irrevocable legal offer to buy the Auction Item and are agreeing to complete the transaction as described in this Agreement and with all other terms disclosed at the time of the auction. Once accepted by SMC Auctions, a contract is created for the sale and purchase of the item in accordance with this Agreement and all other terms disclosed at the time of the auction. All auctions are subject to the Seller’s right of confirmation, Seller’s bids, and SMC Auctions’ bids on behalf of the Seller. Unless expressly agreed to in writing by SMC Auctions, SMC Auctions does not run “absolute auctions.” SMC Auctions reserves the right to reject any bid that is only a minimal increase over the previous bid.

5. **PAYMENT.** All amounts owed must be paid in full within the time announced by SMC Auctions. No item may be removed unless all amounts owed are paid in full. All payments shall be made in United States Dollars. SMC Auctions accepts the following methods of payment: cash, cashier's check, credit card, money order, or wire transfer. Personal and business checks may be accepted; however, SMC Auctions reserves the right to require a letter of guarantee from a bank or other person or entity acceptable to SMC Auctions in its sole discretion. A \$40.00 handling charge may be added to the purchase price of all titled vehicles.

6. **CREDIT CARD TRANSACTIONS.** All credit card purchases must be pre-approved by SMC Auctions, and are subject to a 5% convenience fee. SMC Auctions reserves the right to charge your credit card for the full amount of your winning lot plus any applicable sales tax and Buyer's Premium if you have not made payment to SMC Auctions on or before the final day of the auction checkout.

7. **COMPLIANCE WITH TERMS OF PURCHASE.** By bidding on an Auction Item, each Bidder represents and warrants that they have the ability to close the transaction pursuant to the terms and conditions of sale, including the payment of all money owed. You acknowledge and agree that you have certain obligations if your offer to purchase an item is accepted. Further, you acknowledge and agree that by failing to comply with those obligations, SMC Auctions, the Seller, and the Owner will incur certain expenses as a result, including but not limited to costs and fees in storing, transporting, or reselling the Auction Item. You will be responsible for any and all expenses.

If the Purchaser fails to remove the item by the announced check-out period, all the rights of interests in the item will revert to the original Seller or Owner. Notwithstanding the elimination of any rights and interests, Purchaser, at the sole discretion of SMC Auctions, may remain liable for the cost of storage, transportation, and resale of the item, including but not limited to any difference in price between that which the Purchaser owes for the purchased item and the net amount which the item ultimately resells for. SMC Auctions, Seller, or Owner reserve the right to resell any item remaining after the announced check-out period in any manner and for whatever consideration SMC Auctions, the Seller, or Owner in their discretion deem most advisable, without giving Purchaser notice or an opportunity to cure. If the Purchaser fails to pay in full for the item, any deposit or other money previously paid to SMC Auctions will first be used to satisfy any amount owed to SMC Auctions. Notwithstanding application of the deposit or other funds, Purchaser will still be responsible for any difference between the amount owed to SMC Auctions and the amount deposited with SMC Auctions.

8. **BIDDING MISTAKES.** If a Bidder believes they have made a mistake while bidding, they must immediately notify SMC Auctions of the alleged mistake. Failure to immediately notify SMC Auctions constitutes a waiver of any claim of a mistake. Regardless of the foregoing, even if the Bidder immediately notifies SMC Auctions of their actions, SMC Auctions is under no obligation to cancel or modify the bid, and may decide in its sole discretion that the Bidder remains fully responsible for their bid.

9. **MOVERS AND REMOVAL.** Any Purchaser contractors, including riggers and machinery movers, will not be allowed to work on the auction premises until they have provided SMC Auctions proper insurance, protecting SMC Auctions, the Seller, and the landlord from all and any claims resulting from their actions. SMC Auctions reserves the right to reject any proposed rigger or mover at its sole discretion. All removal, including disconnecting of utilities, will be at the sole expense, liability, and risk of the Bidder: provided however, that if such costs are incurred by SMC Auctions and notice is given, Bidder agrees to pay removal costs incurred by SMC Auctions in addition to the amount bid and accepted and other charges. Bidder is solely responsible for determining the amount of such expenses prior to bidding. **Picking Up Your Items:** You are solely responsible for the safe and timely pick-up and removal of any items you may win at this auction. If you are unable to safely pick up and remove your items during the removal times that have been scheduled for this sale, **PLEASE DO NOT BID.** The Auctioneer does not ship except when a given item is clearly identified as eligible for shipping, nor does the Auctioneer hold items beyond the published removal times. The Auctioneer is not obligated to issue you a refund if you are unable to pick up and safely remove your items during the published removal times.

10. **CONDITION OF LOTS.** Due diligence to verify the condition and description of an item is the sole responsibility of the Bidder prior to placing any bid. Therefore, a Bidder shall examine or inspect items prior to the day of the auction or assume the risk. **ALL ITEMS ARE SOLD AS IS, WHERE IS AND WITH ALL FAULTS. SELLER, OWNER, AND SMC AUCTIONS MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY AUCTION ITEM. SMC AUCTIONS, OWNER, AND SELLER EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** No allowance will be made for errors in cataloging, genuineness, defects, or imperfections, regardless of whether they were previously disclosed.

11. **ADDITIONAL AUCTION TERMS.** SMC Auctions reserves the right to periodically change the terms and conditions of this Agreement, and it is the Bidder's responsibility to periodically review any and all changes made to this Agreement prior to each use

of SMC Auctions website and other services. By continuing to bid, or otherwise utilize SMC Auctions and its services, you agree to the terms, as modified from time to time, regardless of whether you have received actual notice of any update, modification, or other change. SMC Auctions will not modify these terms during the course of an auction.

12. **MALFUNCTION.** Any malfunction, shutdown or temporary loss of service involving the bidding process may, at the sole discretion of SMC Auctions, render the results of the auction void. In such an event, SMC Auctions reserves the right to remedy the situation in whatever way best represents the Seller, including canceling the existing bids.

13. **OTHER INFORMATION.** SMC Auctions relies on information about assets in the auction provided by the Seller and undertakes no investigation of that information. SMC Auctions shall not be responsible for the correct description, genuineness, authenticity of, or defect in any lot, and makes no warranty with respect thereto. SMC Auctions may announce additions to or deletions from the catalog on the day of the auction, or at any other time. SMC Auctions assumes no responsibility for, and makes no representations or warranties concerning, descriptions of assets contained in marketing materials for the auction.

14. **INDEMNIFICATION.** All Bidders and Purchasers agree to fully indemnify, hold harmless and defend SMC Auctions and its directors, officers, employees, agents, and affiliates (collectively "Indemnified Parties") from and against all claims, actions, suits, demands, liens, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses (including without limitation reasonable attorney fees and costs) whether or not involving a third party claim, which arise out of, relate to, or result from Bidder's (1) violation or breach of any term, condition, representation or warranty of this Agreement; (2) improper or illegal use of SMC Auctions services; (3) violation, alleged violation, or misappropriation of any intellectual property right (including, without limitation, trademark, copyright, patent, trade secrets) or non-proprietary right of a third party; (4) purchase or use of any Auction Item; or (5) failure to comply with local, state, or federal laws or regulations; in each case whether or not caused by the negligence, but not gross negligence or intentional misconduct, of SMC Auctions or other Indemnified Party and whether or not the relevant claim has merit.

15. **LIABILITY RELEASE.** You release for forever discharge SMC Auctions, its directors, officers, employees, agents, and affiliates from any liability, including without limitation any liability for damages caused or allegedly caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction of or unauthorized access to, alteration of or use of records, whether for breach of contract, negligence or tortious behavior, or under any other cause of auction whether in law or equity. SMC Auctions and its directors, officers, employees, agents, and affiliates will not be responsible for any injuries (including death) or property damage resulting, caused by, or growing out of, the operation, attempted use, storage, or transportation of any Auction Item. Further, SMC Auctions, Owners or Sellers will not be liable for non-delivery or late delivery of any Auction Item, other than for the return to the Purchaser the sum paid on said Auction Item should Purchaser be entitled thereto due to SMC Auctions' inability or election not to deliver an Auction Item.

You acknowledge that an auction site is a potentially dangerous place. Every person enters the auction site at their own risk with notice of the condition of the premises and the activities that will be or have been conducted on the premises. Except for gross negligence or intentional misconduct of SMC Auctions, you discharge and release SMC Auctions, its directors, officers, employees, agents, and affiliates from any and all liability from loss, injury (including death), or damages to persons or property sustained while in or on property owned, leased, or otherwise controlled by SMC Auctions, Sellers, or Owners.

SMC AUCTIONS WILL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

16. **LIMITATION OF CLAIM PERIOD.** YOU AGREE TO BRING ANY CLAIM YOU MAY HAVE AGAINST SMC AUCTIONS WITHIN THIRTY DAYS FROM THE DATE OF THE EVENT THAT RESULTED IN THE LOSS, INJURY, DAMAGE, OR LIABILITY OR THE SHORTEST DURATION PERMITTED UNDER APPLICABLE LAW IF SUCH A PERIOD IS GREATER THAN THIRTY DAYS. FAILURE TO BRING THE CLAIM WITHIN THE THIRTY DAY PERIOD WILL CONSTITUTE A WAIVER OF THE CLAIM.

17. **ADDITIONS OR WITHDRAWALS.** SMC Auctions may, in its discretion, offer the Auction Items for sale by the piece or by the lot, or in any manner that best serves the interest of the Seller. The Seller has the right to remove items from the auction either before bidding or after bidding has been completed. In the event of a removal after bidding has been completed, the Bidder's sole remedy shall be the refund of any purchase price actually paid.

18. **RECORD.** The record kept by SMC Auctions will be taken as the sole, final, and official record in the event of any dispute (except for instances of manifest error).

19. **AGENCY.** SMC Auctions is acting only as an agent and is not responsible for the actions of the principals.

20. EXPORT. Purchaser agrees to comply with all applicable laws and regulations, including but not limited to United States export controls and laws, and acknowledges that SMC Auctions is not the exporter of any items. Certain Auction Items may be subject to restrictions that, among other things, do not allow the Auction Item to be transported out of the United States. SMC Auctions makes no representation or warranty concerning, and has conducted no investigation to ascertain which items, if any, are subject to any United States or foreign export restrictions.

21. COSTS OF COLLECTION. SMC Auctions shall be entitled to collect all damages, costs, and expenses incurred in connection with collection of any amounts owed to SMC Auctions or successfully defending any claims by Bidder, including without limitation reasonable attorneys' fees and costs.

22. DISPUTES. You agree that the laws of the State of Iowa, without regard to principles of conflict of laws, will govern this Agreement and any claim or dispute that has arisen or may arise between you and SMC Auctions. Any disputes between you and SMC Auctions shall be governed by the laws of the State of Iowa without regard to the provisions thereof which concern conflicts of laws.

YOU AND SMC AUCTIONS EACH AGREE, UPON DEMAND BY YOU OR SMC AUCTIONS, TO SUBMIT ANY AND ALL DISPUTES OR CLAIMS THAT HAVE ARISEN, OR MAY ARISE, BETWEEN YOU AND SMC AUCTIONS RELATING IN ANY WAY TO OR ARISING OUT OF THIS OR PREVIOUS VERSIONS OF THIS AGREEMENT, YOUR USE OF OR ACCESS TO SMC AUCTIONS' SERVICES, OR ANY ITEMS OFFERED OR PURCHASED THROUGH SMC AUCTIONS TO FINAL AND BINDING ARBITRATION. THE ARBITRATION WILL BE CONDUCTED BY A SINGLE ARBITRATOR PURSUANT TO RULES ESTABLISHED BY THE ARBITRATOR, AND WILL TAKE PLACE EXCLUSIVELY IN BOONE COUNTY, IOWA. IF THE PARTIES ARE UNABLE TO AGREE ON AN ARBITRATOR WITHIN 14 DAYS OF DEMAND FOR ARBITRATION, THE DEMANDING PARTY MAY SEEK APPOINTMENT OF AN ARBITRATOR FROM THE COURT.

YOU AGREE THAT THE PURCHASE OF AUCTION ITEMS OCCURS IN IOWA REGARDLESS OF THE LOCATION OF THE SELLER, OWNER, OR AUCTION ITEM. IF NEITHER YOU NOR SMC AUCTIONS DEMANDS ARBITRATION, YOU AGREE THAT ANY CONTROVERSY UNDER THIS AGREEMENT OR OTHERWISE ARISING BETWEEN THE YOU AND SMC AUCTIONS SHALL BE LITIGATED EXCLUSIVELY IN IOWA. YOU IRREVOCABLY CONSENTS TO SERVICE, JURISDICTION, AND VENUE OF SUCH COURTS FOR ANY SUCH LITIGATION AND WAIVE ANY OTHER VENUE TO WHICH YOU MAY OTHERWISE BE ENTITLED TO.

YOU AND SMC AUCTIONS HEREBY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING.

24. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter addressed herein and supersede all prior agreements, discussions, negotiations and understandings between the parties hereto with respect to such subject matter.

25. REMEDIES. Nothing in this Agreement shall be construed as a limitation of remedies available to SMC Auctions, its agents, assigns, or indemnitees. SMC Auctions, its agents, assigns, or indemnitees reserve the right to pursue all remedies available including, but not limited to, all remedies at law or in equity.

26. AUTHORITY. By accepting these terms and conditions, you represent and warrant that you have the full right, power, and authority to enter this Agreement and to perform the obligations contemplated herein. The individual accepting these terms on behalf of an entity represents and warrants in their individual capacity that they have the authority to bind the entity to these terms and conditions.

27. SEVERABILITY. If any term herein is to any extent illegal, otherwise invalid, or incapable of being enforced, either in its entirety or in a particular application, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

28. CAPTIONS. The captions and headings contained herein are inserted only for the purpose of convenience, and in no way define, limit, or prescribe the scope or intent of this Agreement.

29. ASSENT TO TERMS. By proceeding with the creation of a bidding account with SMC Auctions, you acknowledge that you have had an opportunity to fully read and understand the terms contained herein.

30. SINGULAR AND PLURAL. Words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

31. NON-WAIVER OF BREACH. Any waiver of this Agreement must be in writing. The waiver of any breach of any provision of this Agreement or failure to enforce any provision shall not operate or be construed as a waiver of any subsequent breach by any party.

32. EMAIL. By registering to bid you will automatically be registered to receive email and or mail notifications of our future auctions. Should you opt not to receive notifications follow the unsubscribe instructions within the email received or follow the instructions within the Auction Notifications link on our website. We will not share any of our bidder information with outside parties.