

Terms and Conditions

Assist With Auctions

- 1. Services.** By accepting this Agreement as required during the online check-out process, you (the "Seller") authorize The UPS Store (hereby referred to as "Store") to provide the following services in accordance with the terms and conditions of this Agreement: to (1) receive and store the commodity you have described (the "Goods or Item"), (2) list, offer and sell the Item on eBay, (3) deliver the Item to the buyer, if there is one, and (4) collect the sales price from the buyer, deduct Instant Auctions' sales fees ("Sales Fee") and eBay's fees and forward the remainder of the sales price to the Seller in check form in accordance with the "Services" below.
- 2. Rights.** By accepting this Agreement, the Seller confirms that he/she/they are at least 18 years of age, are the legal owner of the Item, and have the right to sell the Item.
- 3. Binding Bids.** The Seller is obligated to complete the transaction with the highest bidder upon the listing's completion, unless there is an exceptional circumstance, such as, (a) the buyer fails to pay for the Goods, or (b) The Store cannot authenticate the buyer's identity.
- 4. Unsold Items.** Should the Item fail to sell after being listed on eBay, the Seller hereby authorizes The Store to hold the item for pickup by the Seller. After the Seller has been notified that the Item did not sell, they have 10 days to pick up the Item before it becomes the property of the Store, where it will be either: auctioned on eBay with no reserve, or donated to charity, or disposed of. Before unsold Items are returned, the Seller agrees to pay the eBay listing fees associated with the item **PLUS \$5**. Items can be shipped back to the Seller if they agree to pay the return shipping and packing cost.
- 5. Payment to the Seller.** As consideration for the services, the Seller agrees the Store will be entitled to collect the Sales Fee according to the following formula: twenty-eight percent (28%) if the Sales Price is between \$0 and \$100, twenty-six percent (26%) if the Sales price is between \$100.01 and \$200, twenty-four percent (24%) if the Sales price is between \$200.01 and \$300, twenty-two percent (22%) if the Sales price is between \$300.01 and \$400, or twenty percent (20%) if the Sales price is greater than \$400.01, OR \$5, whichever is greater, plus a 2.9% transaction fee AND any eBay / PayPal charges incurred in the process of selling the Goods. Following receipt by the Store of the Sales Price from the buyer, the Store is authorized by the Seller to deduct the Sales Fee from the final sale price and forward the remainder to the Seller at the mailing address as stated by the Seller on their PARCEL SHIPPING ORDER form the time the Goods are dropped off, within two (2) weeks from the date of receipt of the Sale Price.
- 6. Bailment Relationship.** The relationship between the Store and the Seller is that of bailor and bailee in which the bailee (the Seller) deposits his personal property (the Item) with the bailor (the Store) for the purpose of listing and selling the Item to third parties through eBay. Nothing contained herein will be construed as creating any agency, partnership, or other form of joint enterprise between the parties.
- 7. Title and Risk of Loss.** Title and risk of loss, for the Goods, remains with the Seller until such time as the Item is delivered to a carrier for delivery to the buyer. Title and risk of loss will not transfer to the Store at any time. Title to the Goods shipped will pass directly from the Seller to the Buyer.
- 8. Seller's Warranty of Goods.** The Seller warrants that (1) the Seller has all the necessary rights and authorization to produce and distribute the Item and to permit the Store to offer, sell and deliver the Item to any third party, (2) the Item and the rights granted under this Agreement do not infringe the proprietary rights of any third party, and (3) the description of the Item is truthful, accurate, and complete. The Seller represents and warrants that the description of the Item and the Item itself will not: be false, inaccurate or misleading, fraudulent, or involve the sale of counterfeit or stolen items, violate any law, statute, ordinance, or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination or false advertising), defamatory, trade libelous, unlawfully threatening or unlawfully harassing, obscene or contain child pornography or otherwise adult in nature or harmful to minors.
- 9. Breach.** Without limiting other remedies, the Store may immediately remove the Seller's Goods listing from eBay, temporarily suspend, indefinitely suspend, or terminate the Services and refuse to provide future Services to the Seller if (1) the Seller breaches this Agreement, (2) the Store is unable to verify or authenticate any information the Seller provides to the Store, (3) the Store believes that the Seller's actions may cause financial loss or legal liability for the Seller, the Stores' users, or the Store, or (4) the Store suspects that the Seller (by conviction, settlement, insurance, escrow investigation, or otherwise) has engaged in fraudulent activity in connection with the Goods, the Store, or eBay.
- 10. Indemnity.** The Seller agrees to indemnify and hold the Store and (as applicable) the Stores' parent, subsidiaries, affiliates, officers, directors, agents, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due, connected to, or arising out of the Seller's breach of this Agreement, or the Seller's violation of any law or the rights of any third party.
- 11. Warranty Disclaimer.** The Store provides its services "as is" and without any warranty or representation as to the Services, express, implied, or statutory. The Store specifically disclaims any implied warranties of title, merchantability, fitness for a particular purpose, and non-infringement. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimer may not apply to the Seller. This warranty gives the Seller specific legal rights and the Seller may also have other legal rights that vary from state to state.
- 12. Waiver of Consequential Damages.** In no event will the Store be liable to the seller for any incidental, consequential, exemplary, indirect, special, or punitive damages arising out of this Agreement or its termination, regardless of the form of action (including negligence and strict product liability) and irrespective of whether the Store has been advised of the possibility of any such loss or damage.
- 13. Liability Cap.** The Stores' liability, and the liability of its employees and suppliers, to the Seller or any third parties in any circumstance is limited to: (1) the **replacement** cost or **repair** cost if repairable of the Item, or (2) **\$100** which ever is lower. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to the Seller.
- 14. Release.** The Seller releases the Store and eBay (and the Stores' officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of, resulting from, or in any way connected with the Services. If the Seller is a California resident, the Seller waives California Civil Code p.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."
- 15. Term.** The term of this Agreement will commence upon completing the date the Terms and Conditions form is signed (the "Effective Date") and unless terminated earlier in accordance with the terms of this Agreement, will continue until the Goods accepted for listing by the Store under this Agreement is sold and delivered, returned to the Seller, or disposed of in accordance with Section 3, but in no event more than sixty (60) days from the Effective Date. This Agreement may be terminated by the Store without notice, for any reason, at any time.
- 16. Survival of Certain Terms.** The following Sections will survive the termination of this Agreement for any reason: 3, 5 through 13 inclusive, 15 and 16. All other rights and obligations of the parties will cease upon termination of this Agreement.
- 17. General.** This Agreement will be governed in all respects by the laws of the United States of America and the Commonwealth of Massachusetts as such laws are applied to agreements entered into and to be performed entirely within Massachusetts between Massachusetts residents. All notices or requests will be in writing and will be sent by facsimile, or recognized commercial traceable courier. Notices will be deemed received upon receipt of written confirmation of transmission when sent by facsimile, or signing for receipt of delivery if sent by traceable courier. Notices will be sent to the parties at the address set forth in the "Customer" as written by the Seller on the PARCEL SHIPPING ORDER form. The failure of either party to require performance by the other party of any provision hereof will not affect the full right to require such performance at any time thereafter; nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. In the event that any provision of this Agreement will be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and, in such event, such provisions will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. This Agreement and the exhibits hereto, constitute the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes, and the terms of this Agreement govern, any prior or collateral agreements with respect to the subject matter hereof with the exception of any prior confidentiality agreements between the parties. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.

Signed _____

Date _____

Parcel Shipping Order

Returned Unsold and paid listing fee _____

Date _____