

ACCUBUILT TERMS OF USE

THIS ACCUBUILT.COM WEBSITE ("SITE") IS OWNED AND OPERATED BY ACCUBUILT, INC., AN OHIO, CORPORATION ("ACCUBUILT," "WE" OR "US"). THESE TERMS OF USE ("AGREEMENT") GOVERN YOUR ACCESS TO AND USE OF THE SITE. YOU SHOULD CAREFULLY READ THIS AGREEMENT. YOUR USE OF THE SITE MEANS THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND THAT YOU HAVE ENTERED INTO A BINDING LEGAL AGREEMENT WITH ACCUBUILT. IF YOU DO NOT ACCEPT AND AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT YOU SHOULD DISCONTINUE YOUR USE OF THE SITE. IN ADDITION, WHEN USING A PARTICULAR SERVICE AND/OR ACCESSING CERTAIN MATERIALS ON OR THROUGH THE SITE, YOU SHALL BE SUBJECT TO ANY POSTED TERMS OR RULES APPLICABLE TO SUCH SERVICES OR MATERIALS, WHICH ARE IN ADDITION TO THIS AGREEMENT. ALL SUCH TERMS OR RULES ARE HEREBY INCORPORATED BY REFERENCE INTO THIS AGREEMENT, AND IF YOU DO NOT AGREE WITH THEM YOU SHOULD NOT USE THE SERVICE AND/OR MATERIALS.

- 1. Privacy Policy.** The Privacy Policy contained on the Site is incorporated in this Agreement by reference, but this Agreement shall govern any conflict or inconsistency with such Privacy Policy.
- 2. Amendments to Agreement and Privacy Policy.** Accubuilt reserves the right to change the terms and conditions of this Agreement, the Privacy Policy and/or any of its other policies relating to the Site, at any time in its sole discretion. Accubuilt shall notify you of such changes by posting the changes on the Site. You are responsible for regularly reviewing the Site and this Agreement regarding such changes. Continued use of the Site after any such changes have been posted shall constitute your agreement to them.
- 3. Materials and Services.** Through this Site, Accubuilt may make available to you: (a) certain audio and visual articles, text, images, illustrations, photographs, video, documents and other materials contained or displayed in or made available through the Site (collectively, "Materials"); and (b) various auction services and other services described in this Agreement and/or on the Site (collectively, "Services").
- 4. License.** Accubuilt and its licensors grant to you a limited, non-exclusive, non-transferable license to: (a) access, view, download, print, use and display Materials; and (b) use the tools and software on the Site (collectively, "Software"); (c) post information to the Site, as described herein and on the Site; and (d) participate in communication and bidding activities through the means provided on the Site. In this Agreement, all references to the "Site" shall be deemed to include all "Software," "Materials" and "Services," unless otherwise expressly indicated. All rights not expressly granted by Accubuilt to you are retained by Accubuilt, and you may not use the Site and/or any element of the Site in any manner or for any purpose not expressly authorized by this Agreement. The rights granted to you do not include, and are not applicable to, the design or layout of the Site, which are protected by trade dress and other laws and may not be copied or imitated in whole or in part.

5. **Restrictions; Removal.** You shall not: (a) remove or destroy any proprietary rights marks or legends on or in the Site; (b) modify, enhance, adapt, translate, or create derivative works of the Site; (c) republish, post, transmit, transfer, distribute, assign, sublicense, rent, lease or sell the Site; (d) decompile, disassemble or reverse engineer the Site; (e) reproduce or make copies of the Site; (f) “frame” or “mirror” the Site on any other server or Internet-based device; and/or (g) access, view, download, print, use and/or display the Site for any commercial or other money-making purpose. You acknowledge that certain elements of the Site are, or may in the future be, licensed to Accubuilt by third parties and that the availability of such elements may cease automatically, without notice or liability on the part of Accubuilt.
6. **Ownership.** Accubuilt and/or its licensors own and shall retain all rights, title and interests, including all intellectual property rights, in and to the Site, and all elements thereof. Except for the express licenses granted to you herein, you neither have nor acquire any rights, title or interests in or to the Site, or any element thereof.
7. **Marks and Logos.** “Accubuilt”, “Accubuilt.com” and all other names, marks, symbols and logos used in connection with the Site are trademarks of Accubuilt or other third parties (the “Marks”). Accubuilt grants you no license, permission or authorization to reproduce or use any Marks, whether owned by Accubuilt or a third party. You agree not to display, copy, redistribute or use any Marks in any manner for any reason without Accubuilt’s prior express written consent.
8. **Registration.**
 - 8.1 Once your profile information has been processed and approved, you will be provided with a user name and password. The user name and password are non-transferable and cannot be changed. The user name and password will need to be used for all your auction activities on the Site. If you have problems or questions with a user name and password, please contact Mark Dunbar at (419) 998-8647.
 - 8.2 Keep your user name and password in a secure place and do not allow any unauthorized persons to access the Services using your email address, user name or password. You are responsible for all activity that occurs under your user name and password. You agree to immediately notify Accubuilt of any unauthorized use of your password or email address or any other security breach.
 - 8.3 You agree that you are solely responsible for any and all tax obligations arising from or in connection with your participation in the Services.
9. **Account Information and Data.**
 - 9.1 Accubuilt does not own any personal data or information that you submit to be used by Accubuilt to provide any Service (“Data”), unless Accubuilt specifically tells you otherwise before you submit it. However, you acknowledge and agree that various individuals and entities may have overlapping rights in and to your Data. As such, Accubuilt has and shall retain all rights, title and interests, including all intellectual property rights, in and to all Data and related databases residing on Accubuilt’s servers,

including all of your Data which is stored in a form that is not identifiable as yours. Accubuilt may use and disclose your Data in accordance with the Privacy Policy, referenced above.

- 9.2 Accubuilt will not monitor, edit, or disclose any personally identifiable information regarding you or your account, including any Data, without your prior permission except in accordance with this Agreement and the Privacy Policy. Please be aware that Accubuilt may provide certain user registration and statistical information such as usage or user traffic patterns in aggregate form to third parties, but such information will not include personal information identifiable as yours. Accubuilt may access your account, including its Data, to respond to Service or technical problems or as stated in this Agreement.
- 9.3 You, not Accubuilt, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Data and Accubuilt shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data, or for any actions or omissions which Accubuilt takes in reliance upon your Data.

10. Third Party Sites and Materials.

- 10.1 Please exercise discretion while browsing the Internet using the Site. You should be aware that when you are on the Site, you could be directed to other sites that are beyond Accubuilt's control. There may be links to other sites from these pages that take you outside of Accubuilt's Site. This includes links from advertisers and sponsors that may use Accubuilt's logo(s) as part of a co-branding agreement. These other sites may send their own cookies to Accubuilt's users, collect data, solicit personal information, or contain information that you may find inappropriate or offensive. In addition, advertisers on the Site may send cookies to users that Accubuilt does not control. Accubuilt reserves the right to disable links from third party sites to the Site at any time in its sole discretion.
- 10.2 Accubuilt explicitly disclaims any responsibility for the accuracy, content, or availability of information found on sites that link to or from the Site. Accubuilt has not taken any steps to confirm the accuracy or reliability of any of the information contained in such third party sites or content. Accubuilt does not make any representations or warranties as to the security of any information (including, without limitation, credit card and other personal information) you might be requested to give any third party, and you hereby irrevocably waive any claim against Accubuilt with respect to such sites and third party content. Accubuilt strongly encourages you to make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties.

- 11. Compliance with Laws; Prohibited Activities.** You agree to abide by all applicable local, state, and federal laws, regulations, statutes, rules and ordinances, in connection with your use of the Site. Without limiting the foregoing, you shall not use the Site to: (a) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages,

whether commercial or otherwise; (b) harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses; (c) transmit or post unlawful, harassing, bigoted, racist, hateful, libelous, abusive, tortious, defamatory, threatening, harmful, invasive of another's privacy, vulgar, obscene or otherwise objectionable material of any kind or nature or which is harmful to minors in any way; (d) transmit or post any material that may infringe the intellectual property rights or other rights of third parties, including trademark, trade secret, copyright or right of publicity; (e) transmit or post any material that contains software viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs and cancelbots; (f) interfere with or disrupt servers or networks connected to the Site or violate the regulations, policies or procedures of such networks; (g) attempt to gain unauthorized access to the Site or computer systems or networks connected to the Site through password mining or any other means; or (h) harass or interfere with another Accubuilt user's use of the Site. In addition, you agree not to use any device, software, or routine, including but not limited to any viruses, worms, time bombs, to interfere or attempt to interfere with the proper working of the Site or any Service, or to intercept any system, data or personal information from the Site, nor will you take any action that imposes an unreasonable or disproportionately large load on the Site's infrastructure.

12. DISCLAIMER. THE SITE IS PROVIDED TO YOU ON AN "AS IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE. YOU ACKNOWLEDGE THAT: THE SITE COULD INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES OR TYPOGRAPHICAL ERRORS; THE SITE MAY BECOME INOPERABLE OR OTHERWISE UNAVAILABLE FOR PERIODS OF TIME; MATERIALS AND/OR SERVICES AT THE SITE MAY BE OR BECOME OUT OF DATE AND ACCUBUILT MAKES NO COMMITMENT TO UPDATE SUCH MATERIALS OR SERVICES. ACCUBUILT ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS IN THE INFORMATION, DOCUMENTS, SOFTWARE, MATERIALS AND/OR SERVICES WHICH ARE REFERENCED BY OR LINKED TO THIS SITE OR THAT THE SITE WILL NOT CONTAIN OR INTRODUCE VIRUSES OR OTHER HARMFUL ELEMENTS TO YOUR COMPUTER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ACCUBUILT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Some jurisdictions do not allow the exclusion of implied warranties such that the above exclusion may not apply to you. This warranty gives you specific legal rights, and you may also have other rights that vary from jurisdiction to jurisdiction.

13. Covenants Not To Sue; Release; Indemnification.

13.1 In your use of the Site, you may enter into correspondence with, purchase products and/or other goods or services from, or participate in promotions of, sellers, advertisers, sponsors or other third parties showing their products and/or services through the Site. Any such activity, and any terms, conditions, warranties or representations associated with such activity, are solely between you and the applicable seller, advertiser, sponsor or other third party. Accubuilt shall have no liability, obligation or responsibility for any

such correspondence, transaction, exchange, purchase, sale, promotion or other activity conducted between you and any sellers, advertisers, sponsors or other third parties. In the event that you have a dispute with, or suffer any harm or injury caused by, one or more such sellers, advertisers, sponsors or other third parties, you acknowledge that your sole and exclusive remedies are against such sellers, advertisers, sponsors or other third parties. You expressly covenant not to sue or otherwise assert any claim against Accubuilt, its affiliates, or any of their respective shareholders, directors, employees, partners, members, managers, contractors, agents, successors and assigns in connection with such disputes, harm or injury.

- 13.2 You hereby knowingly and voluntarily release and forever discharge Accubuilt, its affiliates, and their respective shareholders, directors, employees, partners, members, managers, contractors, agents, successors and assigns (collectively, "Releasees") from any and all claims, liabilities, obligations, actions, causes of action, suits, debts, covenants, controversies, damages, judgments and demands whatsoever in law, equity or any kind, type, or description, whether known or unknown, disputed or undisputed, accrued or unaccrued, liquidated or contingent, foreseen or unforeseen, asserted or unasserted, related to or arising out of any dispute with, any harm or injury (including, without limitation, personal injury or damage to property) caused by, or any other act or failure to act by, any bidders, sellers, advertisers, sponsors, other users of the Site and/or any other third parties.
- 13.3 You agree to indemnify, defend and hold harmless all Releasees from and against any and all claims, actions, demands, liabilities, losses, damages, penalties, interest, judgments, settlements, costs and expenses (including reasonable attorneys' fees) that relate to, arise out of or are based upon: (a) any misrepresentation or breach of any warranty, covenant or agreement made by you related to this Agreement; or (b) any violation by you of any law, regulation or rule. Accubuilt reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, but doing so shall not excuse your indemnity obligations. Accubuilt shall have the right to participate in the defense of all claims as to which it does not assume defense and control, and you shall not settle any such claim without Accubuilt's prior written consent. You also agree to indemnify Accubuilt for any reasonable legal fees or other costs incurred by Accubuilt, acting reasonably, in investigating or enforcing its rights under this Agreement.

- 14. LIMITATION OF LIABILITY. REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, IN NO EVENT SHALL ACCUBUILT, ITS AFFILIATES OR ANY OF THEIR RESPECTIVE SHAREHOLDERS, DIRECTORS, EMPLOYEES, PARTNERS, MEMBERS, MANAGERS, CONTRACTORS, AGENTS, SUCCESSORS AND ASSIGNS BE LIABLE OR RESPONSIBLE TO YOU IN CONNECTION WITH THE SITE, ANY PRODUCTS, ANY AUCTIONS, AND/OR YOUR USE OF ANY SERVICE, FOR ANY (A) INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, EVEN IF THEY ARE AWARE OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) DIRECT DAMAGES IN AN AMOUNT GREATER THAN FIVE THOUSAND DOLLARS (\$5,000 USD). ANY**

CLAIM RELATED TO THE SITE MUST BE INITIATED WITHIN ONE (1) YEAR OF THE DATE YOU KNEW, OR REASONABLY SHOULD HAVE KNOWN, OF THE EXISTENCE OF SUCH CLAIM.

- 15. Termination.** This Agreement, and your right to access and use the Site, are effective until terminated by either you or Accubuilt. Either you or Accubuilt, by giving the other party notice, may, at any time and with or without your cause, terminate this Agreement and/or your access to or use of the Site or Services. Upon any termination of this Agreement, you shall no longer be entitled to use the Site or Services and all licenses and rights granted to you hereunder shall terminate. Any provision of this Agreement that imposes or contemplates continuing obligations on or of a party will survive any expiration or termination of this Agreement, including, without limitation, all provisions of this Agreement relating to ownership, limitations of liability, indemnification and disclaimers of warranty.
- 16. Miscellaneous.**
- 16.1 The relationship between you and Accubuilt is that of independent contract. No joint venture, partnership, employment, or agency relationship exists between you and Accubuilt as a result of this Agreement, your access to the Site or your use of any Service. Neither party has the authority to create any obligations for the other, or to bind the other to any representation, statement or document.
- 16.2 Accubuilt shall not be liable to you by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, interruptions in telecommunications services or Internet access, or any other cause which is beyond the reasonable control of Accubuilt, whether or not similar to the foregoing.
- 16.3 Neither the rights nor the obligations arising under this Agreement are assignable or transferable by you, and any such attempted assignment or transfer shall be void and without effect. Accubuilt may assign this Agreement without restriction.
- 16.4 If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be modified to the extent necessary to be valid and enforceable, and all other provisions of this Agreement shall remain in full force and effect.
- 16.5 In order to ensure consistency in the interpretation and enforcement of this Agreement and Accubuilt's rights in the Site, this Agreement will be governed exclusively by Ohio law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. You expressly agree that any litigation arising between you and Accubuilt related, in any way, to the Site and/or this Agreement, and/or any and all disputes, actions, claims, or causes of action related thereto, shall be initiated and maintained only in the U.S. District Court for the Northern District of Ohio, and/or

the Circuit Court of the County of Allen, Ohio. You expressly consent and irrevocably submit to the exclusive personal jurisdiction and venue of such courts.

- 16.6 Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any action, suit or proceeding arising out of this Agreement.
- 16.7 This Agreement is the entire agreement between the parties pertaining to its respective subject matter, and all written or oral agreements, representations, warranties or covenants, if any, previously existing between the parties with respect to such subject matter are canceled. The statements made by Accubuilt on any of the Site or otherwise than in an express provision of this Agreement are not representations or warranties and do not create contractual obligations.
- 16.8 The failure of Accubuilt to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Accubuilt in writing. No waiver shall be implied from a failure of either party to exercise a right or remedy. In addition, no waiver of a party's right or remedy will affect the other provisions of this Agreement.
- 16.9 Unless otherwise expressly stated in this Agreement, all remedies available under or with respect to this Agreement (including any right to terminate this Agreement granted in this Agreement) are cumulative and in addition to all other remedies, if any, available at law or in equity. The exercise of any right to terminate this Agreement or suspend access or service granted a party in this Agreement shall not result in a breach of this Agreement by such party, and neither the exercise of such right nor any consequence thereof shall give rise to or be the basis for any claim by or liability to the other party, whether in contract, tort or otherwise, even if the terminating party was informed or aware of, or otherwise could have anticipated the possibility of, such consequence.