



## eSale Auctions LLC Services Agreement Form

### Customer Information:

Name: \_\_\_\_\_ Company: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone: \_\_\_\_\_

### Auction Items:

Quantity	Item Description	Price	Min.
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### Terms and Conditions:

I have read and agree to eSale Auctions LLC Terms and Conditions.

Date:

Signature:

## Terms and Conditions

**1. Services:** By accepting this Agreement you authorize eSale Auctions LLC to provide the following services in accordance with the terms and conditions of this Agreement, to:

- (A) Receive and store the goods you have described (the "Goods").
- (B) List, offer and sell the Goods on Ebay, Craigs List or another outlet.
- (C) Ship/Deliver the Goods to the buyer, if any.
- (D) Collect the sales price from the buyer, deduct eSale Auctions LLCs commission fee, deduct eBay listing fees, eBay final value fees and any PayPal transaction fees (if applicable) and forward the remainder of the sales price to Seller in accordance with the "Services" below.

**2. Rights:** By accepting this Agreement, Seller confirms that they are at least 18 years of age, are the legal owner of the item(s), and have the right to sell the item(s).

**3. Binding Bids:** Seller is obligated to complete the transaction with the highest bidder upon the listings completion, unless there is an exceptional circumstance, such as,

- (A) The buyer fails to pay for the Goods, or
- (B) eSale Auctions LLC cannot authenticate the buyers identity.

**4. Unsold Goods:** Should eSale Auctions LLC decide that the Goods are unsuitable for sale on eBay, Craigslist or another outlet, or if the Goods fail to sell after being listed on Ebay, Craigslist (or another outlet) twice, the Seller will be immediately notified by existing and prior contact method(s) — phone, mail, email, etc. — to come and pick up his property. If the items are not picked up within 15 days from receipt of this notice, the Seller hereby transfers ownership of all of the unsold merchandise to eSale Auctions LLC, to donate the Goods to the charity of their choice or otherwise dispose of the Goods to their discretion. When the item(s) are picked up by the Seller, a fee of 5% of the asking price or \$20.00, whichever is greater, is due to be paid to eSale Auctions LLC for 'services rendered' (photography & editing, fuel, research, listing, etc).

**5. Payment to Seller:** As consideration for the Services, Seller agrees eSale Auctions LLC will be entitled to collect a sales fee ("Sales Fee")\* of the price for which the Goods are sold (the "Sales Price").

- (A) Ebay: Following receipt by Ebay of the Sales Price from the buyer, eSale Auctions LLC is authorized by Seller to deduct the Sales Fee from the monies received and forward the remainder to Seller at the Mailing Address as stated by Seller in eSale Auctions LLC Auction Listing Form at the time the payment is initiated, within thirty (30) days from the date of receipt of the Sale Price (\* "Sales Fee" is eBay "Insertion" and "Final Value" fees, PayPal payment processing fees and eSale Auctions LLC commission fees, which are 30% of the first \$500 and 20% of the remaining amount, i.e. above \$500, all combined into one total).
- (B) Graigslist or another outlet: eSale Auctions LLC commission fees, which are 30% of the sale price, plus any extra fees, if any, incurred.

**6. Bailment Relationship:** The relationship between eSale Auctions LLC and the Seller is that of bailor and bailee in which the bailee (Seller) deposits his personal property (Goods) with the bailor (eSale Auctions LLC) for the purpose of listing and selling the Goods 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 Seller until such time as the Goods are delivered to a carrier for delivery to the buyer. Title and risk of loss will not transfer to eSale Auctions LLC at any time. Title to Goods shipped will pass directly from Seller to Buyer.

**8. Seller's Warranty of Goods:** Seller warrants that

- (A) Seller has all the necessary rights and authorization to produce and distribute the Goods and to permit eSale Auctions LLC to offer, sell and deliver the Goods to any third party.
- (B) The Goods and the rights granted under this Agreement do not infringe the proprietary rights of any third party.
- (C) The description of the Goods is truthful, accurate and complete. Seller represents and warrants that description of the Goods and the Goods will not: Be false, inaccurate or misleading; Be 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, antidiscrimination or false advertising); Be defamatory, trade libelous, unlawfully threatening or unlawfully harassing; Be obscene or contain child pornography or otherwise adult in nature or harmful to minors.
- (D) Seller will not sell the Goods (if they remain under his possession) to a third party without the express consent of eSale Auctions LLC. Once this agreement is signed, the Seller **MUST** wait for eSale Auctions LLC sale procedures to be completed. Only after that, if the item was not sold, the Seller can reclaim it and do as he wishes with it.
- (E) Seller will not go back in a sale already completed and try to keep the item. Once a sale is completed, Seller **MUST** release the Goods for prompt delivery or pick-up.
- (F) If Goods do not sell or Seller decides to stop the sale for any reason whatsoever, a fee of 10% of the asking price or \$20.00, whichever is greater, is due to be paid to eSale Auctions LLC for 'services rendered' (photography & editing, fuel, research, listing, etc).

**9. Breach:** Without limiting other remedies, eSale Auctions LLC may immediately remove Sellers Goods listings from Ebay (or another outlet), temporarily suspend, indefinitely suspend or terminate the Services and refuse to provide future Services to Seller if

- (A) Seller breaches this Agreement.
- (B) eSale Auctions LLC is unable to verify or authenticate any information Seller provides to eSale Auctions LLC.
- (C) eSale Auctions LLC believes that Sellers actions may cause financial loss or legal liability for Seller, eSale Auctions LLC users or eSale Auctions LLC itself.
- (D) eSale Auctions LLC suspects that Seller (by conviction, settlement, insurance or escrow investigation, bidding on your own eBay items or having others bid on your behalf as a means of artificially inflating the bidding, or otherwise) has engaged in fraudulent activity in connection with the Goods, eSale Auctions LLC or eBay.

**10. Indemnity:** Seller agrees to indemnify and hold eSale Auctions LLC and (as applicable) eSale Auctions LLC 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 Sellers breach of this Agreement, or Sellers violation of any law or the rights of any third party.

**11. Warranty Disclaimer:** eSale Auctions LLC provides its services "as is" and without any warranty or representation as to the services, express, implied or statutory. eSale Auctions LLC specifically disclaims any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement. This warranty gives Seller specific legal rights and Seller may also have other legal rights that vary from state to state.

**12. Waiver of Consequential Damages:** In no event will eSale Auctions LLC be liable to 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 eSale Auctions LLC has been advised of the possibility of an such loss or damage.

**13. Liability Cap:** eSale Auctions LLC liability, and the liability of its employees and suppliers, to Seller or any third parties in any circumstance is limited to the greater of

- (A) the estimated value of the applicable Goods, as described by Seller, or
- (B) \$100.

**14. Release:** Seller releases eSale Auctions LLC and Ebay (and eSale Auctions LLC 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.

**15. Term:** The term of this Agreement will commence upon completing the Auction Listing Form for the Goods (the "Effective Date") and unless terminated earlier in accordance with the terms of this Agreement, will continue until all Goods accepted for listing by eSale Auctions LLC under this Agreement are sold and delivered, returned to Seller, or disposed of in accordance with Section 3, but in no event more than sixty (60) days from the Effective Date. eSale Auctions LLC may terminate this Agreement without notice, for any reason or no reason, at any time.

**16. General:** This Agreement will be governed in all respects by the laws of the United States of America and the Commonwealth of Michigan as such laws are applied to agreements entered into and to be performed entirely within Michigan between Michigan residents. 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.