



6. **EXPENSES** Consignor agrees that Auctioneer may deduct from its gross sale proceeds all of Auctioneer's costs (as specified in this agreement or subsequent written communications), and a commission based upon the Gross Sales Price of each Lot (item) or any part thereof, as follows:
- |                                       |        |   |       |                |
|---------------------------------------|--------|---|-------|----------------|
| Trucking & 1 Sierra Personnel Member  | \$ 95  | x | _____ | hrs = \$ _____ |
| Trucking & 2 Sierra Personnel Members | \$ 150 | x | _____ | hrs = \$ _____ |
- Add'l Expenses: \_\_\_\_\_
- Consignor authorizes Auctioneer to carry out title searches in respect to the items at the expense of the Consignor, if the Auctioneer in its sole judgment deems it appropriate. In no case whatsoever will Auctioneer have a duty or obligation to do any investigation as to the title, recorded or unrecorded liens or condition of the items submitted for auction. Consignor agrees to allow the use of its name, trademark or logo in advertising and auctioning.
7. **RESPONSIBILITY** Consignor shall: (i) be responsible for loss or damage to the Equipment until the early of: (a) the removal of the Equipment from the auction site by the purchaser; or (b) receipt by Consignor of all proceeds from the sale; (ii) insure the Equipment to its full insurable value against all perils so that in the event of damage to or destruction of the Equipment or any part thereof, all insurance proceeds shall be credited to the gross proceeds of the auction and payment made to the Auctioneer forthwith; (c) commission, based upon the fair market value as determined by the Auctioneer; (d) repayment of all cash advances, if any, made by the Auctioneer to or on behalf of the Consignor, together with all interest and fees; (e) reimbursement of all Auctioneer's out-of-pocket costs for repairs done by Auctioneer. **AUCTIONEER SHALL NOT BE RESPONSIBLE OR LIABLE FOR THE LOSS, DAMAGE OR DESTRUCTION OF THE EQUIPMENT, AND CONSIGNOR HEREBY RELEASES AUCTIONEER FROM ALL CLAIMS FOR ALL COSTS, DAMAGES, EXPENSES SHOWS OVER CAUSED.** \_\_\_\_\_ Initial
8. **GENERAL PRACTICE** Auctioneer may carry out the auction in accordance with its usual and ordinary business practices as may be adjusted from time to time. Auctioneer is acting as an agent of the Consignor and not a principal in the sale of Consignor's items. Auctioneer reserves the right to act as a principal on other lots that may be offered during the same auction. Auctioneer may offer the Equipment for sale live and/or over the internet, in its sole discretion.
9. **TRANSFER OF CONSIGNORSHIP** Neither Consignor nor any third party (or other legal entity) shall bid on the Consignor's items at the auction; in the event the Consignor is in violation of this provision, the item shall be deemed NOT SOLD. Auctioneer in its sole and exclusive judgment may offer the item for auction at a later time, including the next regularly scheduled auction.
10. **AUTHORIZATION** Consignor shall deliver to Auctioneer no later than five (5) days prior to the auction all documents evidencing Consignor's title to the Equipment, all documents necessary to transfer title to the Equipment, properly endorsed, sufficient to permit purchaser to register Consignorship. Any defect in providing proper documentation will have a detrimental effect on the sales price of the Equipment. Consignor nominates and appoints Auctioneer its true and lawful Attorney to sign, execute and deliver on its behalf, all documents required to transfer all of Consignor's rights, title and interest in the Equipment, and permit registration of Consignorship in the event the documents have not been delivered as required. Consignor authorizes Auctioneer to utilize the Equipment in setting up the auction or for demonstration purposes, and holds Auctioneer harmless for said use.
11. **SECURED INTEREST IN EQUIPMENT** Auctioneer may make payments on account of any registered or unregistered charges, liens, taxes or other interest claimed by any person or authority whether or not disclosed herein, in order to clear the title; Consignor shall hold Purchaser and Auctioneer harmless against all losses, damages, claims or costs (including attorney's fees) occasioned by any claim regarding the title and Auctioneer's reasonable acts to clear the Equipment title.
12. **REPOSSESSION** Consignor shall not withdraw the Equipment or any part thereof from the auction sale. If Consignor is in breach of this provision Consignor shall pay Auctioneer, in addition to any other damages that may be assessed all amount(s) Auctioneer would otherwise be entitled to, pursuant to the terms and conditions of this agreement, including the fees in paragraph 6 hereof, based upon the fair market value of the withdrawn Equipment (as determined by Auctioneer). Auctioneer shall have a lien, and may file it, and charge upon the Equipment, and in addition to all other rights, to seize and retain possession as security for Consignor's performance hereunder.
13. **INDEMNIFICATION** Consignor indemnifies and saves harmless Auctioneer against all suits, actions, costs or charges whatsoever arising from any representation contained herein or from any breach of Consignor's obligations, including, but not limited to, any inaccuracy in the descriptions of the equipment. Auctioneer may re-auction any part of the Equipment not sold, or not paid for at the auction and Consignor hereby acknowledges that no monies shall be payable by Auctioneer until Equipment has been paid for, with cleared funds, by the Purchaser thereof. The auction shall be without reserve, the equipment will be sold to the highest bidder and there will be no guarantee whatsoever by Auctioneer as to the proceeds to be realized by the Consignor, unless a reserve or seller confirmation price is specifically stated in this agreement. Consignor will comply with all laws relating to the sale of the Equipment.
14. **DISBURSEMENT OF FUNDS** Consignor irrevocably assigns to Auctioneer all amounts due pursuant to this contract, and Auctioneer shall utilize any proceeds as follows: first, for all the fees and expenses allowable in this contract; second to lien holder(s) and lastly, Consignor. Consignor agrees to promptly pay Auctioneer or other appropriate party any deficiency that may arise from the sale of the Equipment, along with all costs and penalties. Should Auctioneer be required to participate in any action to either enforce the terms and conditions of this agreement or as a result of any other actions or failure to act by Consignor, Auctioneer shall be entitled to recover all its costs and expenses, including attorney's fees.
15. **LEGAL AND BINDING** This contract may only be amended in writing by an officer of Auctioneer. This contract constitutes the entire agreement between the parties and takes the place of all prior agreements, verbal or in writing. The contract shall be subject to and shall be determined both in and under the laws of the State of Arizona, County of Maricopa for the Phoenix location, and State of Arizona, Pima County, for the Tucson location. This contract shall be binding on all heirs, executors, administrators and assigns. Receipt by Auctioneer via facsimile arbitration or PDF file of a signed copy of contract shall upon acceptance of Auctioneer, be considered binding on both parties.

\_\_\_\_\_ Initial for ON-SITE AUCTION (AUCTIONS NOT LOCATED ON SIERRA PREMISES)

**ON-SITE AUCTION ADDENDUM to Sierra Auction Contract**

For auctions conducted by Auctioneer at a property or facility occupied, used, owned, or leased by Consignor, the following conditions apply and supersede those described above that may conflict with those outlined herein.

- FULL DISCLOSURE** Consignor agrees to provide auctioneer with a copy of their Business License, Transaction Privilege Tax License, any DBA's, and the name(s) of all principals. Consignor will also provide auctioneer with any lien information, existing UCC filings, or other encumbrances that may apply to any and all items to be sold as part of this agreement.
- MARKETING** Auctioneer agrees to prepare all advertising material and publicity necessary to advertise sale and promote attendance of buyers in exchange of \$ \_\_\_\_\_ which shall include any other expense involved in said sale except those expenses noted below as payable by the Consignor. In this sale it is anticipated that the publicity necessary shall be as follows: \_\_\_\_\_
- COMMISSION** Consignor agrees to pay auctioneer for the services rendered by auctioneer a commission of \_\_\_\_\_ percent (\_\_\_\_\_/\_\_\_\_\_) of the gross receipts on items agreed to be sold under this agreement whether such sales are made at public auction, by private sale or in any other manner. A full commission shall be due and payable to auctioneer immediately following completion of each sale whether the sale is made for cash or on commission arrangement for that additional property should auctioneer elect to sell it. Any "reserve pricing" must be clearly stated and provided in writing to auctioneer with reasonable advance notice in order to inform customers that auction item(s) are reserved and a "No Sale Fee" of \_\_\_\_\_ per item will be paid to auctioneer for any item(s) not selling as a result of failure to reach pre-determined reserve amount.
- PUNCTUALITY** Consignor promises and agrees that the property will be ready for sale at the sale site not later than \_\_\_\_\_ **20** . Time is of the essence, and in the event of failure of the Consignor to deliver said property, or if Consignor shall breach this Contract, said Consignor agrees to pay the commission, advertising, and other accrued costs. Said commission to be based on the generally accepted auction value of said property. Failure to deliver the above described property to sale site by the date specified above will result in an additional late charge of one percent of the gross receipts, but this does not terminate any and all other remedies available in law and equity.
- PROCEEDS** Auctioneer agrees to pay Consignor the net sale proceeds within (10) banking days, but until that time all proceeds are held by auctioneer and may be used as collateral in satisfying all contractual obligations of Consignor as described herein.
- PREPARATION** Consignor agrees to supply such personnel as necessary to arrange, clean, prepare and make ready properties prior to auction sale and such personnel shall be paid by Consignor and shall be the sole responsibility of Consignor. In the event that Consignor does not adequately prepare properties for sale and auctioneer must incur expense for same, said expense will be deducted from gross receipts of sale after and in addition to commission.
- OBLIGATION OF EXPENSES** In the event that more than one Consignor is conducting a sale at the scheduled time and no advertising allowance is provided in Paragraph 1 of this section, it is agreed that this Consignor shall pay the pro-rated share of sale site expenses based upon this Consignor's gross receipts divided by the total gross receipts.
- LIENS** Consignor hereby agrees to sell the above property to the highest bidder and to deliver said property to the purchaser by Bill of Sale free from all liens and/or encumbrances immediately after the oral declaration of sale by the auctioneer. Any liens or encumbrances applicable to any or all items must be revealed to auctioneer by Consignor at the date of acceptance of this contract by Consignor.
- RESTRICTION** Consignor agrees that after the execution of the Contract that Consignor will not sell or cause to be sold any goods, wares or merchandise to any person, firm or corporation save and except through auctioneer and agrees that Consignor may be restrained from selling such goods, wares and merchandise to any other person after the execution of this Contract except through auctioneer unless auctioneer agrees to the sale and sale amount and is compensated in advance as noted in Paragraph 2.
- RIGHT TO RETURN** Auctioneer reserves the right to return any item(s) not sold to Consignor with zero commission being earned by auctioneer provided such failure to sell is due to the absence of a successful bidder at the auction.
- INTERRUPTION** Consignor promises not to interfere in any way with the auctioneers conducting the sale any time after acceptance of this contract. If Consignor elects to stop the auctioneer from continuing the sale after acceptance of this contract, Consignor agrees to pay auctioneer damages in the amount of \$10,000, plus reimbursement of all auction related expenses, to include advertising expenses, materials and supplies, labor, and any other expenses related to the marketing, setup, and sale of Consignor's items.
- BUY BACK** If Consignor elects to buy back any of the property offered for sale at the auction, a 10% fee (in addition to any other fees as outlined herein) will be charged to the Consignor for those items purchased.
- LIABILITY** Auctioneer is acting as Consignor's agent only and assumes no responsibility or liability for bodily injury or damage to equipment during the period of unloading and placing equipment or during conduct of sale. The personnel referred to in Paragraph 5 are solely in the employ of the Consignor.
- AUTHORITY** Consignor appoints auctioneer as an attorney in Consignor's name and in Consignor's behalf with the power to fully and to the same extent as Consignor to personally execute all necessary deeds, bills of sale, conveyances and other instruments of every nature whatsoever necessary or convenient to the carrying out of the power of sale herein granted and the transfer of title to the property hereinabove described to the purchasers thereof.
- REPRESENTATION** Consignor warrants and represents to auctioneer that the property described does not constitute a substantial part of the equipment owned by Consignor, that if such property constitutes a substantial part of the equipment owned by Consignor that this sale is not being made in connection with a sale in bulk and not in the ordinary course of Consignor's business or a major part of the material, supplies, merchandise or other inventory of Consignor. Auctioneer has entered into this contract relying upon such representation and in consideration thereof, the Consignor shall indemnify and save auctioneer harmless against any and all claims made by any person, firm or corporation claiming to be a creditor of Consignor.
- Other applicable charges & fees: \_\_\_\_\_

\_\_\_\_\_ Initial