

## ASCENT AUCTION SERVICES TERMS OF USE AGREEMENT

This document describes terms and conditions applicable to your use of the services made available by Ascent Auction Services located in Belgrade, MT (“Ascent”, “we”, or “us”) at the website (the “Site”).

### Section 1. General.

**1.1 Services.** This Terms and Conditions of Use Agreement (hereafter this “Agreement”) sets forth the general terms and conditions that apply to the use by you of the Site, including the features and services offered by us from time to time at or through the Site (collectively with the Site, the “Services”). BY USING THE SERVICES, YOU AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN. This Agreement is a legally binding instrument between you and Ascent and describes your responsibilities in connection with your use of the Services and, among other things, limits the liability of Ascent. Before using any of the Services, please read all of this Agreement carefully. By accessing or using any Services, you affirm that you are over 18 years of age and are otherwise capable of forming legally binding contracts, and that you agree to be legally bound and to abide by this Agreement. If you are under 18 years of age, or are otherwise incapable of forming legally binding contracts, or do not agree with any part of this Agreement, YOU MUST NOT ACCESS OR USE THE SERVICES.

**1.2 Amendments.** We reserve the right, exercisable in our sole discretion, to change, modify, add to, subtract from, or otherwise amend the terms and conditions of this Agreement at any time. Except as otherwise stated below, all changes, modifications, or other amendments shall be effective on a prospective basis once they are posted on our Site. This Agreement may not otherwise be amended except in a writing signed by you and Ascent. Continued use of the Services by you constitutes your binding acceptance of this Agreement, including any changes or modifications made by us as described above. You agree to review the terms and conditions of this Agreement periodically to become aware of such revisions and to review your compliance with them. If at any time the terms and conditions of this Agreement are no longer acceptable to you, you must immediately cease all use of the Services.

#### **1.3 Additional Agreements.**

The Services include, among other things, such services as: contacting or placing bids through the Site, or through live bidding; searching and accessing past and upcoming auction records including, and when available, object photos and estimated and realized prices. We reserve the right, exercisable at our discretion, to change or discontinue without prior notice some or all of the Services we provide from time to time at the Site, or change the applicable terms and conditions for your use.

**1.4 Your Account** is identified by the email address you provided, and you are the only party authorized to use your user ID (email address). You are responsible for maintaining the confidentiality of your registered account with us and any password(s) you have chosen, or we may issue to you in connection with your access and use of the Services. You are responsible for all uses of your account, whether or not actually or expressly authorized by

you. If you believe that your account and/or password(s) have been misused or compromised in any manner, please contact Ascent immediately.

**1.5 Equipment.** You shall be solely responsible for obtaining and maintaining all telephone, communications, computer hardware and other equipment needed for access to and use of the Services and all charges of any description arising from or relating thereto.

**1.6 Ascent not involved in auctions/release.** We have no control over the quality or legality of the items displayed on our Site or the truth or accuracy of the descriptions of such items, upcoming auction events or auction results displayed on our Site. Ascent offers lot descriptions and condition details as a courtesy to bidders. They are intended to be accurate, but represent opinions only, not statements of fact, and DO NOT IMPLY ANY WARRANTY concerning condition, or any assumption of liability. Lot announcements, listings, photographs, and catalog information are for descriptive purposes only. You acknowledge that you have the right and responsibility to inspect each lot personally or to have a third-party representative inspect the lot on your behalf. By bidding on a lot, you have agreed to accept the lot in its present condition, at its present location and with the description provided, whether accurate or not. All lots are sold "AS-IS". There shall be no returns or exchanges. In the event that you have a dispute with any parties arising out of your use of the Site you hereby release Ascent 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 or in any way connected with such disputes.

## **Section 2. In-Person and Online Auction Participation.**

THE FOLLOWING DESCRIBES THE TERMS ON WHICH ASCENT OFFERS YOU ACCESS TO BID AT IN-PERSON AND ONLINE AUCTIONS.

**2.1 Ascent only a venue.** Notwithstanding section 1.6 above, Ascent and its employees and contractors act merely as agents of the sellers. We reserve the right in our sole discretion to change some or all of our services at any time.

**2.1.01 Control.** We have no control over the quality, safety or legality of the items or property advertised, the truth or accuracy of the listings, the ability of the sellers to sell or the ability of buyers to buy items. We do not ensure that a buyer or seller will actually complete a transaction.

**2.1.02 Release.** Notwithstanding section 1.6 above, because we are not involved in the actual transaction between buyers and sellers, in the event that you have a dispute with a seller, you release Ascent (and our officers, directors, agents, parent, 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 or in any way connected with such disputes.

**2.2 Eligibility.** In order to participate in a specific in-person or online auction, in some cases, you may need to provide credit card information if you have not done so previously.

You agree to maintain at all times the accuracy of your account information including contact information, addresses and credit card information, and to allow us to provide any of your account information to sellers whenever necessary, including for participating in auctions.

**2.3 Fees.** By using the Services, you agree to be bound by and pay all fees according to the terms of this Agreement. Fees include Title, Bill of Sale and Brand Certificate Fee for all lots requiring title/ certificate transfer, non-sufficient funds and/or bounced check or E-Check fees, and declined credit card fees (“Fees”). You will indemnify, hold harmless and defend Ascent and their respective affiliates and each of their respective directors, officers, employees and agents from and against any and all claims, suits, actions, damages, demands, obligations, proceedings, investigations, liabilities or other losses of any kind (including reasonable attorneys’ fees and costs) arising from a third-party claim based on, arising from or relating to the Fees.

**2.4 Bidding, Buying, and Conditions of Sale.** Bidding includes in-person, over the phone, or on the computer. Review photos provided of the item and/ or view the item on your phone or in-person. Buy one item or multiples items. All bids and sales are final and cannot be retracted or removed. If you are the successful bidder, you agree to pay the amount of your bid plus all taxes and premiums in accordance with all written or oral terms and conditions of the auction and website. Non-paying bidders or fraudulent bidding will be subject to legal recourse and possible criminal charges including any fraud and/or interstate commerce violations.

**2.5 Video and Audio.** Any audio or video aspects of a live auction event are for entertainment purposes only.

**2.6 No warranty.** WITHOUT LIMITING SECTION 10 BELOW, WE DO NOT WARRANT THAT THE IN-PERSON OR ONLINE AUCTION SERVICE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT BIDS WILL BE RECEIVED OR INFORMATION REGARDING CURRENT PRICE WILL BE TRANSMITTED IN A TIMELY FASHION, NOR DO WE GUARANTEE THE PERFORMANCE OF ANY OBLIGATIONS BY A SELLER.

**2.7 Limitation of Liabilities.** WITHOUT LIMITING SECTION 11 BELOW, IN NO EVENT SHALL WE BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FAILURE OF ANY BID OR PRICING INFORMATION TO BE TRANSMITTED OR RECEIVED BY YOU OR THE SELLER IN A TIMELY MANNER, THE INTERRUPTION OF ANY DATA TRANSMISSION, AUDIO OR VIDEO BROADCAST, OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE).

### **Section 3. Information You Provide to Us.**

**3.1 Your Information.** The term “Your Information” means collectively the following: (i) any information or materials you provide to us in connection with our registration process,

your use of any Services, or in email correspondence with us; (ii) any information or materials you provide to other users of the Site in connection with your use of any Services; or (iii) any other information you provide at in-person auctions. Please note that the information and materials belonging to Your Information may include without limitation textual information, graphic images, photographs, and audio-visual materials. Except as may be otherwise expressly provided to the contrary in this Agreement you are solely responsible for Your Information, and we act at all times as a passive conduit for your online distribution, communication, and/or publication of Your Information.

**3.2 Covenant Regarding Your Information.** You agree that Your Information:

- (i) will not be false, inaccurate, frivolous, or misleading;
- (ii) will not infringe any third party's copyright, patent, trademark, trade secret, or other proprietary rights or rights of publicity or privacy;
- (iii) shall not violate any law, statute, ordinance, or regulation (including without limitation those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising);
- (iv) will not be defamatory, trade libelous, unlawfully threatening, unlawfully harassing, or obscene;
- (v) will not contain any computer viruses, worms, Trojan horses, time bombs, or other computer programs, scripts, or instructions that are intended to damage or detrimentally interfere with the operation or use of the Services, or to intercept or expropriate any proprietary computer system information or other confidential data or personal information relating to or arising out of the access or use of the Services;
- (vi) will not create any liability for Ascent or cause Ascent to lose (in whole or in part) the services of its internet service providers or other suppliers and business affiliates;
- (vii) will not contain any links to or from other information or website for which you do not have the right to make or reproduce such links; and
- (viii) will not solicit or involve the purchase or sale of counterfeit, stolen or illegal items, or solicit or commit any fraudulent transaction or other form of criminal activity.

**3.3 Updated Information.** If you are a registered user of the Site, you agree to promptly update your account registration information in order to keep it current, complete, and accurate.

**3.4 Privacy Policy.** Ascent, respects your privacy and that of our clients, both buyers and sellers. We will not release your information to anyone without your permission. You agree to give Ascent permission to email you promotional materials for future auction events. You can change this preference at any time.

**Section 4. Use of Content.**

**4.1 Copyright.** You acknowledge that the Services contain information, text, software, photographs, music, audio and video clips, graphics, links and other material (collectively, the "Content") that may be protected by copyright, trademark or other proprietary rights of

Ascent or third parties. Ascent owns a copyright in the selection, coordination, arrangement and enhancement of such Content, as well as in the content original to Ascent. You agree to comply with any additional copyright notices, information, or restrictions contained in any Content available on or accessed through the Services.

**4.2 Limited License.** Subject to your compliance with the terms and conditions of this Agreement (including without limitation the restrictive terms and conditions set forth in this Section 4), you are granted a limited non-exclusive, non-transferable, non-sub-licensable, and revocable license to access the Services and/or Content only for your own personal non-commercial use. You acknowledge that all Content included with the Services is provided for your own use. You agree to maintain and/or reproduce all copyright and other notices contained in such Services and/or Content.

**4.3 Trademarks.** Ascent is a trademark of Ascent Auction and Ascent Auction Services. All rights reserved. All other trademarks associated with product and company names that may appear in connection with the posting of items for sale are the property of their respective owners. Use of such third-party trademarks does not suggest or imply any affiliation with or endorsement by those third parties.

**4.4 Uploading or Posting Content.** You will not upload, post, or otherwise make available through the Services any Content protected by copyright, trademark, or other proprietary right without the express permission of the owner of the copyright, trademark, or other proprietary right and the burden of determining that any material is not protected by copyright rests with you. You shall be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from such a submission. By submitting Content to any public area of the Site, you hereby grant, or warrant that the owner of such Content has expressly granted, Ascent a royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, modify, adapt, publish, translate, publicly display and distribute such Content (in whole or in part) worldwide and/or to incorporate it in other works in any form, media or technology now known or hereafter developed for the full term of any copyright that may exist in such Content. You also permit any other user of the Services to access, view, store, or reproduce such Content for that user's personal use.

**4.5 Beneficiaries.** The foregoing provisions of this Section 3 are for the benefit of Ascent, its subsidiaries, affiliates and its third-party content providers and licensors and each shall have the right to assert and enforce such provisions directly or on its own behalf.

## **Section 5. Site Access; Interference with Services; Monitoring; Compliance with Laws.**

**5.1 Site Access.** We do not guarantee continuous, uninterrupted, or secure access to the Services, and operation of the Site may be interfered with by numerous factors outside of our control. Internet connection speed will determine how rapidly pages with photographs load to your browser or your ability to bid.

**5.2 No Interference.** You agree that you will not use any robot, spider, other automatic device, or manual process to monitor or copy our web pages or the content contained herein without our prior expressed written permission. You agree that you will not use any device, software, or routine to interfere or attempt to interfere with the proper working of the Site or the Services, or any transaction being conducted on or through the Site or Services. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on the server infrastructure of the Site.

**5.3 Fraudulent Activity.** You may not register to use any Services under a false name, or use an invalid or unauthorized credit card in connection with any Services. You may not make offers to purchase any goods or services under a false name while using the Services. You may not impersonate any other user of the Services, or make use of another user's password(s). Such fraudulent conduct is a violation of federal and state laws. Fraudulent conduct may be reported by us to law enforcement authorities, and we will cooperate with such authorities to ensure that violators are prosecuted to the fullest extent of the law.

**5.4 Monitoring.** You agree that Ascent has the right, but not the obligation, to monitor any form of user activity and/or Content linked to or from or otherwise associated with the Services. We may investigate any reported violation of our Agreement, or Site policies, and any user or other third party complaints relating thereto. We may take any action that we deem appropriate in connection with any such investigation without notice (including without limitation issuing warnings, suspending or terminating Services, denying Site access and/or removing any materials posted on the Site). We may also investigate, in our sole discretion, the use of any credit card by a user in connection with the Services, and take such action as we deem necessary or appropriate, including without limitation contacting the owner or user of such card or canceling purchase orders placed by such owner or user.

**5.5 Compliance with Laws.** The Services may be used only for lawful purposes and in a lawful manner. You agree to comply with all applicable laws, statutes and regulations regarding use of the Services and any transactions that may be conducted by means of the Services.

## **Section 6. External Site; Linking.**

**6.1 External Site.** The Services may contain links to website on the Internet that are owned and operated by third parties (the "External Site"). This Agreement does not apply to your use of any External Site to which the Site links, and we are not responsible for the availability of any External Site to which the Site links. We do not endorse or take responsibility for the contents, advertising, products or other materials made available through any External Site, and you acknowledge that Ascent is not responsible for the availability of, or the content, advertising, products, or other materials located on or through, any External Site. You acknowledge and agree that under no circumstances will we be held responsible or liable, directly or indirectly, for any loss or damage that is caused or alleged to have been caused to you in connection with your use of, or reliance on, any content, goods, or services available on any External Site. If you decide to access an External Site, you do so

at your own risk. You should contact the Site administrator or Webmaster for those External Site if you have any concerns regarding such links or the content or services located on such External Site.

## **Section 7. Breach.**

**7.1** Without limiting other remedies, we may immediately issue a warning, temporarily suspend, indefinitely suspend or terminate your registered user account and/or refuse to provide the Services to you: (i) if you breach this Agreement; (ii) if we are unable to verify or authenticate any information you provide to us; or (iii) if we believe that your actions may cause legal liability for you, us, our other users, or other third party business affiliates.

## **Section 8. Indemnity.**

**8.1** You agree to indemnify, defend, and hold Ascent and its affiliates, and their respective officers, directors, owners, agents, information providers, and licensors (collectively, the “Company Parties”) harmless from and against any and all claims, liability, losses, costs, and expenses (including attorneys’ fees) incurred by any Company Party in connection with any use or alleged use of the Service by any person, whether or not authorized by you. Ascent reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with Ascent’s defense of such claim.

## **Section 9. Termination of or Change in the Services.**

**9.1** Ascent shall not be liable to you or to any third party for any of the direct or indirect consequences of any modification, malfunction, suspension, discontinuance of or interruption to or of any of the Services. Ascent reserves the right, in its sole discretion, to restrict, suspend, or terminate your access to all or any part of the Services at any time for any reason without prior notice or liability. Ascent may change, suspend or discontinue all or any aspect of the Services at any time, including the availability of any feature, database, or Content without prior notice or liability.

## **Section 10. DISCLAIMER OF WARRANTIES.**

**10.1** NEITHER ASCENT NOR ANY PROVIDER OF THIRD PARTY CONTENT OR THEIR RESPECTIVE AGENTS WARRANTS THAT THE SITE OR SERVICE WILL MEET YOUR REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE; NOR DOES ASCENT, ANY THIRD PARTY CONTENT PROVIDER, OR THEIR RESPECTIVE AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SITE, SERVICES OR THE CONTENT. THE SERVICES AND THE CONTENT ARE DISTRIBUTED ON AN “AS IS, AS AVAILABLE” BASIS. NONE OF ASCENT, THIRD-PARTY CONTENT PROVIDERS, AND THEIR RESPECTIVE AGENTS MAKE ANY WARRANTIES OF ANY KIND,

EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WITH RESPECT TO THE SITE, SERVICES, ANY CONTENT OR ANY PRODUCTS OR SERVICES SOLD THROUGH THE SERVICES. YOU EXPRESSLY AGREE THAT THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SERVICES AND THE ACCURACY OR COMPLETENESS OF THE CONTENT IS ASSUMED SOLELY BY YOU. WITHOUT LIMITING ANY PROVISION HEREIN, ASCENT MAKES NO WARRANTY THAT ANY PARTICULAR COMPUTER SYSTEM CONFIGURATION WILL BE COMPATIBLE WITH THE SITE. IT IS YOUR SOLE RESPONSIBILITY TO ENSURE THAT YOUR COMPUTER SYSTEM HAS THE RECOMMENDED HARDWARE, OPERATING SOFTWARE, AND INTERNET BROWSER SOFTWARE VERSIONS TO ACHIEVE THE SITE FULL FUNCTIONALITY AND CAPABILITIES.

**10.2** While Ascent will endeavor to use commercially reasonable efforts to confirm the authenticity of the goods it receives and posts for auction via its website, Ascent makes no claims, representations or warranties with regard to the authenticity of any goods sold on its Site. Accordingly, to the extent permitted by applicable law, WE EXCLUDE ALL EXPRESS OR IMPLIED WARRANTIES, TERMS AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. In addition, to the extent permitted by applicable law, Ascent (including our affiliates, officers, directors, agents and employees) is not liable, and you agree not to hold Ascent responsible, for any damages or losses (including, but not limited to, loss of money, goodwill or reputation, profits, or other intangible losses or any special, indirect, or consequential damages) resulting directly or indirectly from the items posted for sale on our Site.

## **Section 11. LIMITATION OF LIABILITY.**

**11.1** THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION 10 APPLY TO ANY DAMAGES OR INJURY CAUSED BY ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUS, COMMUNICATION LINE FAILURE, THEFT OR DESTRUCTION OR UNAUTHORIZED ACCESS TO, ALTERATION OF, OR USE OF RECORD, WHETHER FOR BREACH OF CONTRACT, TORTIOUS BEHAVIOR, NEGLIGENCE, OR UNDER ANY OTHER CAUSE OF ACTION. YOU SPECIFICALLY ACKNOWLEDGE THAT ASCENT IS NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

**11.2** Preview, bid, and pickup purchases at your own risk. Ascent nor any of its officers, employees, independent contractors, or clients, are responsible for injury or damage of any kind, to anything or anyone, while previewing, bidding, picking up purchases, or conducting business. You agree to hold Ascent and its agents harmless, regardless of opinion.



**11.3** NEITHER ASCENT, ANY THIRD-PARTY CONTENT PROVIDER NOR THEIR RESPECTIVE AGENTS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO ACCESS OR USE THE SITE OR SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12.1 Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Montana, to include but not limited to, the Uniform Commercial Code, as adopted in Montana. The exclusive jurisdiction and venue of any controversy or claim arising from this contract will be in the County of Gallatin in the State of Montana. If litigation is filed to enforce the terms of this Agreement, the losing party in such litigation is responsible to pay the litigation costs and reasonable attorney's fees incurred by the prevailing party.

**12.2 Headings.** Section headings in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

**12.3 Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. If any inconsistency exists between the terms of this Agreement and the Site such terms shall be interpreted as to eliminate any inconsistency, if possible, and otherwise, the additional terms and conditions of this Agreement control.

**12.4 Waiver.** Ascent's failure to exercise or forbearance from exercising any rights or remedies, or failure to enforce or forbearance from enforcing, the strict performance of any provision of this Agreement, will not constitute a waiver of Ascent's right to exercise such rights or remedies or enforce such provision or any other provisions of this Agreement in that or any other instance. Any waiver of any provision of this Agreement by Ascent must be made in writing and signed by an authorized representative of Ascent specifically referencing this Agreement and the provision to be waived.

**12.5 Integration.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous written or oral agreements between the parties with respect to such subject matter hereof.