

EQUIPMENT CONSIGNMENT AGREEMENT

This Agreement is made and entered into as of this _____ day of _____, 20__, by and between _____ (“Customer”), and SMC, LLC (“Auction Company”).

This Consignment Agreement, hereinafter referred to as “this Agreement”, states the terms of the parties’ agreement with respect to personal property, hereinafter referred to as “the property”, consigned to SMC, LLC, doing business as SMC Auction Services, hereafter referred to as the “Auction Company” by the seller identified below, hereafter referred to as the “Customer”. The property is listed on a property inventory form attached to this Agreement (Exhibit A), executed separately or property identified as being subject to this Agreement. Customer agrees to offer the property for sale at public auction, subject to the terms set forth in this agreement. While the Auction Company cannot guarantee any sale price in a public auction format, it agrees to use its professional skill, knowledge and experience to the best advantage of both parties in preparing for and conducting the sale of the property. The Auction Company will act solely as an agent in any transaction between the Consignor and the eventual buyer.

In consideration of the mutual obligations and undertakings hereafter set forth, Customer and Auction Company hereby covenant and agree as follows:

1. **Consignment.** Customer hereby agrees to allow the sale, on a consignment basis, of all of the equipment individually identified on Exhibit A attached hereto and incorporated herein (collectively the “Equipment”). This means that Customer owns the Equipment and is responsible for all expenses of the Equipment until sold to a third party purchaser. In no event shall the Auction Company own the Equipment, but will have the right to sell such Equipment on behalf of Customer. The Customer will provide the Auction Company with numerous photos of the item(s) for sale and a detailed description. The equipment will remain in the customers care unless other arrangements are made. The customer must make available the equipment for public viewing if so requested.
2. **Retention of Title.** In no event shall title to any of the Equipment be deemed to be transferred to the Auction Company and the title to the Equipment shall be retained by Customer until such time as the Equipment is sold to a third party purchaser.
3. **Listing Fee.** Upon agreeing to list the equipment for auction the Customer shall pay the Auction Company a nonrefundable fee of _____ (\$100/item for items listed with a reserve) per Equipment item for the cost of listing an Equipment item for sale, including but not limited to costs associated with storing and advertising the Equipment for sale (“Listing Fee”). The per item listing fee will be waived for any items being sold with no reserve price.
4. **Sale of Equipment; Allocation of Proceeds; Payments to Customer Upon Sale.**

Customer hereby authorizes the Auction Company to sell any or all of the Equipment listed on Exhibit A attached hereto in the ordinary course of Dealer’s business on Customer’s behalf and further agrees that Dealer shall retain ____% of the sale as a consignment fee for the Auction Company’s sale of such Equipment item. Promptly after the Auction Company’s receipt of payment for the sale of such Equipment item, the Auction Company shall subtract its consignment fee and remit the remaining amount to the Customer.

5. **Delivery; Repairs; Maintenance.** Customer shall be solely responsible for the performance of equipment and any repair work required as a condition to the sale of such Equipment item. Customer shall be responsible for the maintenance of the Equipment, at its sole cost and expense.

6. Risk of Loss or Damage. Customer shall assume all liabilities associated with the Equipment during the term of this Agreement until such Equipment item is sold. Customer shall hold the Auction Company harmless from loss of Equipment by theft, fire, vandalism, flood, deterioration, etc. or damage to the Equipment.
7. Representations and Warranties by Customer. Customer has good and marketable title to the Equipment, none of which will be subject to any liens or other encumbrances, including blanket liens, except any that may be listed on Exhibit A.
8. Warranties. The Auction Company shall not offer any warranties on the sale of an Equipment item except to the extent a warranty is required by law and cannot be disclaimed. The following language shall appear in bold, all capital letters on each bill of sale, purchase order or other contract for sale used in connection with a sale of an Equipment item:

“TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE ITEM SOLD IS BEING SOLD ON AN “AS IS – WHERE IS” BASIS, WITHOUT ANY WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR LOSS OF REVENUES OR PROFITS, INCONVENIENCE, EXPENSE FOR SUBSTITUTE EQUIPMENT OR SERVICE, STORAGE CHARGES, LOSS OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY THE USE OR MISUSE OF, OR INABILITY TO USE THE ITEM SOLD. IN NO EVENT SHALL SELLER’S LIABILITY EXCEED AMOUNT BUYER PAID TO SELLER TO PURCHASE THE ITEM SOLD. BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS, DAMAGE OR INJURY TO BUYER AND BUYER’S PROPERTY AND TO OTHERS AND THEIR PROPERTY ARISING OUT OF USE OR MISUSE OF, OR INABILITY TO USE THE ITEM SOLD.

AS SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR DO NOT ALLOW LIMITATION ON IMPLIED WARRANTIES, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE.”

All statements required by this section shall be printed in a font size of 10 point or higher.

9. Transfer of Title. Customer and Auction Company agree to cooperate with one another to execute such documents and take such actions as may be reasonably required to transfer title to an Equipment item to a third party purchaser. Customer hereby appoints Auction Company as its attorney-in-fact for the limited purpose of transferring title to Equipment items sold to third party purchasers in accordance with the terms of this Agreement. Customer’s appointment of Auction Company as its attorney-in-fact shall be deemed to be revoked with no further action upon the transfer of the last Equipment item.
10. Sales Tax. Auction Company agrees that it is responsible for the collection of all sales, use or other transfer tax owed on the sale of the Equipment and agrees to collect the applicable taxes and report the same on its applicable sales, use or other transfer tax returns.
11. Insurance. During the term of this Agreement, Customer shall be responsible for maintaining any and all insurance on the Equipment. In no event shall the Auction Company be responsible for obtaining any insurance or paying any insurance premium for the Equipment.
12. Amendment. This Agreement may not be altered or amended, and no right hereunder shall be waived, except by an instrument in writing duly executed by the party or parties to be charged with such amendment or waiver. No waiver of any of the provisions of this

Agreement shall be deemed or constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

13. Termination. Upon fifteen (15) days written notice to the other party, either party may terminate this Agreement.
14. Notices, etc. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when actually (i) received by the party to whom it is addressed if hand delivered or (ii) sent by registered or certified mail (return receipt requested) or telecopy (if transmission is confirmed):

(a) If to Auction Company, to:
SMC, LLC
1287 W Avenue
Ames, IA 50010
(877) 268-3165 fax

(b) If to Customer, to:

15. Parties in Interest. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Except as expressly set forth herein, no party hereto shall assign, delegate or transfer, or grant a security interest in, its rights, duties or obligations hereunder to any third party.
16. Arbitration. Any controversy or claim arising out of or relating to this Agreement, or any breach hereof except as set forth below, shall be decided and settled by binding arbitration in accordance with Title 9 of the U.S. Code (United States Arbitration Act) and the Commercial Arbitration Rules of the American Arbitration Association then in effect. The place of arbitration shall be determined.
17. Governing Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa without regard to the provisions thereof regarding conflicts of laws.

18. Entire Agreement; Prior Agreements. This Agreement represents the entire agreement of the parties with respect to the matters contemplated herein. All prior agreements, representations, warranties, covenants or understandings, verbal or written, regarding the subject matter hereof are hereby terminated and superseded by the execution and delivery of this Agreement, and shall be of no further force or effect.

19. Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement on the date first above written.

**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH
MAY BE ENFORCED BY THE PARTIES.**

CUSTOMER:

By:
Name: _____
Title: _____

SMC, LLC Representative:

By:
Name: _____
Company: _____

Authorized by (SMC, LLC member):

By:
Name: _____
Title: _____

Exhibit A

	Item	Description	Model No.	Serial No.	Reserve Price
1					
2					
3					
4					
5					
6					
7					
8					