



AGREEMENT TO TERMS OF SERVICE

Acknowledgment and Acceptance of Terms of Service

By completing the registration process and also by clicking the "I accept" button, you accept and agree to be bound by the Terms of Service set forth below. You may be referred to as "user," "buyer" when you are being described as acting as buyer in a transaction, "bidder" when you are being described as bidding on an asset in order to act as a potential buyer in a transaction, and "seller" when you are acting as a seller in a transaction. These Terms of Service comprise the entire agreement between you and MiSell, Inc. and supersede all prior agreements between the parties, regarding the subject matter contained herein. In addition to agreeing to these Terms of Service, you also accept and agree to be bound by the additional information and terms contained on the listing of the asset being sold or link to the listing.

If you are an individual, you expressly represent and warrant that you have the capacity under applicable law to enter into a legally binding contract; for example, if you are a minor, you may only use this site and MiSell, Inc.'s services in conjunction with your parent or guardian. If you are applying as a legal entity, you expressly represent and warrant that you have been duly authorized by your entity to enter into agreements on behalf of that entity.

Description of MiSell, Inc.'s Service

MiSell, Inc. provides an online venue for sellers to list assets for sale and for buyers to locate assets for sale. Assets listed on the auction site are being sold on a consignment basis on behalf of the seller, by MiSell, Inc. as the seller's agent. MiSell, Inc. and the seller have entered into an Online Auction Consignment Agreement. Title and ownership of the assets remain in the seller. MiSell, Inc. does not own the assets listed on the auction site when the assets are being sold on a consignment basis. The seller is responsible for the description of the assets the seller is selling. MiSell, Inc. makes no representations or warranties of the assets. MiSell, Inc. does not assume responsibility for verifying the material, content and information on its site and is not responsible for any damages, losses, expenses or other injuries incurred by any user as a result of relying on any material, content and information posted on the site. The duties and responsibilities of MiSell, Inc. shall be limited to those expressly set forth in these Terms of Service. You acknowledge and agree that MiSell's duties are ministerial in nature.

Registration

You agree to provide, and represent that you have provided, current, true, accurate and complete information in the registration process and represent that you are authorized to use the debt card, credit card, or charge card. The registration information is subject to our Privacy Policy, which is incorporated by reference into, and made a part of, these Terms of Service. MiSell, Inc. may change the Privacy Policy in the future. You should check the Privacy Policy frequently for changes. You understand, if you are a buyer or bidder, that it is a violation to make bids in a false name or with an invalid debit card, credit card or charge card, even if MiSell, Inc.'s software initially accepts such a bid, or with a debit card, credit card or charge card that you are unauthorized to use.

Contractual Obligation

A. Terms of Service as Contract.

These Terms of Service, together with any additional conditions of sale provided on the listing for the sale of a particular asset, comprises a contract between MiSell, Inc., as agent for seller, and the winning bidder in any completed auction. A bid made by a buyer is an offer to purchase the asset at the stated bid price. The bid is an irrevocable offer. Buyers are required to conduct any research or due diligence of an asset prior to making a bid. Buyers are also urged to physically inspect the asset during the inspection period. ALL ASSETS ARE LISTED AND SOLD ON AN "AS IS" "WHERE IS" BASIS. ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED AND EXCLUDED. If a buyer bids on an asset and the bid represents the highest bid for that asset and the highest bid is at or above the Seller's minimum price, the buyer's bid is deemed accepted by MiSell, Inc. as agent for the seller and by the seller. Buyer also agrees that any oral representation made by MiSell, Inc. or its representatives shall not modify the "as is" "where is" terms.

B. Electronic Signature.

You understand and acknowledge that in various places on the site it may require you, as a buyer or bidder, to input a username and password and then to click a button labeled "accept," "agree," "bid," "acknowledge," or such similar phrasing, in which case the bidder is agreeing to the specified terms and by entering your password or username and by clicking the button you are providing your "electronic signature" which shall be as binding, enforceable and valid as a written "pen and paper" signature.

C. Purchase Price, Buyer's Premium, Sales Tax and Deposit.

The purchase price is the sum of the bid price, buyer's premium, buyer's fee, and sales tax, if applicable. All prices are in U.S. dollars and all payments must be made in U.S. dollars or its equivalent.

MiSell, Inc. reserves the right to charge your credit card twenty (20%) percent of your purchase or your total purchase amount immediately following the sale. The balance, if any, will be due within five (5) days and prior to the removal of the purchased assets, and shall be payable by cashier's check, cash, credit card, or wire transfer. MiSell, Inc. reserves the right to charge any remaining balance of your purchase price on your credit card if the balance is not otherwise paid by you within seven (7) days. MiSell, Inc. does not accept partial payments. All purchases must be paid in full.

A buyer's premium will be added to all purchases. The buyer's premium varies, depending on the auction. The actual buyer's premium in effect will be stated on the additional information and terms contained on the listing of the asset being sold. You will see the additional information and terms when you click on the button to view the assets to be sold. You may also call MiSell, Inc. to find out the exact amount of the buyer's premium for any auction.

All purchases will be subject to the Michigan six (6%) percent sales tax unless you provide MiSell, Inc. with documentation satisfactory to MiSell, Inc. certifying that you or the transaction is exempt from sales tax.

D. Titled Assets.

For Michigan residents, MiSell, Inc. is required by the State of Michigan to broker all vehicles sold. A \$95.00 broker fee will be charged for all vehicles which MiSell, Inc. needs to broker. In addition a \$15.00 fee for title transfer will be charged. In addition, MiSell, Inc. can apply for your plates and registration if you so choose. If you wish to have MiSell, Inc. do so, you must provide MiSell, Inc. with proof of insurance for the purchased vehicle before you can remove it from the auction site. If not, you must be prepared to tow or trailer your vehicle. The appropriate fees will be added to your invoice. Non-Michigan residents will pay according to their state rules for titled vehicles. Buyers will need to sign the documentation required by the State for title transfers. It may take 4-10 business days to receive your title from the Secretary of State.

E. Removal and Failure to Remove.

All purchased assets must be removed from the auction site without damaging any property and within the time announced or posted. All costs and risk of such removal shall be borne by buyer and, in every case; buyer will use prudence and care in such removal. If for any reason buyers fail to remove any of the purchased assets within the time specified, MiSell, Inc. shall have the right but not the obligation, in its sole discretion, to recall, discard or remove and store said purchased assets at buyer's sole risk and expense (storage costs will be charged - per day - per asset - other costs additional), without waiving any rights that MiSell, Inc. or seller may have against buyer. Storage charges will be the responsibility of the buyer (after removal period).

F. MiSell, Inc.'s Right to Terminate Purchase.

If for any reason MiSell, Inc. is unable to complete the sale of any purchase to buyer or provide such purchase free and clear of liens, even if the buyer was given notice that he is the high bidder and purchaser, buyer agrees that MiSell, Inc. may terminate the purchase/agreement, in which case MiSell, Inc.'s only liability shall be the return of any monies actually paid by buyer.

Bidding Procedure

A. Bidding.

Once bidding commences, bidders may make a bid at any time prior to closing of the bidding. All assets will have a minimum bid price disclosed on the site. If there are no bids above the minimum bid price, then the seller is not obligated to sell the asset. After bidding closes on each asset, MiSell, Inc. will send the highest bidder and the seller an e-mail detailing the highest bid. In all auctions, a buyer who is designated as the winning bidder is legally bound to buy the asset at the quoted bid amount.

Posted closing times and displays of MiSell, Inc.'s current time are approximate. MiSell, Inc. reserves the right to close early or extend auctions at any time at its discretion. It is strongly recommended that bids be placed early to avoid losing out due to an ill-timed, last minute bid. All times are based on the time zone where the auction is located. Dynamic bidding on this website is a feature that does not allow an item to sell at the end of the auction until there is 5 minutes of bidding inactivity. Example - An item is bid on at 7:55 p.m. An auction is scheduled to close at 8:00 p.m. When this bid is placed the ending time will automatically extend to 8:05 p.m. When another bid is placed at 8:01 the auction will extend until 8:10 p.m. This will give bidder 9 minutes to place another bid. If no bids are placed this auction will conclude at 8:10 p.m. The key to the dynamic bidding feature is that the auction extends from the preset closing time in 5 minute intervals, not 5 minutes from when you placed your bid.

B. Who Can Bid.

Bidders must register with MiSell, Inc. and be capable of forming legally binding relations under applicable law. The services provided by MiSell, Inc. are not available to individuals under the age of eighteen (18) years old and any other individuals who are legally prohibited from, or otherwise incapable of, entering into binding contracts.

Responsibilities of Seller

The seller must accurately describe the assets in a listing provided for inclusion on the site and shall be responsible for any misstatements or omissions in such description. The seller must disclose any and all outstanding encumbrances. The seller understands that failure to accurately describe an asset may be fraudulent. The seller is also responsible for complying with all applicable local, state and federal laws, rules or regulations regarding the sale of any assets. The seller understands that by placing an item for auction is an irrevocable offer to sell an item to the highest bidder. The seller further understands that the sale of the item on the auction site shall not be fraudulent or involve the sale of counterfeit or stolen assets and shall not infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights.

Modifications to Terms of Service

MiSell, Inc. may change these Terms of Service from time to time. Your continued use of MiSell's service and this site constitutes an affirmative: (1) acknowledgment by you of these Terms of Service and any modifications; and (2) agreement by you to abide and be bound by these Terms of Service and modifications.

Termination of Right to Use Site

MiSell, Inc. retains the right to terminate your rights to use the site. You agree that MiSell, Inc. may, in its sole discretion, terminate your account, deny access to the site, and terminate any active auctions. Cause for such termination shall include, but not be limited to, (a) breaches or violations of the Terms of Service or other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) unexpected technical or security issues or problems, (d) actions which might jeopardize the business operations or goals of MiSell, Inc., and (e) extended periods of inactivity. Termination of MiSell, Inc.'s account includes removal of access to all offerings within the site, and deletion of password and all related information, files and content associated with or inside the account.

Further, you agree that all terminations shall be made in MiSell, Inc.'s sole discretion and that MiSell, Inc. shall not be liable to you or any third-party for any termination of an account or access to the site. If it is suspected in MiSell, Inc.'s sole discretion that you have participated in fraudulent behavior on the Web site, MiSell, Inc. reserves the right to suspend your account at any time, remove any active auctions, and give buyers of recent auctions the opportunity to withhold performance without penalty.

Technical Difficulties

MiSell, Inc. is not responsible for bids not being processed or not being accepted due to technical difficulties.

Disclaimer of Warranties

YOU EXPRESSLY AGREE THAT USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. MiSELL, INC. EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. MiSELL, INC. MAKES NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES MiSELL, INC. MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. MiSELL, INC. MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE SERVICE OR ANY TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. GOOD AND SERVICES ARE SOLD "AS IS" "WHERE IS". NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM MiSELL, INC. OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

Limitation of Liability

MiSELL, INC. SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE, OR FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE OR RESULTING FROM UNAUTHORIZED ACCESS TO, OR ALTERATION OF YOUR TRANSMISSIONS OR DATA, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, USE, DATA OR OTHER INTANGIBLE, EVEN IF MiSELL, INC. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

Release and Indemnification

Notwithstanding any other release, agreement to “hold harmless” or indemnification contained herein, you hereby further waive, release, forgive, discharge and relinquish any and all claims that you now have or may have against MiSell, Inc., its affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives which are connected with, arise out of, relate to or are incidental to any MiSell, Inc. transaction or the use of the site. You hereby agree to indemnify, defend and hold MiSell, Inc., its affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives harmless from and against any and all claims, loss, damage, tax, liability and/or expense that may be incurred by MiSell, Inc., its affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives arising out of or in connection with the performance of its duties as described in this Agreement, including the legal costs, fees and expenses of defending itself against any claim by any or all of the parties to any MiSell, Inc. transaction and/or by any other person and/or as a result of you taking any action or refraining from taking any action or instituting or defending any action or legal proceeding. You further agree to indemnify and hold MiSell, Inc., its affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives harmless from any claim or demand, including reasonable attorneys’ fees, made by any third party due to or arising out of your use of the site, the violation of these Terms of Service by you, or the infringement by you, of any intellectual property or other right of any person or entity.

Applicable Law and Other Terms

These Terms of Service shall be governed by and construed in accordance with the laws of the State of Michigan. You and MiSell, Inc. agree to submit to the exclusive jurisdiction of the courts of the State of Michigan. Venue shall be in Kalamazoo County, Michigan. If any provision(s) of these Terms of Service is held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. MiSell, Inc.’s failure to exercise or enforce any rights or provisions of these Terms of Service shall not constitute a waiver of such right or provision unless acknowledged and agreed to by MiSell, Inc. in writing. You and MiSell, Inc. agree that any cause of action arising out of or related to the use of the site must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred and you and MiSell, Inc. forever waives any such cause of action. The section titles in these Terms of Service are solely used for the convenience of the parties and have no legal or contractual significance.