

Office Use: C# _____*



Hess Auctioneers, LLC

1451 River Road ~ PO Box 10

Marietta, Pennsylvania 17547

Phone 717-426-2493 ~ 1-866-511-2493

Fax 717-427-1665

Email ~ info@hessauctioneers.com

CONSIGNOR AGREEMENT

This Agreement (“Agreement”) is entered into on this _____ day of _____, 20____,

between _____ (“Seller”) and HESS AUCTIONEERS, LLC. Seller and HESS AUCTIONEERS, LLC, intending to be legally bound hereby, agree as follows (information hereto will remain on file for a period of one year with Annex A being updated per auction):

1. **Auction Sale.** HESS AUCTIONEERS, LLC will conduct the auction sale (the “Auction Sale”) of the personal property listed below in Annex A hereto (collectively, the “Listed Items” and each such item a “Listed Item”) . The Auction Sale will take place at 1451 River Road, Marietta, PA 17547 (the “Auction Premises”). Auction Sale date will be listed in Annex A.
2. **Commissions.** Seller agrees to pay HESS AUCTIONEERS, LLC a commission of: Twenty PERCENT (20%) of the selling price for each Listed Item sold for \$1 to \$999, Ten PERCENT (10%) of the selling price for each Listed Item sold for \$1000 to \$4999, Seven PERCENT (7%) of the selling price for each Listed Item sold for \$5000 to \$25,000, Six PERCENT (6%) of the selling price for each Listed Item sold for \$25,001 or over.
3. **Seller’s Address and Contact Information.** HESS AUCTIONEERS, LLC shall mail payments and/or contact Seller at the information listed below:

Company Name: _____

Contact Person: _____ Title: _____

Address: _____

Town, State & Zip: _____

Office Phone #: _____ Cell Phone#: _____

Email Address: _____

4. **Seller’s Representations and Warranties.** Seller hereby represents and warrants to HESS AUCTIONEERS, LLC that the following statements are true and accurate (and will be true and accurate as of the Auction Sale):

- a. Seller has good and valid title to each Listed Item and that Seller owns each Listed Item free and clear of all security interests, liens, claims, pledges, encumbrances, conditional sale or title retention agreements, judgments, demands, agreements, charges, easements, equitable interests, conditions, options, rights of first refusal, mortgages, deeds of trust, restrictions of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, or other liabilities or encumbrances of any nature whatsoever, real and personal, tangible and intangible, known and unknown, matured and unmatured, actual, fixed and contingent (collectively, the "Interests").
 - b. Upon sale of each Listed Item at the Auction Sale as contemplated by this Agreement, the buyer of such Listed Item will acquire good and valid title to the Listed Item, free and clear of all Interests.
 - c. Each Listed Item is in a safe condition and is free from any concealed physical defect, hazardous material or environmental problem as defined by federal or state law. No Listed Item is illegal, fraudulent, stolen, counterfeit, or otherwise materially flawed in some manner not readily apparent upon inspection.
 - d. All listing details provided to HESS AUCTIONEERS, LLC by Seller are true, accurate and complete.
 - e. Seller has full legal right, power and authority to execute, deliver and perform Seller's obligations under this Agreement. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.
5. **No Sale Fee for Reserve Listed Item.** At Seller's option, Seller may, on Annex A hereto, set a minimum selling price that must be met before a Listed Item may be sold at auction (any such Listed Item is a "Reserve Listed Item"). Seller agrees that any Listed Item which has not been so designated a Reserve Listed Item on Annex A hereto, shall be sold as an Absolute auction (highest bidder purchases the item regardless of the amount of that highest bid) as specified in Section 10 herein. **If the Reserve Listed Item does not reach the minimum reserve price, then the Seller shall pay HESS AUCTIONEERS, LLC the applicable No Sale Fee described below:**
- i. \$100 No Sale Fee -Trucks, Trailers & Equipment with reserve price of up to \$5,000 per item
 - ii. \$200 No Sale Fee -Trucks, Trailers & Equipment with reserve price of \$5001 to \$10,000 per item
 - iii. \$300 No Sale Fee -Trucks, Trailers & Equipment with reserve price of \$10,001 to \$20,000 per item
 - iv. \$350 No Sale Fee -Trucks, Trailers & Equipment with reserve price of \$20,001 and up per item
6. **Additional Fees (if applicable).** In addition to commissions, Seller agrees to pay all other fees and charges of HESS AUCTIONEERS, LLC for services rendered in connection with the purchase and sale of Listed Items, including, without limitation, storage fees, detailing fees,

NSF check fees, title attached fees and customary third party fees and charges such as wire transfer fees, as applicable.

7. **Buyer's Premium.** HESS AUCTIONEERS, LLC will charge and retain a TEN PERCENT (10%) buyer's premium on each Listed Item sold at the Auction Sale up to and including \$4,999.99. HESS AUCTIONEERS, LLC will charge and retain a FIVE PERCENT (5%) buyer's premium on each Listed Item sold at the Auction Sale over \$5,000.00.
8. **Taxes.** Except as paid by the buyer, Seller is responsible for any and all taxes arising out of the sale of any Listed Item at the Auction Sale.
9. **Delivery of Listed Items.** Seller shall deliver all Listed Items to the Auction Premises by **seven days prior to auction date in Annex A.** At the time of delivery, all identification markings, including but not limited to paint, decals and numbers, shall be removed from each Listed Item.
10. **Sale Procedure.** Any Listed Item which is not listed by Seller on Annex A as a Reserve Listed Item, will be sold as an Absolute auction, meaning the highest bidder purchases the item regardless of the amount of that highest bid. All sales will be consummated when the auctioneer's hammer falls, with the auctioneer calling out the selling price and the buyer's bidder number. Seller agrees that HESS AUCTIONEERS, LLC will sell the Listed Items as an absolute auction, and not contingent upon any prior appraisals, market analysis or any other prior agreements, provided, however, that Reserve Listed Items shall be sold to the highest bidder who meets the minimum price as set by Seller on Annex A. HESS AUCTIONEERS, LLC provides no guarantee with respect to the selling price of the Listed Items and any estimates which may be provided are opinion only and shall not be construed as any promise of a selling price.
11. **Title Documents.** With respect to any Listed Item capable of being or required to be registered, Seller agrees to deliver to HESS AUCTIONEERS, LLC, prior to the date of the Auction Sale, all documents properly evidencing Seller's title to such Listed Item, including, but not limited to, the original Department of Motor Vehicle title, manufacturer's certificate of origin and any and all other documents required to transfer title of such Listed Item to any buyer, as applicable. All such documents shall be properly endorsed as necessary to permit the buyer to register ownership of the Listed Item. Seller further agrees to execute any documents required by any bank, financial institution or state agency in order to release relevant financial information and title work to Hess Auctioneers, LLC.
12. **Records and Payment of Proceeds.** HESS AUCTIONEERS, LLC shall keep accurate records of the sale. Within 21 days after the Auction Sale, HESS AUCTIONEERS, LLC shall provide Seller a check with a detailed report of each item sold, the selling price and the deductions for commissions and fees applicable to each item.
13. **Auction Ground Sales.** All purchase and sale transactions originating and/or consummated at the time a Listed Item is on the Auction Premises shall be completed through HESS AUCTIONEERS, LLC with buyer and Seller responsible for the appropriate fees.

14. **Reclamation of Unsold Items, Storage Fees and Return of Title.** If any Listed Item, including but not limited to any Reserve Listed Item, is not sold at the Auction Sale (such item an “Unsold Item”), then Seller shall remove the Unsold Item from the Auction Premises within three business days after the day of the Auction Sale. After Seller has removed the Unsold Item from the Auction Premises, HESS AUCTIONEERS, LLC shall return the title and any other ownership documents relating to the Unsold Item, if any, to Seller. HESS AUCTIONEERS, LLC shall charge a storage fee of \$50.00 per item per 24-hour day during which any Unsold Item remains on the Auction Premises following the third business day after the Auction Sale.
15. **No liability.** Neither HESS AUCTIONEERS, LLC nor its employees or agents shall be responsible to Seller for any loss or damage to any Listed Item including, but not limited to, (i) loss or damage due to fire, flood or windstorm and (ii) loss or damage resulting from theft, vandalism or negligence committed by any person; provided, however, that this waiver of liability by HESS AUCTIONEERS, LLC is not intended to waive liability for loss or damage resulting from the gross negligence or willful misconduct of HESS AUCTIONEERS, LLC, its employees or agents.
16. **Indemnification by Seller.** Seller shall indemnify and hold HESS AUCTIONEERS, LLC harmless from and against any and all liability, liens, demands, judgments, suits, and claims of any kind or character arising out of, in connection with, or relating to the activities of HESS AUCTIONEERS, LLC under the terms of this Agreement, including, but not limited to, environmental issues, claims for injury to or death of any persons, or damage, loss or destruction of any property, real or personal, under any theory of tort, contract, or strict liability. Seller further covenants and agrees to defend any suits brought against HESS AUCTIONEERS, LLC on any claims, and to pay any judgment against HESS AUCTIONEERS, LLC resulting from any suit or suits, together with all costs and expenses relating to any claims, including attorney's fees, arising from the actual or claimed breach of any of Seller's representations and warranties herein, which shall survive completion of the sale of any Listed Item or from any other act or omission on the part of the Seller. HESS AUCTIONEERS, LLC, if it so elects, shall have the right to participate, at its sole expense, in its defense in any suit or suits in which it may be a party, without relieving Seller of the obligation to defend HESS AUCTIONEERS, LLC.
17. **Dispute Resolution.** In the event any dispute arises between Seller and HESS AUCTIONEERS, LLC relating to this Agreement, the parties agree they will attempt in good faith to resolve any such dispute promptly first through discussions between the parties and mediation as may be agreed upon by the parties. If any such dispute cannot be resolved through discussions or mediation, the Parties agree to submit any disputes arising from this Agreement to final and binding arbitration under the Arbitration Rules of the Lancaster Bar Association. Venue for such arbitration shall be Lancaster County, Pennsylvania and shall be governed by the laws of Pennsylvania, except where superseded by the arbitration procedures of the Lancaster Bar Association. In the event of such arbitration between Seller and HESS AUCTIONEERS, LLC, the losing party shall pay all costs and expenses incurred by the prevailing party in connection with such arbitration, including reasonable attorneys' fees and expenses and arbitration costs.

18. **Liquidated Damages.** If Seller does not deliver any Listed Item to HESS AUCTIONEERS, LLC as required pursuant to this Agreement or if Seller does not deliver title or other ownership documents to HESS AUCTIONEERS, LLC as required pursuant to this Agreement, then Seller shall pay to HESS AUCTIONEERS, LLC liquidated damages of \$2,000.00, plus reasonable attorney's fees, court costs and interest at the current judgment rate until paid in full. The parties hereto agree that such liquidated damages amount constitutes a reasonable value to compensate HESS AUCTIONEERS, LLC for actual losses arising from Seller's breach, and that such liquidated damages amount is not punitive.
19. **Limitation on Liability.** Notwithstanding anything herein the contrary, the liability of HESS AUCTIONEERS, LLC and its owners, employees and agents, jointly and severally, to Seller shall not exceed the amount of any fees, commissions or other consideration paid to HESS AUCTIONEERS, LLC by Seller in connection with any transaction, event or circumstance arising from this Agreement, regardless of the legal theory under which such liability is imposed.
20. **Miscellaneous.** HESS AUCTIONEERS, LLC reserves the right to refuse to do business with any individual or company in HESS AUCTIONEERS, LLC's sole discretion.
21. **Merger and Integration Clause; Savings Clause.** This Agreement and the Annex(es) attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention and all remaining provisions of this agreement shall remain in full force and effect.

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representatives to execute this Agreement as of the date first above written.

HESS AUCTIONEERS, LLC

SELLER

Hess Auctioneers Rep. Signature

Seller's Signature

Date

Date

Name: _____ Phone: _____

Annex A Auction Sale Date: April 20, 2018

Item # 1 (Internal Use - Hess Auctioneers Stock #: _____)

Year: _____ Make: _____ VIN#: _____

Selling Options (check one): Absolute Reserve: Reserve Amount: \$ _____

Item # 2 (Internal Use - Hess Auctioneers Stock #: _____)

Year: _____ Make: _____ VIN#: _____

Selling Options (check one): Absolute Reserve: Reserve Amount: \$ _____

Item # 3 (Internal Use - Hess Auctioneers Stock #: _____)

Year: _____ Make: _____ VIN#: _____

Selling Options (check one): Absolute Reserve: Reserve Amount: \$ _____

Item # 4 (Internal Use - Hess Auctioneers Stock #: _____)

Year: _____ Make: _____ VIN#: _____

Selling Options (check one): Absolute Reserve: Reserve Amount: \$ _____

Item # 5 (Internal Use - Hess Auctioneers Stock #: _____)

Year: _____ Make: _____ VIN#: _____

Selling Options (check one): Absolute Reserve: Reserve Amount: \$ _____

I understand that the signed Seller Agreement will remain on file for a period of one year, unless terms change prior to that. The attached Annex A is only valid for the Auction Sale Date as listed above. I further understand that I will need to complete a new Annex A for each auction I consign units in.

Seller's Signature

Date