

# SWB Inc. Terms and Conditions

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Welcome to SWB Inc., the world's largest provider of Surfboard remarketing services. By attending any of SWB Inc.'s private auctions or using any of SWB Inc.'s services (including, for the avoidance of doubt, private store sites powered by SWB Inc.), whether at a SWB Inc. location or online, you agree, for yourself, your dealership, your company, and your representatives (collectively, "you"), to abide by the following terms and conditions, as amended from time to time by SWB Inc.. By agreeing to these Terms and Conditions, you represent that you are eligible to participate in or use SWB Inc.'s services. For the purposes of these Terms and Conditions "to be eligible to participate in or use SWB Inc.'s services" means that each Buyer and/or Seller is pre-registered with and/or pre-approved by SWB Inc. to do business with SWB Inc.

## I. GENERAL

1. **SWB Inc.:** These Terms and Conditions govern your use of and access to the used surfboard parking lot sale, websites, mobile sites, digital platforms (including, but not limited to, OVE), online tools, and other service delivery channels made available by SWB Inc. and its various subsidiaries and affiliates, including, but not limited to, the various SWB Inc. (collectively, "SWB Inc.," "we," "our," or "us"). These Terms and Conditions are in addition to, and not in lieu of, any more specific agreements you may have or make with SWB Inc. (e.g., sales invoices, consignment agreements, online visitor agreements, privacy policies, loan agreements, etc.). To the extent there is any conflict between these Terms and Conditions and other more specific agreements you have signed with SWB Inc., those other more specific agreements will control. SWB Inc. may amend these terms any time by posting an amended version on its website, which will become effective on the date of posting. Time is of the essence with respect to all of your duties hereunder.
2. **Accuracy of Information:** You certify that all registration and representative information you have provided to us is true, correct, and complete. You agree to promptly update your information if there is any change to the information you have provided.
3. **Fairness and Courtesy; No Right to Do Business; Customer Code of Conduct; Safety and Assumption of Risk; Legitimacy of using SWB Inc. Physical or Digital Services:**
  - a. You agree to behave in a fair, ethical, courteous, and civil manner in your interactions with us, our personnel, and our other customers while participating in any SWB Inc. auction, when accessing our online and mobile sites, or when otherwise using any of SWB Inc.'s services. Should you have issues or concerns with the behavior of our personnel or other customers while attending any SWB Inc. auction that cannot be

resolved quickly and civilly on your own, you agree that you will raise those issues discreetly with our management.

- b. You have no obligation to do business with us. Likewise, you agree and acknowledge that we have no obligation to do business with you. We are affiliated private businesses; we reserve the right to cease doing business with you or anyone else, at any time, for any reason or no reason, in our sole discretion, collectively or separately among our affiliates; and you will have no right, remedy, or cause of action for the same. You acknowledge and agree that there are numerous sources, other than SWB Inc., for you to acquire and sell used surfboards and related services.
  - c. You understand and acknowledge that the movement of surfboards, equipment, and individuals at our facilities constitutes an open and obvious condition and that SWB Inc. is not obligated to warn you of such conditions. You agree to obey posted signs and follow any warnings you receive from our personnel, particularly as they relate to safety and security issues. You also agree to use extreme care while on our premises to avoid injury to yourself and others, both in moving surfboards on and off the premises and in traversing any sale lanes, parking lots, and offices on foot and otherwise. By entering our private premises, you assume the risk of injury.
  - d. You agree that, anytime you communicate with SWB Inc., enter upon SWB Inc. premises (rented or owned), use SWB Inc. physical or digital services, or otherwise interact with SWB Inc. personnel, it will be for, and be strictly limited to, conducting legitimate business with SWB Inc. as a customer, and you agree that you will not make any recording, video, or use any other method to capture data or activity existing at or occurring at or during any SWB Inc. function or activity without prior written consent from SWB Inc..
4. You agree that you, and not SWB Inc., are responsible to pay any taxes or tariffs on your related or subsequent transactions.
5. **Bound by Representatives:** You are responsible for all activities that occur on your account(s) with us. You are bound by the actions of, and transactions entered into by, your actual and appointed representatives. If you are checking in or logging in as a representative for another entity, you agree that you are a duly appointed and authorized representative for that person/entity and have authority to bind that person/entity to any actions or transactions you conduct.
6. **Communications :** Except where prohibited by law, you hereby expressly authorize us to communicate with you via email, landline or cell/mobile phone, including text messaging, using an automatic telephone dialing system or an artificial or prerecorded voice message, and/or any other forms of communication or technology now known or created in the future, for any purpose, including general business matters, account information, marketing materials, collection, and/or any other communication needs. Such express permission will extend to any and all of the contact information, including physical and email addresses, phone numbers, and to such other addresses, phone numbers, email addresses, online chat, social media platforms, etc. that you may provide to us, or that we may obtain from any third party at any time. You are not required to consent to receive marketing calls and texts to your cell phone and/or residential line using an automatic telephone dialing system or an artificial or prerecorded voice message from us as a condition of your access to SWB Inc., and you may opt out of receiving such communications by adjusting your account settings.
7. **No Commitment to Lend:** Neither these terms and conditions nor any other request by you to us will constitute a commitment by us to lend funds to you or to take any other action. **SWB Inc. Policies:** You also agree to abide by any applicable SWB Inc. Marketplace Policies, other location-

specific policies of SWB Inc., or policies on any relevant application, as amended from time to time.

8. **Understanding of Terms and Conditions:** You acknowledge and agree that you understand these terms and conditions written in English and that you have sought the help of an attorney and/or translator as you deem necessary to understand them. The Parties agree that this agreement, and all correspondence and all documentation relating to this agreement, be written in the English language. Any translated version of any of these terms and conditions offered by SWB Inc. is provided as a courtesy only, with the English version being the binding version.
9. **Severability :** If any provision in this agreement is determined to be legally unenforceable, the parties agree that the unenforceable provision will be severed, and the remaining provisions of these terms and conditions will remain in full force and effect.
10. **Electronic Approval:** You hereby acknowledge and agree that these terms and conditions are being executed both in your individual capacity and in your capacity as an authorized representative for any person or other entity on whose behalf you are engaging with SWB Inc. and that the approval of this document, if by checking the "I agree" radio button on the digital platform, will be deemed to satisfy all requirements imposed on electronic or digital signatures under applicable federal and state law, including, as applicable, the Electronic Signatures in Global and National Commerce Act (the "E-Sign Act"), 15 U.S.C. §7001(a) et seq., state electronic transactions or commerce laws, and any other similar laws relating to the validity or enforceability of electronic or digital signatures. You further acknowledge and agree that these terms and conditions may be approved by you pursuant to Section 6(b) herein, which will for all purposes be deemed effective to constitute the valid signature of the party affixing such electronic or digital signature.
11. **Headings:** The headings used in these Terms and Conditions are used for convenience only and are not to be considered in construing or interpreting these Terms and Conditions.

## **II. TERMS OF SALE:**

12. **Terms of Sale:** You agree to the following terms of sale for each surfboard placed in the Gian used surfboard parking lot sale.
  - a. Seller agrees to pay \$10 USD per surfboard in advance via Venmo, Paypal or cash; Seller is the transferor and agrees to sell the surfboard. SWB Inc. is merely the facilitator in the transaction and expressly disclaims any and all express and/or implied warranties or conditions as to merchantability, merchantable quality, fitness for a particular purpose, or any other matter whatsoever with respect to a surfboard, and SWB Inc., not being the seller of the surfboard, makes no warranty whatsoever with respect to the condition of the surfboard Surfboard. Buyer acknowledges and agrees that they are a sophisticated commercial party and agree to satisfy themselves as to the condition and value of a Surfboard and the terms of any bid before bidding or selling. You further agree to look to the counter-party Buyer or Seller (as applicable) in such a transaction, and not SWB Inc., for any legal claims.
  - b. Any adjustments or rejections must be raised the day of sale and resolved prior to settlement. Surfboards must be paid for on the day of purchase
  - c. SWB Inc. may charge a reasonable daily storage fee of up to \$25 per day should any Surfboard be left on SWB Inc. premises.

- d. Buyer agrees:
  - i. to purchase the applicable Surfboard for the purchase price established by the seller, or displayed on any online platform as the purchase price of the Surfboard, and shown on the final bill of sale or other final purchase receipt from us;
  - ii. It is Buyer's responsibility to confirm the actual condition of such Surfboard conforms with its description, the announcements, and Seller's disclosures, if any;
  - iii. to make any claim of defects in such Surfboard with Seller, who will be solely responsible for those claims, and to immediately notify SWB Inc. of such claims pursuant to its policies;
  - iv. that Buyer will comply with respect to removal of Surfboards from SWB Inc.'s premises and payment of daily storage fees; and that Buyer is responsible for transportation, and all associated costs therewith, of such Surfboard to Buyer's desired location.
- e. You represent and warrant to SWB Inc. that: (i) you are solvent; (ii) you are a licensed or duly authorized Surfboard owner in good standing or otherwise authorized to sell or buy.
- f. Seller represents and warrants that: (i) Seller is the true and lawful owner of the Surfboard being sold, or that Seller is duly appointed and authorized to sell the Surfboard on behalf of the true and lawful owner (in which case, Seller agrees to fully disclose the identity of the true and lawful owner and the fact of the representative relationship); (ii) the Surfboard is free from all liens and encumbrances; (iii) Seller has good right and full power and authority to sell the Surfboard; and (iv) Seller will warrant and defend the Surfboard against the claims and demands of all persons whomsoever.
- g. You agree that any amounts owing to SWB Inc. may be deducted from any proceeds or other property due to you and that SWB Inc. may stop payment or refuse to authorize payment on any check or draft to you and hold any consigned Surfboards pursuant to this right of setoff. SWB Inc. may hold any of your property in SWB Inc.'s possession for a reasonable period of time.
- h. Seller acknowledges responsibility for any and all representations regarding condition pertaining to any Surfboard.
- i. Upon payment to Seller, SWB Inc. will be subrogated to all of Seller's and Buyer's respective rights, and Seller and Buyer agree to promptly take any action or sign any document deemed necessary, in SWB Inc.'s sole discretion upon SWB Inc.'s request, to secure such rights and do nothing to prejudice them.
- j. Disclaimers and Indemnification.
  - i. You agree that SWB Inc. is responsible for neither condition of the Surfboard nor the information contained in the statement about the surfboard.
  - ii. You agree that all representations or disclosures concerning any Surfboard are solely the responsibility of Seller, whether made before the sale, or otherwise, and you acknowledge and agree that SWB Inc. has made no representations or disclosures whatsoever about any Surfboard, including any representation as to the accuracy of data included in Surfboard history or condition reports, regardless of whether SWB Inc. has interpreted such information as a courtesy to you or on your behalf.

- iii. You acknowledge that SWB Inc. is merely performing a used surfboard retail service and expressly disclaims all express and/or implied warranties or conditions as to merchantability, merchantable quality, fitness, or any other matter whatsoever, and SWB Inc., not being the seller of the Surfboard, makes no warranty whatsoever with respect to title to the Surfboard.
- iv. You agree, jointly and severally with any Buyer or Seller (as the case may be), to indemnify, defend, and hold SWB Inc. harmless from and against any and all liability, loss, cost, damage, or expense, including attorneys' and legal fees, as applicable, which are in any way related to or may otherwise arise, either directly or indirectly, from any Surfboard, including, but not limited to, the purchase or sale of any Surfboard and/or any damage caused by transporters or other agents of either Buyer or Seller.
- v. If SWB Inc. is required to make or defend a claim, related in any way to a Surfboard or Surfboard transaction, from or against either Seller or Buyer or an agent, employee, insurer, or bonding company of either, then SWB Inc. will recover, in addition to the amount of the claim and the costs incurred in the claim, reasonable attorneys' fees and legal fees in an amount not less than twenty-five percent (25%) of the amount of the claim, regardless of whether suit is filed, including appellate and bankruptcy fees and costs. Interest will accrue on the unpaid balance of any such claim at the rate of one and one-half percent (1.5%) per month, provided that, if applicable law permits a higher rate, such higher rate will apply.

- k. You acknowledge and represent that, when conducting business with SWB Inc., you are acting in an arms-length business transaction and that you are familiar with the nature of the Surfboards you purchase. If you purchase a Surfboard that is not of the sort you typically purchase, and/or you are unfamiliar with the type of Surfboard you purchase (by way of example only, exotic Surfboards, highline Surfboards, "kit" Surfboards, or Surfboards specially manufactured or manufactured for a specific use or purpose), with respect to which typical data or market values may not be available or accurate, you purchase such Surfboards at your peril, and SWB Inc. will have no liability or responsibility for vagaries in the data or market values accompanying such a Surfboard.

- 1. SWB INC. RESERVES THE RIGHT TO VOID, UNWIND, ADJUST, OR CANCEL ANY TRANSACTION IN ITS SOLE DISCRETION.

13. **Payments:** Payments for Surfboards must be made by the Buyer to the Seller purchasing those goods.
14. **Electronic Payment Authorization:** You agree that, if you designate a bank account for payment of amounts you owe us, including, but not limited to, by adding a bank account to your online profile, we may use such account information to initiate ACH entries to your bank account, including debit entries for amounts you owe us from time to time as such amounts become due, credit entries for amounts we owe you, and debit or credit entries in any amount necessary to correct an error. You understand that, other than account information we routinely make available to you online, we will not provide any notice to you prior to initiating entries and that you are responsible for ensuring that your account balance is sufficient to cover debits for amounts you owe us. You agree that any authorizations we initiate to your bank account must comply with applicable law. This authorization is in addition to, and does not terminate or alter, any other authorization for electronic payments (including ACH authorizations) that we have on file or that you provide us in the future.

15. **Individual Guaranty:** By entering our private facilities and/or using our services, you personally guarantee full payment and performance of all obligations incurring to SWB Inc. created by your participation with SWB Inc., whether personally or as a representative of another entity, despite the fact that you may be participating in a representative capacity. This is a general guaranty of payment and performance and not merely a guaranty of collection.
16. **Surfboard Release:** A Surfboard Release from seller to buyer occurs without acknowledgment from SWB Inc.
17. **Assets on SWB Inc. Property:**
- a. **Disclaimer .** Unless expressly agreed to the contrary in a writing signed by us, we are not a bailee of your property, consigned or otherwise. If you leave your Surfboards or other property unattended on our premises or otherwise in our care, regardless of the reason, you are solely responsible for any and all damage, theft, or loss relating to such property, regardless of our knowledge or involvement.
  - b. **Force Majeure.** In the event of a natural disaster, SWB Inc.'s primary focus is the safety and security of its team members and customers. SWB Inc. has no responsibility or liability for damage to consigned inventory or for any delay or failure by SWB Inc. to perform any services or other obligations hereunder as a result of any act of God, fire, flood or other weather-related event, earthquake, governmental or regulatory act, epidemic, pandemic, riot, insurrection, sabotage, war, terrorism, supply shortage, power outage or Internet failure, labor strike or work stoppage, or any other cause beyond SWB Inc.'s reasonable control (collectively "Force Majeure Events").
  - c. **Abandoned Surfboard Removal.** Upon written notice, SWB Inc. may require Buyer or Seller, as applicable, to immediately remove any Surfboards from SWB Inc.'s premises. If Buyer or Seller fails to remove the Surfboards within five (5) days of such notice, SWB Inc. may (a) proceed to transfer or sell any such Surfboard to satisfy any obligations to us or (b) treat it as abandoned property and dispose of it where permissible by applicable law.
18. **Transportation of Surfboards:** We may, upon your request and/or as deemed necessary or desirable by us, from time to time, in our sole and absolute discretion, transport or arrange, via third parties, to transport Surfboards belonging to you at your sole cost and expense. In such cases, we are not liable for theft, conversion, loss, injuries, damage, claims, expenses (including legal fees), suits, or demands related to such Surfboards (collectively, "Transportation Claims"), howsoever caused and to whomever caused. Such Surfboards are being transported for you, and you assume all risks associated with the transportation of your Surfboards. You further acknowledge and agree that your only claim or remedy for Transportation Claims, if any, will be to and against the third-party carrier, its insurer, your own insurer, or the third-party that caused the alleged damage, and not to, against, or involving us.

### **III. SURFBOARD ARBITRATION:**

19. **Surfboard Arbitration Rules:** You agree and acknowledge that:
- a. any dispute arising from the purchase or sale of a Surfboard through SWB Inc. will be resolved by the Buyer and the Seller; and that SWB Inc. is held harmless.

### **IV. INTELLECTUAL PROPERTY:**

21. **Contributions to SWB Inc.:** You agree and acknowledge that by submitting ideas, suggestions, concepts, documents, and/or proposals ("Suggestions") to SWB Inc., that:
- a. you have all necessary rights to share such Suggestions with SWB Inc. and that the Suggestions are not subject to restrictions by third parties;
  - b. SWB Inc. is free to use and/or share such Suggestions as it sees fit;
  - c. SWB Inc. may have already conceived, contemplated, or developed something similar to the Suggestions;
  - d. SWB Inc. may incorporate the Suggestions into its products and services, now or in the future, and SWB Inc. does and will own such products and services; and
  - e. SWB Inc. is not obligated to you in any way for such Suggestions.
22. **SWB Inc.'s Proprietary Rights:** You agree and acknowledge that SWB Inc.'s products and services, and any software used in connection with SWB Inc.'s products and services, and the materials on the various SWB Inc. websites, contain proprietary and confidential information that is protected by intellectual property and other laws. Further, you agree and acknowledge that in the performance of its services, SWB Inc. may generate materials, including, but not limited to, photographs, reports, visuals, narratives, Surfboard and transactional records, and other data and documents derived from the foregoing, and that SWB Inc. will own the rights to such materials. Except as explicitly provided in these terms and conditions, you may not take, appropriate, convert, distribute, transmit, display, reproduce, modify, create derivative works from, or otherwise exploit any of the SWB Inc. generated materials. SWB Inc. owns many trademarks, tradenames, and service marks, including, but not limited to, the marks SWB Inc. and SWB Inc..com. You may not use any SWB Inc. trademark or service mark without SWB Inc.'s prior written consent.

## **VI. CLAIMS & DISPUTES:**

23. **DISCLAIMER OF WARRANTIES AND CONDITIONS:** UNLESS OTHERWISE SPECIFICALLY SET FORTH HEREIN OR IN A MORE SPECIFIC AGREEMENT YOU MAY HAVE OR MAKE WITH SWB INC., ALL PRODUCTS AND SERVICES PROVIDED TO YOU BY SWB INC. ARE ON AN "AS-IS" BASIS. SWB INC. CANNOT AND DOES NOT MAKE ANY WARRANTIES OR CONDITIONS RELATING TO THE ACCURACY, COMPLETENESS, CURRENTNESS, NON-INFRINGEMENT, MERCHANTABILITY, MERCHANTABILITY, DURABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF ANY PRODUCTS OR SERVICES PROVIDED TO YOU BY SWB INC., AND CANNOT GUARANTEE THAT ANY SERVICES PROVIDED TO YOU WILL BE ERROR FREE, OR CONTINUOUSLY AVAILABLE, OR THAT SUCH SERVICES WILL BE FREE OF DEFECTS, VIRUSES, OR OTHER HARMFUL COMPONENTS.
24. **INDEMNIFICATION :** UNLESS CONTRARY TO APPLICABLE LAW, YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SWB INC., ITS SUCCESSORS AND ASSIGNS, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, MEMBERS, REPRESENTATIVES, BORROWED SERVANTS, VOLUNTEERS, INDEPENDENT CONTRACTORS, AND AGENTS (EACH, A "SWB INC. PARTY" AND COLLECTIVELY, THE "SWB INC. PARTIES"), FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, CAUSES OF ACTION, DEBTS, OR LIABILITIES, INCLUDING ATTORNEYS' FEES, ARISING OUT OF OR RELATING TO:

- a. ANY PERSONAL INJURY OR PROPERTY DAMAGE THAT YOU MAY CAUSE, EITHER SOLELY BY YOUR OWN ACTIONS OR JOINTLY WITH OTHERS (INCLUDING THE SWB INC. PARTIES), TO SWB INC., ANY PERSONNEL OR CUSTOMERS OF SWB INC., OR ANY THIRD PARTIES, OR THE PROPERTY OF ANY OF THE FOREGOING;
- b. THE BREACH OR ALLEGED BREACH OF ANY AGREEMENT OR OBLIGATION HEREUNDER OR UNDER ANY OTHER AGREEMENT THAT YOU MAY HAVE WITH SWB INC.;
- c. ANY TRANSPORTATION CLAIMS;
- d. ANY ACTIONS THAT A SWB INC. PARTY MAY TAKE AS YOUR AGENT, REPRESENTATIVE, OR ATTORNEY-IN-FACT, PURSUANT TO SECTION 6 HEREOF OR OTHERWISE;
- e. YOUR USE OF ANY PRODUCTS OR SERVICES OF SWB INC.; ANY DESIGN DEFECT OR MECHANICAL FAILURE AFFECTING A SURFBOARD (UNLESS SUCH DEFECT OR FAILURE WAS CAUSED BY SWB INC.), INCLUDING ANY ISSUES RELATED TO THE CONDITION OR STATUS OF ANY ADVANCED DRIVER ASSISTANCE SYSTEMS (“ADAS”) IN THE SURFBOARD, WHETHER OR NOT SWB INC. WAS AWARE OF ANY SUCH ISSUE; AND
- f. ANY LIABILITY OR OBLIGATION, INCLUDING ANY CAUSED IN PART BY A SWB INC. PARTY, THAT MAY OTHERWISE ARISE FROM YOUR PARTICIPATION IN ANY SALE OR AUCTION CONDUCTED BY A SWB INC. PARTY, YOUR PRESENCE AT ANY PREMISES OWNED OR OPERATED BY SWB INC., OR THE PROVISION OF PRODUCTS OR SERVICES TO YOU BY SWB INC..

25. **WAIVER AND RELEASE OF LIABILITY:** YOU HEREBY WAIVE ANY CLAIM OR CAUSE OF ACTION THAT YOU MAY HAVE, EITHER NOW OR IN THE FUTURE, AGAINST ANY SWB INC. PARTY, AND HEREBY RELEASE THE SWB INC. PARTIES FROM ANY AND ALL LIABILITY UNDER SUCH CLAIM OR CAUSE OF ACTION, IN EACH CASE TO THE EXTENT SUCH CLAIM OR CAUSE OF ACTION ARISES FROM OR RELATES TO:

- a. YOUR ENTITLEMENT TO THE PROTECTION OF ANY CONSUMER PROTECTION STATUTE;
- b. ANY BIDDING OR DISCLOSURE ISSUES THAT MAY OCCUR AT A SALE OR AUCTION CONDUCTED BY US, SUBJECT TO YOUR LIMITED RIGHTS UNDER THE SWB INC. ARBITRATION POLICIES;
- c. ANY TRANSPORTATION CLAIM;
- d. ANY DAMAGE TO YOUR SURFBOARDS OR OTHER PROPERTY LEFT OR STORED ON ANY PREMISES OWNED OR OPERATED BY SWB INC., REGARDLESS OF COMPENSATION PAID TO US FOR SUCH STORAGE;
- e. ANY PERSONAL INJURY OR OTHER PROPERTY DAMAGE SUFFERED WHILE ON OR AROUND ANY PREMISES OWNED OR OPERATED BY SWB INC.; AND
- f. ANY ACTIONS TAKEN BY A SWB INC. PARTY AS YOUR AGENT, REPRESENTATIVE, OR ATTORNEY-IN-FACT, PURSUANT TO SECTION 20 HEREOF OR AS MAY OTHERWISE BE AUTHORIZED.

26. **LIMITATIONS OF LIABILITY AND TIME:** UNLESS STATE LAW PROVIDES OTHERWISE, UNDER NO CIRCUMSTANCES WILL THE SWB INC. PARTIES BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUES OR PROFITS), OR DAMAGES FOR LOSS OF BUSINESS, OR LEGAL FEES OR COSTS, EVEN IF ONE OR MORE OF THE SWB INC. PARTIES ARE ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. YOU AGREE THAT THE AGGREGATE LIABILITY OF THE SWB INC. PARTIES, COLLECTIVELY, TO YOU IN CONNECTION WITH ANY CLAIMS OR CAUSES OF ACTION THAT YOU MAY ASSERT, WILL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY YOU TO SWB INC. FOR THE PRODUCT(S) OR SERVICE(S) AT ISSUE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE LAST EVENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION BEING ASSERTED. BECAUSE SOME STATES/JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OF THESE LIMITATIONS MAY NOT APPLY TO YOU. YOU FURTHER AGREE THAT ANY CLAIMS OR CAUSES OF ACTION THAT YOU ASSERT AGAINST THE SWB INC. PARTIES MUST BE FILED OR OTHERWISE FORMALLY COMMENCED IN THE RELEVANT FORUM WITHIN TWELVE (12) MONTHS OF THE LAST EVENT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION BEING ASSERTED, OR WITHIN THE TIME REMAINING UNDER THE APPLICABLE STATUTES OF LIMITATION – WHICHEVER TIME PERIOD IS SHORTER – AND THAT ANY CLAIMS OR CAUSES OF ACTION NOT FILED OR COMMENCED WITHIN SUCH PERIOD WILL BE FOREVER BARRED.
27. **Choice of Law and Consent to Jurisdiction:** These terms and conditions will be governed by the internal laws of the State of California (U.S.A.), where SWB Inc. maintains its headquarters, and without regard to Georgia’s internal conflicts of law analysis. If any claim or dispute between SWB Inc. and you is not arbitrated under Section 32 hereof, you agree that non-exclusive jurisdiction and venue for such claims and disputes will exist in the federal and state courts located in Fulton County, Georgia. You further agree and acknowledge that you may not sue SWB Inc. in any jurisdiction or venue except Fulton County, Georgia.
28. **DISPUTE RESOLUTION AND CLASS ACTION WAIVER:**
- a. **ARBITRATION AGREEMENT.** YOU AGREE TO ARBITRATE ANY DISPUTE OR CLAIM THAT YOU MAY HAVE WITH SWB INC. THAT ARISES OUT OF OR RELATES IN ANY WAY TO THESE TERMS AND CONDITIONS; ANY PURCHASE, SALE, OR OTHER AUCTION OR CREDIT TRANSACTION WITH SWB INC.; YOUR USE OF ANY SWB INC. WEBSITE, ONLINE PORTAL, OR ANY SWB INC. PRODUCT OR SERVICE; OR ANY OTHER AGREEMENT BETWEEN YOU AND SWB INC.. ARBITRATION CONDUCTED HEREUNDER WILL BE FINAL AND BINDING. THIS ARBITRATION PROVISION MEANS THAT YOUR CLAIMS AGAINST SWB INC. WILL BE RESOLVED THROUGH ARBITRATION RATHER THAN LITIGATION IN COURT. YOU ACKNOWLEDGE THAT SWB INC. MAY (BUT WILL NOT BE REQUIRED TO) SUBMIT TO ARBITRATION ANY DISPUTE OR CLAIM THAT IT MAY HAVE AGAINST YOU, WITH ANY SUCH ARBITRATION BEING GOVERNED BY THE PROVISIONS OF THIS SECTION 32.
  - b. **ABILITY TO OPT OUT.** YOU MAY OPT OUT OF THIS ARBITRATION AGREEMENT (SECTION 32 ONLY) FOR ANY FUTURE BUSINESS WITH SWB INC. AND DOING SO WILL NOT IN ANY WAY PREJUDICE OR AFFECT YOUR DEALINGS WITH SWB INC.. TO EXERCISE THIS OPT OUT RIGHT, YOU MUST

EMAIL SWB INC. WRITTEN NOTICE OF YOUR ELECTION TO OPT OUT AT EMAILNOTICES@COXAUTOINC.COM NO LATER THAN 30 DAYS AFTER YOUR INITIAL ACCEPTANCE OF THESE TERMS AND CONDITIONS AS SET FORTH IN THE FIRST PARAGRAPH HEREOF. THE PROCEDURE SPELLED OUT HEREIN IS THE ONLY WAY TO OPT OUT OF THIS ARBITRATION AGREEMENT, AND ANY ATTEMPTS TO OPT OUT AFTER THE DEADLINE SET FORTH HEREIN WILL BE INEFFECTIVE.

- c. **CLASS ACTION WAIVER.** ANY ARBITRATION PROCEEDING UNDER THIS SECTION 32 WILL TAKE PLACE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS AND CLASS OR REPRESENTATIVE PROCEEDINGS OF ANY KIND ARE NOT PERMITTED AND YOU EXPRESSLY WAIVE YOUR ABILITY TO PARTICIPATE IN A CLASS OR REPRESENTATIVE PROCEEDING AGAINST SWB INC.. TO THE EXTENT THAT YOU OPT OUT OF ARBITRATION FOLLOWING THE PROCEDURE SET FORTH IN SECTION 32(b) ABOVE, OR IF THIS ARBITRATION AGREEMENT IS FOUND INAPPLICABLE TO YOUR DISPUTE WITH SWB INC., THIS CLASS ACTION WAIVER WILL CONTINUE TO APPLY IN LITIGATION. YOU AGREE THAT THIS CLASS ACTION WAIVER IS AN ESSENTIAL ELEMENT OF OUR AGREEMENT AND THESE TERMS AND CONDITIONS AND THAT IT MAY NOT BE SEVERED. IF THIS CLASS ACTION WAIVER IS DEEMED INVALID OR UNENFORCEABLE, THEN THE ENTIRE AGREEMENT TO ARBITRATE IN THIS SECTION 32 WILL BE NULL AND VOID.
- d. **Arbitration Procedures/Arbitrator Authority.** Any dispute or claim subject to arbitration pursuant to this Section 32 will be submitted to binding arbitration administered by the Judicial Arbitration and Mediation Service ("JAMS") pursuant to its Streamlined Arbitration Rules and Procedures as in effect at the time of the submission of such dispute or claim (the "JAMS Streamlined Rules"). The disputes and claims subject to arbitration pursuant to this Section 32 will be resolved by a single arbitrator selected pursuant to the JAMS Streamlined Rules. The arbitrator will be bound by and will strictly enforce these terms and conditions and any other applicable agreement between you and SWB Inc., and may not limit, expand, or otherwise modify any of these terms and conditions or the provisions of any other applicable agreement between you and SWB Inc.. The arbitrator may award any relief that a court of law could, applying the limitations of liability contained in these terms and conditions. The arbitrator may award injunctive relief if permitted by law – but the injunctive relief awarded by the arbitrator may not extend beyond our dealings with each other. The laws of the State of Georgia will apply to any claims or disputes between us. Any arbitration will be held in Atlanta, Georgia, unless otherwise agreed upon by the parties in writing. Each party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator will award SWB Inc. any costs and fees to which SWB Inc. may be entitled under Section 28 in connection with any indemnification claim, and may also, in his or her discretion, award cost and fees to SWB Inc. if it is determined that you submitted or filed any arbitration in bad faith or that your claims against SWB Inc. have no reasonable legal basis.
- e. **Application of FAA/Survival.** You agree that your transactions with SWB Inc. evidence transactions in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this Section 32 (notwithstanding the application of Georgia law to any underlying claims as provided for in clause (d) above). You also agree that this Section 32 survives any termination of these terms and conditions or any other

agreement between us.

**VII. SPECIAL CONSIDERATIONS (Mobile Sales; Additional Terms for Digital Sales):**

29. **Mobile Sales:** If we agree to provide any auctioneering or other services to you at a facility other than a SWB Inc. facility (whether owned by you or an independent third party), we will not be liable for theft, conversion, loss, injuries, damage, claims, expenses (including legal fees), suits, demands, or alleged regulatory or zoning violations related to such facilities or the Surfboards stored on, or sales events conducted at, such facility, and these terms and conditions will otherwise apply in all respects to such services. Unless agreed otherwise by us in writing, those services will be provided to you at the rates then applicable at our nearest permanent facility, which rates are subject to change at any time. You also agree to reimburse SWB Inc. for any reasonable out-of-pocket expenses we actually incur in connection with services provided to you at such off-site locations. For any Surfboards physically located away from a SWB Inc. facility when auctioned (whether at an off-site sales event hosted by you or through SWB Inc.'s online platform), the Seller will have three (3) business days, inclusive of the sale date, to make the Surfboard available to the Buyer. The risk of loss or damage to the Surfboard will shift from the Seller to the Buyer upon the earlier of (i) actual pick-up by the Buyer or its agent; or (ii) two (2) business days after Seller truthfully notifies the Buyer the Surfboard is available for pick-up at the location stated in the sale listing.
30. **Digital Sales:**
- a. **Applicable to All Digital Sales.** In addition to the terms and conditions set forth above, the following provisions apply to all internet-based and digital application sales both in real time and virtually (each, a "Digital Platform"). For purposes of this section, "Participant" means a user of a Digital Platform, whether as a Seller or Buyer of a Surfboard.
    - i. **Accuracy of Surfboard Information.** Information about a particular Surfboard, including images, listed on any Digital Platform is supplied by the Seller of the Surfboard, not by SWB Inc., and SWB Inc. does not make any representations or warranties with respect to the accuracy or completeness of such information or the condition of any Surfboards. Responsibility for the information contained in Surfboard listings lies with each Seller. When establishing your account, Seller agrees to these Terms and Conditions and all policies located in the SWB Inc. Marketplace Policies.
    - ii. **Right to Monitor/Alter/Remove Postings.** SWB Inc. reserves the right (but assumes no obligation) to delete, move, or edit any listings, ads or other postings that SWB Inc. considers, in its sole and absolute discretion, unacceptable or inappropriate. By using any Digital Platform, Participant (for itself and on behalf of each of its representatives) agrees not to post or transmit any defamatory, abusive, obscene, threatening, misleading, or illegal material, or any other material that infringes on the rights of others or interferes with the ability of others to use any Digital Platform. SWB Inc. will not, in the ordinary course of business, review the content of private electronic messages that are not addressed to SWB Inc.. SWB Inc., however, may occasionally release information concerning such communications when release is appropriate to

comply with law (including disclosure in response to a request from a law enforcement agency), to enforce these Terms and Conditions, or to protect the rights, property or safety of visitors any Digital Platform. Seller agrees that SWB Inc. may reject any Surfboard listing in SWB Inc.'s discretion. Seller also agrees that positioning of listings is at SWB Inc.'s discretion.

- iii. **Bid/Buy Now/ Make an Offer binding obligations.** Buyer understands and agrees that it may not retract any bids to purchase a Surfboard via a Digital Platform without SWB Inc.'s express written permission. The submission of a bid for a Surfboard by (or on behalf of) Buyer automatically becomes a legally binding contract to purchase the Surfboard from the Seller at the price and on the terms bid by (or on behalf of) Buyer. For avoidance of doubt, a bid constitutes a legally binding contract even if they have not met the floor price on the Surfboard.

By clicking the "I agree" check box next to the link to these Terms and Conditions and the "Bid", "Make an Offer" or "Buy Now" button, you, on behalf of Buyer, are agreeing to these Terms and Conditions and all policies located in the SWB Inc. Marketplace Policies, and agree that each Digital Platform sale transaction Buyer engages in will be governed by them. These Terms and Conditions will be enforceable against Buyer like any written negotiated agreement signed by Buyer. If Buyer does not agree to these Terms and Conditions, do not click the "I Agree" checkbox.

- iv. Buyer agrees that, in the event a purchased Surfboard, which is not located on SWB Inc. property, is not removed from its location within 30 days of the time the Surfboard is deemed eligible for release, the Surfboard may, in SWB Inc.'s sole discretion, be transported to the nearest SWB Inc. location at Buyer's expense, and charged the daily storage rate for such auction until the Surfboard is picked up by Buyer. Once such Surfboard is on SWB Inc. property, paragraph 20 of these Terms and Conditions will apply.
- v. **Costs and Profits.** Seller and SWB Inc. will each bear all of its own costs in connection with the activities under the Terms and Conditions. Seller will be entitled to any profits and assumes the risk of any losses associated with the sale of any Surfboards. Seller will be responsible for all fees and expenses incurred in the purchase and subsequent sale of any Surfboards, which includes, without limitation, taxes, financing costs, inspection and reconditioning costs, remarketing fees, transportation fees, and auction sales fees.