

# Terms & Conditions

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## 1. Overview

The following General Terms and Conditions shall apply exclusively to the business relationship between Entertainment Shopping, Inc., its internet platform [www.swoopo.com](http://www.swoopo.com) ("Swoopo") and our users. By using Swoopo, the user accepts the following General Terms and Conditions, as well as the manner in which Swoopo and its "BidButler" operate as described on the website [www.swoopo.com](http://www.swoopo.com). Variations or alterations in the following Terms and Conditions shall only be binding upon Entertainment Shopping, Inc. if agreed to in writing.

Any special promotions run by Swoopo shall only be valid if they are announced on Swoopo's website or in its corresponding email newsletter. Certain promotions may only be valid for a limited time, and details of any such timing will be announced on the website or in a newsletter. Once the advertised time limit of any such promotion has been reached, or the relevant auction or auctions have ended, the promotion is also finished.

Any bidding advice or other written materials (for instance, 'Help' articles) posted on Swoopo are provided solely as suggestions and are not intended to be relied upon. Swoopo is not liable or responsible for any actions taken due to a user or other person having read or been told about such advice or other written materials.

## 2. Eligibility to Participate / Registration with "My Swoopo" / Disqualification

By placing a bid on Swoopo, the user declares that they are legally capable of entering into binding contracts and that they are at least 18 years old.

Employees and relatives of employees of Entertainment Shopping, Inc. are not eligible to participate in Swoopo auctions under any circumstances.

Swoopo's products and services are offered exclusively to private users and not to commercial or partly-commercial resellers. Swoopo reserves the right to exclude commercial resellers from the participation in the auctions and to close their user accounts at any time.

Each user may register only once using their physical address (registration using PO Boxes or equivalents is not permitted). Additionally, only one user registration per household is permitted.

During the registration process, the user must choose a username. The username must not be offensive, be selected to deceive or mis-inform other users, may not offend common decency or infringe upon the rights of third parties. If Swoopo receives information of a username which is illegal or in breach of these Terms, this username can be amended by Swoopo without prior notice. The corresponding user password is to be kept secret by the user. User accounts created during registration are non-transferable. The user account may be used only by the user and not by anyone else. Any abuse of the user account, be it to the detriment of third parties or to the detriment of Swoopo, shall result in the disqualification of the user and the reporting of a crime. In general, the user shall be liable for all activities that are undertaken using the user account together with the associated password.

Swoopo reserves the right to temporarily or permanently disqualify a user, or disable their

account at any time, and at its sole discretion. Users will be disqualified when in the reasonable opinion of Swoopo, a member has violated any laws or the rights of third parties. A user will be disqualified if such action will protect the rights of other users, or to prevent unauthorized manipulation or use of Swoopo. Examples of such unauthorized usage include (but are not limited to) non-payment of bids, use of unauthorized third-party bidding software or set up of multiple user accounts by the same individual. In case of a breach of these Terms, Swoopo reserves the right to withhold deliveries or refunds for bids. Furthermore, Swoopo reserves the right to limit the number of auctions a user may participate in or the number of his successfully finished auctions at its sole discretion. Please refer to our separate acceptable use policy for additional information.

### **3. Bid Purchasing for Online Bidding / Payment / Validity of Bids**

Bidding rights, so-called “Bids”, must be purchased and paid for by users prior to online bidding. Bids can be purchased in packages (so-called “BidPacks”) at the currently applicable prices, which can be viewed in “My Swoopo” under “Buy Online Bids”. Payment can be made by credit/debit card or via payment agents such as PayPal and ClickandBuy.

Should a payment not be honored by a user, a returned payment fee will be charged. The user will be responsible for these fees. Swoopo reserves the right to block access to the user’s account until payment in full of the invoice amount, including any fees due to returned payment etc., and to withhold any outstanding deliveries until payment is received in full.

Bids and Voucher Bids are valid for one year after they have been credited to a user’s account. Free Bids are only valid for the time stated in the promotion, in general only 7 days. Upon expiration, they become void and can no longer be placed. Once a Bid is placed in an auction, it is deducted from the user’s bid account and can no longer be refunded. Refunds will not be issued for Bids placed in an auction, expired Bids, Voucher Bids and Free Bids. For further information on refunds please see our [Refund Policy](#).

### **4. Bidding / Use of the BidButler**

Users can bid in two ways online. Bids can be placed by clicking on the relevant bid buttons, or can be placed automatically by a BidButler.

The BidButler assists bidders in being able to bid on an auction even if they are not online at that time. The BidButler automatically submits bids according to the specifications set in advance by the user. The user can read about how the BidButler operates in the “[Help](#)” section. The user is prohibited from using bidding software not authorized by Swoopo, and doing so will result in immediate disqualification from use (see clause 2: Eligibility and the [Acceptable Use Policy](#)).

## **5. How the Auctions Work**

With each bid placed the price of the item on which the user is bidding increases by the amount specified. A bid submitted by the user constitutes willingness of a user to enter into a binding contract with Swoopo and in the event of a successful finishing of an auction, the claim to receive a purchase offer for the item of the auction under the conditions set out in the related auction. A contract to purchase the item does not come into effect until the auction is finished and the last bidder has followed all the steps as set forth in clause number 6.

Each new bid resets the 'remaining time' for an auction up to, but not above, the displayed countdown reset value (usually, 10, 15 or 20 seconds). The one exception to this rule is when two BidButlers bid against one another. For more information, please consult the 'Help' section. The auction ends when the remaining time reaches zero. The user who was the last to bid then wins the auction. All other bids placed on the item expire and will not be credited back to the user's account or be eligible for a refund. The last bidder is determined based on the records in Swoopo's database and Swoopo's decision regarding who is the last bidder shall be final (save in the case of manifest error).

## **6. Acceptance of the Win / Payment**

After an auction has ended, the last bidder ("winner") must go to "My Swoopo". Here, information such as total price (including shipping costs) and payment options will be displayed. The user must actively confirm and pay the total price (end price plus shipping costs) for the win by following the steps indicated on that page or elsewhere on the website. Once the winner has clicked on the confirmation button the win is accepted. If an auction win has not been confirmed and paid within 21 days of the auction end date, Swoopo reserves the right to withdraw the offer to conclude a contract and the winner's right to pay for and receive delivery of an item will be permanently revoked. All bids placed in that auction expire and are non-refundable. The user must pay the total price when confirming the win. After confirming the win and paying the amount due, the winner will receive a confirmation e-mail.

The item will not be sent to the user until the total price has been paid to Swoopo. A similar requirement for delivery is that all bids purchased and used by the user have been properly paid for. Should bids that have already been purchased and used not have been paid for, payments received shall be viewed as payment toward the bids not yet paid for, and we reserve the right to retain the item purchased at auction until all bids and the total price have been paid for in full. Swoopo reserves the right to charge the winner reasonable storage charges for items not paid for. An invoice containing the auction price and shipping costs will be sent to the user by Swoopo once delivery has been arranged.

## **7. Returns and Cancellations**

Swoopo grants winners the right to cancel an order. This right is unconditional and begins from the moment the contract is concluded. If a user cancels a contract to which the cancellation

provisions apply they are entitled to a refund of the auction end price they have paid in relation to the contract even if the goods are not defective in any way. Bids placed on the auction are not eligible for a refund. These cancellation rights end fourteen days after the day on which a winner received the goods or a notification that the goods are ready for collection.

An exception to the right to cancel is audio or video recordings or computer software that the customer has unsealed. These items are not eligible for return or refund.

If a user wishes to cancel the contract, they must inform Swoopo in writing (by letter or email), that they want to cancel within the time period noted above. Cancellations by phone will not be accepted.

The following contact details must be used:

**Entertainment Shopping, Inc.**

P.O. Box 2803

Cupertino, CA 95015

**support@swoopo.com**

In order to complete a valid cancellation or return, a user must return the received product or products in good condition, such as might be expected from typical testing in a retail store. Costs of postage for returns will be paid by the user (unless goods are found to be faulty). If the user is unable to return the service or product received or only able to return it in part or only in a depreciated condition, he will have to pay compensation to us [the amount refundable will be reduced proportionally], as applicable.

Should Swoopo incur additional costs for insufficient postage on the return or for courier shipments and other irregular shipping methods that are over and above postal shipping costs, these costs will be deducted from any payment whatsoever remitted by the customer. Sets/boxes can only be returned in their entirety.

## **8. Delivery**

Unless otherwise stated, delivery will be made directly from our suppliers or from our warehouse to the address provided by the user. **Deliveries are made solely within the 50 states of the United States (explicitly excluding the U.S. sovereign territories of Guam, Puerto Rico and the U.S. Virgin Islands). Some restrictions or higher shipping costs may apply if the delivery address is in Alaska or Hawaii, please check notifications on the detail pages of the auctions in advance.** Delivery times vary and any delivery time indicated is provided only as a guide and is not guaranteed. Swoopo shall be entitled to involve third parties to satisfy its contractual obligations without being required to notify the buyer. Obvious damage to the item from transport or packaging damaged during transport is to be reported to Swoopo upon taking

delivery.

Should Swoopo not be able to deliver the item ordered, Swoopo shall be entitled to substitute the item with a comparable replacement product with the same or better features, or provide a refund of the auction end price to the user based upon the user's preference.

## **9. Offsetting / Withholding Payment / Retention of Title**

The user shall only have the right to offset if his or her counterclaims are not disputed by Swoopo.

The user is not entitled by reason of any alleged minor defect to withhold more than a proportionate amount of the sum due.

The item delivered shall remain Swoopo's property until payment is received in full of the total price, including for the bids used in the auction. Until such time as payment has been made in full the user undertakes to store the item separately from their other possessions and to insure it.

## **10. Disclaimer of Warranty and Limitation of Liability regarding the Use of Swoopo.**

USER EXPRESSLY AGREES THAT USE OF SWOOPO INTERACTIVE IS AT USER'S SOLE RISK. NEITHER SWOOPO, ITS AFFILIATES NOR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS, THIRD PARTY CONTENT PROVIDERS OR LICENSORS WARRANT THAT SWOOPO WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF SWOOPO, OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICE, OR MERCHANDISE PROVIDED THROUGH SWOOPO. SWOOPO IS PROVIDED ON AN "AS IS" BASIS; TO THE MAXIMUM EXTENT PERMITTED BY LAW, SWOOPO DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY INFORMATION, SERVICES, PRODUCTS AND MATERIALS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUS AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, SWOOPO DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE VIA THE SITE IS ACCURATE, COMPLETE OR CURRENT. WE ARE NOT RESPONSIBLE FOR TYPOGRAPHICAL ERRORS. THIS DISCLAIMER OF LIABILITY APPLIES 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. USER SPECIFICALLY ACKNOWLEDGES THAT

SWOPO 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 USER.

IN NO EVENT WILL SWOPO, OR ANY PERSON OR ENTITY INVOLVED IN USE OF A SWOPO AUCTION, BE LIABLE FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE SWOPO. USER HEREBY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION SHALL APPLY TO ALL CONTENT ON SWOPO.

IN ADDITION TO THE TERMS SET FORTH ABOVE NEITHER, SWOPO, NOR ITS AFFILIATES, INFORMATION PROVIDERS OR CONTENT PARTNERS SHALL BE LIABLE REGARDLESS OF THE CAUSE OR DURATION, FOR ANY ERRORS, INACCURACIES, OMISSIONS, OR OTHER DEFECTS IN, OR UNTIMELINESS OR UNAUTHENTICITY OF, THE INFORMATION CONTAINED SWOPO, OR FOR ANY DELAY OR INTERRUPTION IN THE TRANSMISSION THEREOF TO THE USER, OR FOR ANY CLAIMS OR LOSSES ARISING THEREFROM OR OCCASIONED THEREBY. NONE OF THE FOREGOING PARTIES SHALL BE LIABLE FOR ANY THIRD-PARTY CLAIMS OR LOSSES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, PUNITIVE OR CONSEQUENTIAL DAMAGES. NEITHER, SWOPO, NOR ITS AFFILIATES, INFORMATION PROVIDERS OR CONTENT PARTNERS WARRANT OR GUARANTEE THE TIMELINESS, SEQUENCE, ACCURACY OR COMPLETENESS OF THIS INFORMATION. ADDITIONALLY, THERE ARE NO WARRANTIES AS TO THE RESULTS OBTAINED FROM THE USE OF THE INFORMATION.

## **11. Disclaimer of Warranty and Limitation of Liability regarding Purchases from Swoopo.**

All new products are sold with the manufacturer's limited warranty only. Swoopo warrants solely that the products sold to user under these terms shall have the characteristics specified in Swoopo's specifications for such Products as set forth in the description of each auction and assumes no further warranties. The warranty period and service varies by manufacturer and product. The full text of any such warranty is available, free of charge, upon written request mailed to Swoopo. Warranty is excluded for the delivery of any used Products.

EXCEPT FOR THE WARRANTIES SET FORTH ABOVE SWOPO MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, OR ANY RELATED SERVICES PERFORMED BY SWOPO OR ANY OF ITS AGENTS OR SUBCONTRACTORS IN CONNECTION WITH ANY ORDER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, WHICH OTHER WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

SWOPO SHALL NOT BE LIABLE FOR PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM THE IMPROPER HANDLING, MODIFICATION, MISUSE OF THE PRODUCTS BY THE CUSTOMER OR ANY OTHER PERSON FOLLOWING DELIVERY BY SWOPO. IN NO EVENT SHALL SWOPO BE LIABLE TO ANY

PERSON FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL, LOSS-OF-USE DAMAGES OR ADDITIONAL EXPENSES INCURRED, WHETHER PURSUANT TO A CLAIM IN CONTRACT, TORT OR OTHERWISE AND WHETHER IN AN ACTION FOR BREACH OF WARRANTY OR OTHERWISE.

## **12. System Outage / Temporarily Halted Auctions**

A system outage has occurred if no bids can be submitted for items due to an unforeseeable disruption in a system. In such a case, auctions will be temporarily halted and the remaining times for the auctions, the current bidding price and the current highest bidder will be maintained. After the disruption has been resolved, the auctions will be continued and 10 minutes will be added to the remaining times for the auctions. Temporarily halted auctions are clearly indicated. Bids placed on a temporarily halted auction shall not be credited back on a user's account and are not eligible for a refund for bids used or other costs incurred.

With the currently available technology, it is not possible to develop and operate computer programs (software) and data processing systems (hardware) completely without errors, or to rule out any unpredictable events in connection with the internet (hereinafter referred to collectively as "technical faults"). Swoopo, therefore, provides no guarantee for the constant and uninterrupted availability of its website and technical systems. In addition, but not subject to, the provisions of clause number 10, Swoopo shall not be liable for any damage whatsoever incurred by auction users or third parties from using Swoopo's services. In particular, Swoopo shall not be liable for damage that occurs due to bids submitted by auction users not being received by Swoopo or not being received promptly or not being considered, as a consequence of technical faults.

## **13. Trademarks**

Swoopo's logos are trademarks of Entertainment Shopping, Inc. and any of its subsidiaries. All rights reserved. All other trademarks appearing on Swoopo are the property of their respective owners.

## **14. Service and Support for Products Purchased**

All requests for technical service and support should be made directly to the manufacturer in accordance with their terms and conditions.

## **15. Applicable Law / Severability Clause**

This Terms of Use Agreement and your use of the website shall be governed by the laws of the United States of America and the State of California without regard to its conflicts of laws principles. Any legal action or proceeding related to this website shall be brought exclusively in a federal or state court of competent jurisdiction sitting in California.

The UN Convention on the International Sale of Goods shall not apply.

## **16. Protection of Data: Collection, Processing, and Use of our Customers' Personal Information**

The protection of your data is very important to us.

For more information on the collection, processing, and use of personal data, please read our [Privacy Policy](#).

## **17. External Links**

Our website may contain links to other websites operated by third parties, and these sites may likewise contain links to other websites. Despite conducting careful checks, we assume no liability for the content of external links. The operators of the sites linked to and from this site are solely responsible for their contents. We hereby expressly distance ourselves from all content of any and all websites linked to the Swoopo website. We cannot take any responsibility for the content of the data protection and privacy guidelines of third-party websites.

## **18. General**

The contract between Swoopo and users is binding on the parties and on their respective successors and assigns. The user may not transfer, assign, charge or otherwise dispose of any contract formed under these General Terms and Conditions or any of their rights or obligations without Swoopo's prior written consent.

Swoopo has the right to revise and amend these General Terms and Conditions from time to time in its absolute discretion but for reasons including but not limited to changes in market conditions affecting Swoopo's business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in Swoopo's system capabilities. All users will be subject to the policies and terms and conditions in force at the time that they have successfully bid for items listed on the Swoopo website, unless any change to such policies or terms and conditions is required to be made by law or governmental authority or Swoopo notifies its users of the changes to such policies or General Terms and Conditions before Swoopo sends information relating to dispatch (in which case Swoopo has the right to assume

that all successful winners have accepted the changes to the terms and conditions unless notified to the contrary with 7 working days by the user of the items).

Swoopo is the owner or licensee of all intellectual property rights on the Swoopo website and the material published on it. Those works are protected by copyright laws and treaties around the world and all rights relating to the same are reserved. Users may print one copy and may download extracts of pages for personal reference only. Users may not modify any paper or digital copies of any materials printed or downloaded. Users must also not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text. Users must not use any part of the materials on the Swoopo website for commercial purposes. This Agreement and any operating rules for Swoopo established by Swoopo constitute the entire agreement of the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter. This Agreement shall be construed in accordance with the laws of the State of California, without regard to its conflict of laws rules. No waiver by either party of any breach or default hereunder shall be deemed to be a waiver of any preceding or subsequent breach or default. The section headings used herein are for convenience only and shall not be given any legal import.

**Note:**

We would like to advise all users to monitor their bidding practices. Placing bids online at [www.swoopo.com](http://www.swoopo.com) frequently or repeatedly can incur high costs. Users should therefore pay attention to their bidding practices and check their charges regularly.