

# Rare Vintage & Specialty Product Auction

## Terms and Conditions for Participation

Last updated: March 4, 2019

**Notice: Participation in any Rare Vintage & Specialty Product Auction is governed by these Terms and Conditions. Please review carefully prior to submitting a bid.**

### Introduction

Thank you for your interest in the Rare Vintage & Specialty Product Auction ("Product Auction").

The Pennsylvania Liquor Control Board ("PLCB") is the primary wholesaler and retailer of wine and spirits in Pennsylvania. As such, the PLCB occasionally has the opportunity to purchase very rare wine and spirits products, which are considered to be highly valuable. These products may be of particular interest to collectors and connoisseurs, as well as some retail licensees. The PLCB has developed the Product Auction in an effort to equitably distribute these products, while also trying to fulfill its statutory obligation to maximize the return on the sale of such products for the Commonwealth. Through the Product Auction, interested individual consumers and licensees can submit sealed bids for the opportunity to purchase specific wine or spirit products at the dollar amount of their submitted bid, if their bid is selected as the highest and winning bid, subject to these Terms and Conditions.

### Scope of Terms and Conditions

These Terms and Conditions govern participation in any Product Auction conducted by the PLCB. In addition, these Terms and Conditions are supplemented by the general Terms of Use posted on FineWineAndGoodSpirits.com (the "FW&GS website"), which are incorporated herein by reference. Participants will be required to acknowledge that they have reviewed and understand these Terms and Conditions, including the general Terms of Use governing the FW&GS website, when submitting a bid for any Product Auction. To the extent that these Terms and Conditions conflict with any provision contained in the general Terms of Use governing the FW&GS website, these Terms and Conditions take priority with regard to products offered for sale and purchased through a Product Auction.

### Eligibility to Participate

Product Auctions are open to participation by both individual consumers and licensees. However, participation by licensees is limited only to retail licensees whose licenses authorize the resale of wine and spirits for on-premises consumption and whose licenses are active/operational. Licensees whose licenses are in a revoked, history, or cancelled status are not eligible.

Persons under the age of 21 are strictly prohibited from participating in any Product Auction.

In order to be eligible to participate in any Product Auction, individual consumers and licensees must sign up for or have an existing customer account through the FW&GS website and must include the email address associated with such account on each bid form. However, setting up a Quick Checkout Profile with a credit card on file is not necessary for participation in a Product Auction, since credit cards are not an acceptable form of payment for Product Auctions. Please note that registration on the Licensee Online Order Portal ("LOOP") website does not carry over to the FW&GS website; a separate account must be established on the FW&GS website.

The PLCB reserves the right to disqualify submitted bids from anyone suspected of engaging in the prohibited activities set forth herein, and to disqualify individual consumers or licensees from participation in current or future Product Auctions.

### Selection of Products

The PLCB has the sole discretion to select what rare vintage or specialty wine and spirits products to acquire and make available for sale through a Product Auction. However, prior to acquiring products to offer for sale through a Product Auction, the PLCB may survey customers to determine the level of interest that exists with regard to those products. Acquisition or selection of a particular product or brand for inclusion in a Product Auction does not guarantee that the same product or brand will or will not be made available again through subsequent or future Product Auctions.

### **Auction Lots**

All Product Auctions will include one or more auction lots. Each auction lot will consist of either a single-bottle wine or spirits product code or a multi-bottle package wine and/or spirits product code. The PLCB has the sole discretion to determine what products to include within each auction lot and how many lots will be included in each Product Auction.

### **Withdrawal of Auction Lots**

The PLCB reserves the right to withdraw any or all auction lots from a Product Auction for any reason and at any time prior to completion of the purchase transaction for the auction lot(s) being withdrawn. The PLCB also reserves the right to make the corresponding product from the withdrawn auction lot available for sale in a subsequent Product Auction or through other sales channels.

### **Sealed Bid Auction Process**

All Product Auctions will be conducted through a sealed bid auction process.

For any Product Auction, the eligible bid that is of the highest dollar amount (subject to the licensee bid provisions set forth herein) for each auction lot will be considered the winning bid for that auction lot.

Subject to any applicable minimum bid or reserve amounts that may be imposed at the discretion of the PLCB, the individual consumer or licensee who submitted the winning bid for an auction lot will be given the opportunity to purchase that auction lot at the specified dollar amount of the winning bid. The purchase of any auction lot through a Product Auction will also be subject to the payment of applicable sales tax.

Regardless of the dollar amount of the next highest bid, whether submitted by the winning bidder or another bidder, the winning bidder will be required to pay the full dollar amount of their highest bid. For example, if the winning bidder submits a bid of \$10,000.00, and the next highest bidder only submits a bid of \$8,000.00, the purchase price that the winning bidder will be required to pay is \$10,000.00 (plus applicable sales tax). Similarly, if the winning bidder submits two bids for the same auction lot, one for \$10,000.00 and one for \$9,000.00, and the next highest bid from another bidder is only \$8,000.00, the purchase price that the winning bidder will be required to pay for that auction lot is \$10,000.00 (plus applicable sales tax).

### **Licensee Bids**

Any bid amount submitted by a licensee will be viewed as a wholesale price bid net of any licensee discount. In other words, the submitted bid amount must reflect the full and final wholesale price that a licensee is willing to pay (prior to applicable sales tax being added). For purposes of evaluating a licensee (wholesale price) bid against an individual consumer (retail price) bid for any auction lot, the PLCB will calculate what the retail price of the auction lot would be based on the licensee's submitted bid amount. To calculate the retail price, the PLCB will divide the licensee bid amount by 0.9, which is reflective of the fact that a licensee is otherwise entitled to a 10 percent discount from the retail price under the Liquor Code. If the calculated retail price based on the licensee's submitted bid amount is higher than a competing bid from an individual consumer, then the licensee's bid will prevail. However, the licensee will only be required to pay the actual amount of their submitted bid, which is the wholesale price for purposes of a Product Auction, plus applicable sales tax. No other discounts will be given.

### **Bid Submittal Requirements**

Each auction lot being offered for sale as part of a Product Auction will be assigned a unique Lot Number and will have a corresponding Bid Sheet, which will be made available on the FW&GS website during the applicable bid submittal period.

Please note that the Lot Number is different than the Product Code.

Any eligible individual consumer or licensee wishing to submit a bid in a Product Auction will be required to submit a bid package consisting of the required bid surety, and the relevant completed Bid Sheet for the desired Lot Number, properly signed and sealed.

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The name of the bidder and the bidder's email address associated with their account registered at the FW&GS website must be included on the Bid Sheet that is submitted, along with the bid amount and other contact information. Bid amounts must be in whole dollar figures (e.g., \$10,001.00). Bids may not be conditioned in any manner, nor may bidders make any changes to the Bid Sheet. Any bids that are less than the minimum bid amount set by the PLCB will be rejected. Any minimum bid amounts set by the PLCB will be specified on the corresponding Bid Sheet for each auction lot. The Bid Sheet will also specify whether an auction lot is being offered with or without any reserve; however, under no circumstances will the specific dollar amount of any reserve be disclosed. Bid Sheets must be signed in ink by an official authorized to bind the bidder to these Terms and Conditions.

Each bid package must include the **required bid surety of \$2,500.00** in the form of a cashier's check or certified check.

***By submitting a sealed bid, the bidder agrees to be bound by these Terms and Conditions and that they will purchase the product(s) being offered in that auction lot at the submitted bid dollar amount (plus applicable sales tax), if their bid is selected as the highest and winning bid. If the winning bidder refuses to complete the purchase of the product(s) for the submitted bid dollar amount, the bidder will forfeit the required bid surety.***

Failure to sign and/or properly complete the Bid Sheet, and/or failure to include the required bid surety, will result in immediate disqualification of the bid.

Bidders may submit multiple bids for the same auction lot and may also submit bids for multiple auction lots being offered as part of the same Product Auction. However, separate Bid Sheets must be submitted for each bid, and a separate bid surety must be submitted for each auction lot for which a bid is being submitted.

For any Product Auction, all elements of bids must remain valid for at least 90 days, including, but not limited to, the bid surety and the submitted bid amount.

Bids must be carried by hand or mailed (USPS, UPS, FedEx, etc.) to:

PLCB Purchasing & Contract Administration Division  
Product Auction  
Northwest Office Building, Room 312  
Harrisburg, PA 17124-0001

Faxed or emailed bids will not be accepted.

Bids must be received on or before the final day of the applicable bid submission period, no later than 4 p.m. EDT. Participants mailing bids should allow proper time to ensure timely receipt of their bid. If receipt confirmation is desired, bid packages should be sent via USPS certified or registered mail. The PLCB bears no responsibility for delayed delivery to the submittal address set forth above, regardless of the delivery method selected by the bidder.

## Bid Surety

Each bid submitted for a separate auction lot must be accompanied by a cashier's check or certified check in the amount of \$2,500.00 payable to the Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board, as a bid guarantee. For example, if a bidder wishes to submit bids for two different auction lots, this would require them to provide \$5,000.00 in total as a bid surety for such bids. However, each bidder will only be required to submit a maximum of one bid surety payment per auction lot, regardless of the total number of bids submitted by the bidder for the same auction lot.

Per the "Required Payment Method" section herein, the bid surety will be deducted from the payment amount the winning bidder will be required to submit. The bid surety of a winning bidder will be forfeited as liquidated damages if the bidder fails to comply with these Terms and Conditions.

The PLCB will deposit the bid surety of the highest responsive bidder for each auction lot. The bid surety of the second-highest bidder for each auction lot will be temporarily held but only deposited if the highest responsive bidder fails to submit full and timely bid payment. The bid surety of the third-highest bidder for each auction lot will also be temporarily held but only deposited if both the highest responsive bidder and the second-highest responsive bidder fail to submit full and timely bid payment. All other bid sureties will be returned to non-selected bidders via certified mail, return receipt requested, within 30 calendar days of bid opening. Bid sureties of the second-highest and third-highest responsive bidders for each auction lot will be returned by the PLCB within 30 calendar days of the PLCB's final determination that there are no grounds for forfeiture of said surety.

### **Bid Submittal Period**

The bid submittal period for each Product Auction will be set forth in a separate Product Auction announcement posted to the FW&GS website. Bids must be received on or before the final day of the applicable bid submission period, no later than 4 p.m. EDT. The PLCB reserves the right to delay, modify, or extend the applicable bid submittal period for any Product Auction, or for any specific auction lot, for any reason. Such changes will be communicated via the FW&GS website.

### **Bid Withdrawal**

Bidders may withdraw submitted bids by notifying the PLCB by email at [RA-LBProductAuction@pa.gov](mailto:RA-LBProductAuction@pa.gov) no later than 5 p.m. EDT on the last day of the applicable bid submittal period. The subject line of the email should say "Product Auction Bid Withdrawal", and the content of each bid withdrawal email should include the Product Auction and Lot Number(s) (e.g., Product Auction No 1., Lot No. 1) and the postmark date(s) or other information that clearly identifies the specific bid(s) to be withdrawn. The PLCB will make no claim against the bid surety for such timely withdrawn bids.

### **Minimum Bid Amount**

A minimum bid amount will be established for each auction lot offered for sale and will be specified in the corresponding Bid Sheet available on the FW&GS website. The PLCB has the sole discretion to set the minimum bid amount. Any submitted bid that is not equal to or greater than the minimum bid amount for the auction lot for which it is being submitted will be disqualified from consideration. Submission of a bid for less than the minimum bid amount may also result in the bidder being disqualified from participation in future Product Auctions.

### **Reserve Amount**

In addition to a minimum bid amount, the PLCB may impose an undisclosed reserve amount for any auction lot offered for sale in a Product Auction. The Bid Sheet will specify whether an auction lot is being offered with or without any reserve; however, under no circumstances will the specific dollar amount of any reserve be disclosed. If a reserve amount is set by the PLCB, and such reserve amount is not met, the PLCB has the discretion to withdraw the auction lot from the Product Auction and to make any product included in such auction lot available for sale in a subsequent Product Auction or through other sales channels.

### **Bid Opening and Tabulation**

All sealed bids submitted for a Product Auction will be opened by the PLCB at an undisclosed time and location, and each bid opening will be witnessed by an independent third-party. Bid openings will not be conducted publicly so that the names and personal purchase choices of individual consumers can be protected, as required by the Liquor Code.

Upon opening sealed bids for each auction lot, the PLCB will disqualify and remove any bids that are not in conformity with the bid submittal requirements set forth herein, including bids that are for less than the minimum bid amount.

The PLCB will then review the remaining bids for each auction lot to determine which eligible bid is the winning bid. Subject to the licensee bid provisions herein, the eligible bid that is for the highest dollar amount for each auction lot will be deemed the winning bid for that auction lot, as long as that amount exceeds the minimum bid amount and any reserve amount set by the PLCB.

In the event that two or more eligible bidders submit identical bid amounts (subject to the licensee bid provisions herein) that become the highest bid amount for any auction lot, the PLCB will notify each such bidder of the tie via email, confirming the amount of the tie bids and the number of tie bids. The tied bidders will each have the option to submit one best and final offer bid amount by emailing the PLCB at [RA-LBProductAuction@pa.gov](mailto:RA-LBProductAuction@pa.gov) within 48 hours of the date and time the email is sent by the PLCB. In the event of a further tie among best and final offers, the same process will be repeated until there is only one highest bid. Any incremental bid submitted during the best and final offer process used to resolve a tie bid situation must be at least \$250.00 more than the bidder's total aggregate prior bid amount.

Names and other personal information of individual consumers who submit bids in a Product Auction will not be publicly disclosed, as this information is protected from disclosure under the Liquor Code. Bid amounts will be publicly available following completion of the auction process, both for the winning bid amount and any eligible non-winning bids.

Because of the value of the products offered for sale through a Product Auction, and potential security risks, the names of

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licensee bidders, including a winning licensee bidder, will only be disclosed if the licensee bidder consents to the disclosure of that information.

The PLCB reserves the right to reject any and/or all bids received during a Product Auction, to waive technical defects or any informality in bids, and to accept or reject any part of any bid if, in its sole judgment, the best interest of the Commonwealth is thereby served.

### Winning Bidder

Once a winning bidder has been determined for each auction lot offered for sale through a Product Auction, the winning bidder will be notified via email and phone. Per instructions included in the email, the winning bidder will have 15 calendar days to select a Fine Wine & Good Spirits store for product pickup (see "Delivery of Product" herein) and complete the purchase of the auction lot for the full winning bid amount (plus applicable sales tax). If the winning bidder declines to purchase the auction lot or fails to timely submit full payment, the winning bidder will lose the right to purchase the auction lot and will forfeit their bid surety.

### Default to Next-Highest Bidder

In the event that the winning bidder for an auction lot offered for sale through a Product Auction declines to make the purchase or fails to timely submit full payment, the second-highest bidder will be deemed the winning bidder and given the opportunity to purchase the auction lot at the second-highest bid amount, as long as such bid amount is equal to or greater than the minimum bid amount and any reserve amount set by the PLCB. The second-highest bidder will have 15 calendar days to purchase the auction lot for the full amount of their winning bid (plus applicable sales tax). If this does not occur, the second-highest bidder will forfeit their bid surety.

If the second-highest bidder declines the purchase opportunity or fails to submit full payment within the allotted time period, the third-highest bidder will be deemed the winning bidder and given the opportunity to purchase the auction lot at the third-highest bid amount, so long as such bid amount is equal to or greater than the minimum bid amount and any reserve amount set by the PLCB. The third-highest bidder will have 15 calendar days to purchase the auction lot for the full amount of their winning bid (plus applicable sales tax). If this does not occur, the third-highest bidder will forfeit their bid surety.

If both the second-highest and third-highest bidders decline the purchase opportunity or fail to submit full payment within the allotted time periods, the auction lot will be withdrawn from the Product Auction.

### Required Payment Method

The only method of payment that will be accepted for purchases made as part of a Product Auction is Automated Clearing House ("ACH") debit. PLCB routing and bank information will be supplied to the winning bidder in order to facilitate the required ACH debit, and the winning bidder will be responsible for instructing their bank to transfer the appropriate amount to the identified PLCB account. The previously deposited bid surety amount of \$2,500.00 will be deducted from the payment amount that the winning bidder is required to submit via ACH debit to complete the purchase transaction.

### Sales Tax

All sales made by the PLCB are subject to the applicable state sales tax (currently 6 percent), as well as the applicable local sales tax for transactions occurring in Allegheny County (currently 1 percent) and Philadelphia (currently 2 percent).

### Notification of Non-Winning Bidders

Non-winning bidders will be notified at the conclusion of the Product Auction by return of each non-winning bidder's bid surety.

### Delivery of Product

Once full payment for an auction lot has been made by the winning bidder, the product(s) included in the auction lot will be hand delivered to a Fine Wine & Good Spirits store of the winning bidder's choice for customer pickup. In order for the PLCB to release the product(s) at the time of customer pickup, the winning bidder must be present and show valid identification that corresponds to the customer name and contact information associated with the winning bid. The winning bidder will also be required to sign

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a goods receipt acknowledging the salable condition of the product(s) being delivered and the acceptance of such product(s) without any further right of return. The PLCB will not release product(s) sold through a Product Auction to any party other than the winning bidder of the auction lot. Product(s) purchased as part of a Product Auction cannot be delivered to any location other than a Fine Wine & Good Spirits store.

### Broken, Damaged, or Lost Items

If an item is broken, damaged, or otherwise lost prior to the time of customer pickup — whether by a supplier, shipping company, or the PLCB — a winning bidder will only be entitled to receive reimbursement from the PLCB for the amount of monies actually paid to the PLCB relative to the purchase of the product, including the bid surety associated with the winning bid; no other reimbursement or compensation is guaranteed. Additionally, the PLCB is not responsible for and will not offer any compensation for any product breakage, damage, or loss that may occur after a winning bidder has taken possession of a product.

### No Returns or Exchanges

All sales of product through a Product Auction are final and the product is being sold “as is” without any guarantees as to product quality. The PLCB will not accept any returns or exchanges of product sold through a Product Auction after the product has been accepted by the winning bidder at the time of customer pickup.

### Incurring Costs

The PLCB is not liable for any cost incurred by anyone for any purpose relating to a Product Auction.

### Unlawful Acquisition of Product/Criminal Activity Prohibited

Items offered for sale to individual consumers are not intended for resale. The sale of alcoholic beverages without a license is strictly prohibited under Pennsylvania law. Moreover, retail licensees are required to purchase alcoholic beverage products directly from the PLCB or from certain other classes of licensees who are authorized by law to sell such products to them; retail licensees are not permitted to purchase or otherwise acquire alcoholic beverage products from individual consumers. Anyone suspected of violating applicable Pennsylvania laws governing alcoholic beverages will be reported to the Pennsylvania State Police Bureau of Liquor Control Enforcement.

Furthermore, anyone suspected of engaging in fraudulent or other criminal activity in connection with a Product Auction or otherwise will be reported to the appropriate law enforcement authorities.

Bid rigging activities or collusion between bidders in submitting bids or discouraging others in the submission of bids is strictly prohibited.

If any product(s) purchased as part of a Product Auction will be transported outside of Pennsylvania subsequent to customer pickup, it is the responsibility of the customer to determine what laws may apply in other states and to ensure compliance with the same.

### Disqualification from Participation

Anyone who violates these Terms and Conditions may be disqualified from participation in current or future Product Auctions. The PLCB also reserves the right to disqualify from participation in current or future Product Auctions any individual consumer or licensee suspected of engaging in bid rigging, collusion, or any other conduct intended to circumvent these Terms and Conditions or otherwise gain an unfair advantage over other bidders. The PLCB's decisions relative to such matters shall be final and non-appealable.