

AGREEMENT OF PURCHASE

This agreement is by and between _____ (“Institution”), and
_____ (“Seller”).

WHEREAS, the Seller desires to sell to the Institution a comprehensive collection of _____ (“Collection”), which is more particularly described in the attached inventory, **Attachment A**, which is incorporated herein by reference; and,

WHEREAS, the Institution deems it in its interest to acquire the Collection for custodial care and appropriate service to the public, and is agreeable to purchasing the Collection under the terms hereafter stated;

NOW, THEREFORE, the parties hereby agree as follows:

- 1) Purchase. The Seller agrees to sell, and the Institution agrees to buy, the Collection for a total purchase price of _____ (“Purchase Price”). The Institution shall initiate payment of the Purchase Price immediately after receipt and satisfactory inspection of the Collection.
- 2) Copyright.
 - a) The Seller hereby dedicates to the public domain such intellectual property as the Seller may own in the Collection. OR
 - b) The Seller hereby transfers and assigns to the Institution such intellectual property as the Seller may own in the Collection. OR
 - c) [The Seller hereby dedicates to the public domain such intellectual property as the Seller may own in the Collection] OR [The Seller hereby transfers and assigns to the Institution such intellectual property as the Seller may own in the Collection], subject to the following exceptions:

OR
- 3) The Seller reserves all rights in such intellectual property as the Seller may own in the Collection, subject to the uses identified in **Attachment B** hereto, which is incorporated herein by reference.
- 4) Shipping.
 - a) Costs. _____ will arrange and pay for shipping the Collection to the Institution.
 - b) Risk of Loss. The Seller bears responsibility for the Collection, including responsibility for the risk of loss of or damage to the Collection, until such time as the Collection arrives at the Institution. Additionally, the Seller is responsible for the purchase of private insurance in connection with shipment of the Collection, if desired by the Seller.

c) **Inspection and Acceptance.** After receipt of the Collection, the Institution will have 90 days in which to inspect the Collection to ensure that all the items listed or described on Attachment A are included, and that Collection is in the same condition as noted in the master packing list. A significant discrepancy in the inventory and/or condition of the Collection, if unresolved by the parties, is grounds for refusal of the Collection by the Institution and withholding of payment. A “significant discrepancy” is defined as _____. In the event that such a discrepancy exists, the Collection will be returned to the Seller at the Seller’s expense, unless the Seller cures the discrepancy no later than 90 days after the Institution provides written notice of the discrepancy, or such later time as may be agreed upon by the parties. The Institution will indicate its acceptance or rejection of the Collection in writing. The Institution will reduce payment by \$__ per rejected or missing item, or may, at the Institution’s discretion, accept as replacements different items from the Seller.

5) Warranties and Indemnifications.

a) **Warranty of Title.** The Seller represents and warrants that the Seller is the true and lawful owner of the property conveyed by this agreement and has full power to convey such property, and the title so conveyed is free, clear, and unencumbered.

b) **Authority to Sign Agreement.** The Seller hereby warrants that the Seller has the authority necessary to sign this agreement.

c) **Seller Indemnification.** The Seller agrees to indemnify and save harmless the Institution from and against any and all claims, lawsuits, actions, damages, loss, costs and expenses (including attorneys’ fees), and demands, by third parties, that in any manner result from the Seller’s breach of the Seller’s warranties and undertakings in this agreement. This indemnification binds the heirs, executors, administrators, and assigns of the Seller.

6) Publicity. Seller shall obtain prior written approval from the Institution prior to using the Institution’s trademarks or trade names, images or holdings (collectively, “Proprietary Marks”). This applies to all uses regardless of whether on the web, in print, or in any other media. Once approved, similar uses in the same context and format will not require additional approval. The contact at the Institution for these reviews is _____.

7) Notice. All notices required to be given hereunder shall be in writing and sent by _____ to _____. Notice is effective when given.

8) Miscellaneous.

- a) Nature of Relationship. Nothing in this agreement is intended or is to be deemed to create a partnership or joint venture between the Institution and the Seller.
- b) No waiver. No waiver or modification of any of the terms of this agreement will be valid unless in writing. No waiver by either party of a breach hereof or default hereunder will be deemed a waiver by such party of any subsequent breach or default.
- c) Severability. If any particular term, covenant, or provision of this agreement is determined to be invalid or unenforceable, the invalidity or unenforceability thereof will not affect the remaining provisions of this agreement, which will nevertheless remain in full force and effect.
- d) Force Majeure. Performance by either party under this agreement is excused during the period such performance is prevented or delayed by government restrictions (whether with or without valid jurisdiction), war or warlike activity, insurrection or civil disorder, or any other causes similar or dissimilar to the foregoing that are beyond the control of either party and are not foreseeable at the time the agreement is executed.
- e) Captions. Any captions or headings to the sections of this agreement are solely for the convenience of the parties hereto, are not part of this agreement, and are not to be used for the interpretation or determination of the validity hereof.
- f) Counterparts. This agreement may be executed in counterparts and either party hereto may execute any such counterpart, each of which when executed and delivered will be deemed to be an original and all of which counterparts taken together will constitute one and the same instrument.
- g) Assignment. Neither party hereto may assign this agreement without the written consent of the other, such consent not to be unreasonably withheld.
- h) Entire Agreement. This agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all pre-existing agreements and understandings between them with respect thereto.
- i) Choice of Law and Venue. This agreement is to be governed for all purposes by, and construed in accordance with the law of _____ and venue is to lie exclusively in the courts for _____.

The effective date of this agreement is the last date of signature below.

For the Institution

For the Seller

By: _____
NAME
ADDRESS

By: _____

_____ Date

_____ Date

SAMPLE

Contract Analyzer

Report Summary



Contract Analysis Result

Points of Concern:

THIS IS A SUMMARY OF PART: 1

Page 1 of 4 of the Agreement of Purchase outlines the agreement between the Institution and the Seller for the purchase of a comprehensive collection. Here are the identified risks and their respective risk levels:

1. Risk Level: Medium There is a risk associated with the Seller's ownership and transfer of intellectual property rights in the Collection. The options provided in section 2 of the agreement regarding copyright introduce potential uncertainties and need clarification.

2. Risk Level: Low The shipping costs are yet to be determined, and there may be potential financial implications. However, this risk level is low as it can be negotiated and agreed upon.

3. Risk Level: Low The risk of loss or damage to the Collection during shipment lies with the Seller until it arrives at the Institution. However, the Seller can purchase private insurance for added protection, if desired.

Please note that the risk level is subjective and may vary depending on the specific context and circumstances. It is recommended to seek legal advice for a comprehensive assessment of risks.

THIS IS A SUMMARY OF PART: 2

Risk Level: Medium

1. Inspection and Acceptance: The institution has 90 days to inspect the collection received. A significant discrepancy in the inventory or condition can result in refusal of the collection and withholding of payment. The definition of a "significant discrepancy" is not provided, which may lead to ambiguity and potential disputes.

2. Warranties and Indemnifications: a) Warranty of Title: The seller represents that they are the true owner of the property and have the authority to convey it. However,



Contract Analysis Result

Points of Concern:

there is a risk that the seller's representation may not be accurate, resulting in potential legal complications. b) Authority to Sign Agreement: Seller warrants that they have the necessary authority to sign the agreement. If this representation is false, it may invalidate the agreement. c) Seller Indemnification: The seller agrees to indemnify the institution for any claims resulting from the seller's breach of warranties. The extent of the indemnification and the potential costs involved are uncertain.

3. Publicity: The seller must obtain prior approval from the institution before using its trademarks or trade names. Failure to obtain approval may result in potential legal and reputational risks.

4. Notice: The method of sending notices is not specified, increasing the risk of miscommunication or delays in receiving important information.

5. Miscellaneous: No specific risks identified.

Please note that the risk level is subjective and may vary depending on the specific context and circumstances. It is recommended to seek legal advice for a comprehensive assessment of risks.

THIS IS A SUMMARY OF PART 3:

Risk Level: Low a) Nature of Relationship: There is a risk that the agreement may create a partnership or joint venture between the Institution and the Seller, which could result in additional obligations and liabilities.

Risk Level: Low b) No waiver: There is a risk that any waiver or modification of the terms of the agreement will not be valid unless it is in writing. This may restrict the flexibility of the parties in making changes to the contract.

Risk Level: Low c) Severability: There is a risk that if any term, covenant, or provision of the agreement is determined to be invalid or unenforceable, it may not affect the remaining provisions of the agreement. This could result in potential difficulties in enforcing certain provisions.

Risk Level: Medium d) Force Majeure: There is a risk that performance by either party may be excused if it is prevented or delayed by unforeseeable events beyond their



Contract Analysis Result

Points of Concern:

control. This provision may provide some flexibility but could also result in disruptions or delays in the performance of the contract.

Risk Level: Low e) Captions: There is a risk that any captions or headings are not part of the agreement and should not be used for interpretation or validity determination. This may result in confusion or misinterpretation of the agreement's content.

Risk Level: Low f) Counterparts: There is a risk that the agreement can be executed in multiple counterparts, but each counterpart should be considered an original. This provision ensures flexibility in the execution process.

Risk Level: Low g) Assignment: There is a risk that neither party can assign the agreement without the written consent of the other, which may limit the ability to transfer rights or obligations under the contract.

Risk Level: High h) Entire Agreement: There is a risk that the agreement supersedes all pre-existing agreements and understandings, potentially disregarding previous commitments or provisions that were not explicitly included in the new agreement.

Risk Level: Medium i) Choice of Law and Venue: There is a risk that the agreement is governed by a specific law and venue, which may not be favorable or convenient for one party.

Please note that the risk level is subjective and may vary depending on the specific context and circumstances. It is recommended to seek legal advice for a comprehensive assessment of risks.

Risk Level: Low

This part of the contract simply states the effective date of the agreement and the required information from the Institution and the Seller. There are no specific risks identified in this section.

As for whether this agreement will protect you as a buyer, it is important to review the entire contract to assess the extent of protection it offers. This particular section does not provide much indication of buyer protection, as it primarily focuses on the effective date and basic contact information. It is recommended to carefully



Contract Analysis Result

Points of Concern:

review the other parts of the contract, terms and conditions, warranties, and any applicable clauses related to buyer's rights and remedies. Seeking legal advice would be beneficial to fully understand the level of protection provided by this agreement.

Please note that the risk level is subjective and may vary depending on the specific context and circumstances. It is recommended to seek legal advice for a comprehensive assessment of risks.