



**DAVID R. MALTZ & CO., INC.**  
155 Terminal Drive, Plainview, N.Y. 11803 • (516) 349-7022 FAX: 349-0105



## TERMS AND CONDITIONS OF SALE

### In Re: Cricket II

1. These Terms and Conditions of Sale are promulgated in connection with the online-only auction sale (the "Auction Sale") of the Cricket II, documentation No. 255516 with assorted attachments including but not limited to the The Cricket II's Monster Fishing sail, the original fighting chair and foot rest, a case of 5 generic lifejackets, a generic life ring, a "Monster Mash" chum bucket, a plastic trash bucket that has the words "Monster Trash" on it and a compass.
2. The Auction Sale will begin on January 14, 2009 at 1:00 pm est and will end on February 4, 2009 at 1:00 pm est, thereafter (the "Sale Date") on the web site of David R. Maltz & Co., Inc. (the "Auctioneer"), and known as www.MaltzAuctions.com. If any bids are received within one hour of the scheduled close of bidding, the close of bidding shall be extended by one hour. The auction will conclude when no bids are entered for one hour prior to the scheduled conclusion of the auction.
3. The Seller of the Assets is Jeanette Mundus, the Executor of the Frank Mundus Estate (hereinafter "Seller").
4. In order to be permitted to bid on the Assets, prior to making a bid, each prospective bidder must deliver to the Auctioneer a certified check or wire transfer in the amount of Five Thousand Dollars (\$5,000.00) (the "Qualifying Deposit"), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing bidder as the Auctioneer determines to have made the highest bid for the Assets (the "Successful Bidder"). Within 48 hours after conclusion of the Auction Sale, the Successful Bidder shall deliver to the Auctioneer by certified check or wire transfer an amount equal to 10% of its successful bid minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit"). The Successful Bidder must execute, and thereby agree to be bound by (i) these Terms and Conditions of Sale, and (ii) a Memorandum of Sale. **All Qualifying Deposits will be returned to unsuccessful bidders within 48 hours of conclusion of the Auction.**
5. The Successful Bidder must pay the balance of the Purchase Price for the Assets (the difference between the amount of the successful bid and the Deposit) to the Seller, by certified check or wire transfer at the closing of title to the Assets (the "Closing"). The Successful Bidder must close title to the Assets ("Close") on a date that is no more than twenty (20) business days after the conclusion of the Auction Sale. Within 48 hours after conclusion of the Auction Sale, the Successful Bidder must execute and deliver to the Auctioneer a Memorandum of Sale substantially in the form annexed hereto.
6. In connection with the Closing and Closing Date, the Successful Bidder is hereby given notice that **Time is of the Essence Against the Successful Bidder and the failure of the Successful Bidder to close for any reason whatsoever (except as otherwise provided below) including its failure to pay the balance of the Purchase Price on the Closing Date, will result in the termination of the Successful Bidder's right to acquire the Assets under these Terms and Conditions of Sale and in the Deposit being forfeited and retained by the Seller.** The Successful Bidder shall be obligated to close title to the Assets and there is no contingency of any kind or nature that will permit the Successful Bidder to cancel or avoid its obligation to timely close the sale of the Assets under these Terms and Conditions of Sale. Further, the Successful Bidder shall have demonstrated, to the sole satisfaction of the Auctioneer evidence of its ability to timely conclude the transaction upon these Terms and Conditions of Sale. The Auctioneer reserves the right to reject any offeror, who in the sole discretion of the Auctioneer, the Auctioneer believes is not financially capable of consummating the purchase of the Assets. **Expenses incurred by the Successful Bidder or any competing bidder concerning any due diligence, shall be the sole responsibility of such bidder, and under no circumstances shall the Seller, Auctioneer or their professionals be responsible for, or pay, such expenses.**

7. The Seller, Auctioneer or their representatives have not made and do not make any representations or warranties whatsoever as to the value, use, enforceability, or any other matter or thing affecting or related to the Assets or this Auction Sale, which might be pertinent to the purchase of the Assets. Each bidder hereby expressly agrees and acknowledges that no such representations have been made.

8. The Assets are being sold **“AS IS” “WHERE IS”, “WITH ALL FAULTS”**, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and free and clear of any and all liens, claims, interests, and encumbrances of whatever kind or nature. By delivering their respective Qualifying Deposits, all bidders acknowledge that they have had the opportunity to investigate the Assets, all rights thereto, and laws, rules and regulations applicable thereto, and the form of the Coast Guard Bill of Sale that the Seller will execute to convey the Assets, and will rely solely thereon and on their own independent investigations of the Assets in making their bids. The Seller, Auctioneer nor their representatives make any representations or warranties with respect to the permissible uses of the Assets. All bidders acknowledge that they have conducted their own due diligence in connection with the Assets, and are not relying on any information provided by the Seller, Auctioneer or their representatives.

9. The Trustee shall convey the Assets by delivery of a Trustee’s Bill of Sale.

10. These Terms and Conditions of Sale will be posted on [www.MaltzAuctions.com](http://www.MaltzAuctions.com). In order to be permitted to bid, each prospective bidder must deliver to the Auctioneer, a signed copy of these Terms and Conditions of Sale. By making a bid for the Assets, all bidders will be deemed to have acknowledged having read these Terms and Conditions of Sale and to have agreed to be bound by them.

11. The Auction Sale of the Assets is subject to confirmation by Seller. Maltz shall notify the Successful Bidder whether the Seller confirms the successful bid within 48 hours of the conclusion of the Auction Sale.

12. Purchaser is solely responsible to pay Maltz the buyer’s premium in the amount of (15%) of the high bid at Auction Sale. The sum of the high bid and the buyer’s premium is defined as the “Purchase Price”.

13. The undersigned has read these Terms and Conditions of Sale and agrees to be bound by them.

Offeror:

X: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**A Signed Copy of These Terms & Conditions of Sale and a \$5,000 Certified Check Must be Sent to The Office of The Auctioneer to Register to Bid:**

David Constantino  
David R. Maltz & Co., Inc.  
155 Terminal Drive  
Plainview, NY 11803

Phone: 516.349.7022  
Email: [dconstantino@maltzauctions.com](mailto:dconstantino@maltzauctions.com)  
Web: [www.MaltzAuctions.com](http://www.MaltzAuctions.com)