

Bidding Procedures & Conditions of Sale

Definitions

“Assignment” means an IP Sale Agreement with recordable assignment documents attached thereto executed by the Seller in advance of the Live Auction for each Lot to be offered for sale at the Live Auction.

“Auctioneer” means an auctioneer retained by OT to conduct the Live Auction.

“Associate Auctioneer” means an Illinois licensed auctioneer under the direct supervision of, and sponsored by OT to conduct the Live Auction.

“Bidder(s)” means the person(s) or entity(ies) who are registered to bid at the Live Auction, have executed a Bidder Agreement with OT, and have met any other requirements as determined by OT.

“Bidder Registration Fee” means the bidder registration fee as published by OT and in effect on the date the Bidder delivers a Bidder Agreement to OT.

“Buyer(s)” means the person(s) or entity(ies) who are registered Bidders and have made the final winning bid for a Lot, as judged by the Auctioneer at the Live Auction; or the person(s) or entity(ties) who purchase a Lot at a Later Sale as acknowledged by OT. □

“Catalogue” means the printed or online auction catalogue distributed by OT prior to the Live Auction Date, as may be amended from time to time, that includes a description of Lots to be offered for sale at the Live Auction.

“Data Room” means a secure online data room, specific to each Lot and created and maintained by an independent third party, for the purpose of allowing Bidders to perform due diligence on such Lot.

“IP” means a patent, patent application, registered trademark, common law trademark, trademark application, registered copyright, unregistered copyright, copyright application, domain name, trade dress or other indicia of origin, together with the goodwill associated therewith.

“Indemnified Parties” means OT and its affiliates, the Auctioneer, Associate Auctioneer, Services Company, and their respective agents, directors, officers, employees, contractors and lawyers; and **“Indemnified Party”** means any one of the foregoing.

“Live Auction” means the July 23, 2009 live intellectual property auction sponsored by OT to take place in Chicago, Illinois.

“Live Auction Date” means July 23, 2009.

“Lot” means one or more items of IP and Technology grouped together for sale at the Live Auction as a collective and single lot by a Seller and which are exclusively consigned to OT.

“OT Parties” means Ocean Tomo Auctions, LLC, its affiliates and agents, and the Auctioneer.

“Reserve Amount” means the lowest acceptable (i.e., reserve) price Consignor is willing to sell a Lot for at the Live Auction.

“Seller/Consignor” means a person or entity which has executed a consignment agreement with OT, pursuant to which one or more Lots have been consigned to OT for sale at the Live Auction. The term “Seller” may be used interchangeably with the term “Consignor”.

“Services Company” means a company retained by OT to provide services in conduction of the Live Auction as unlicensed assistants and under the direct supervision of OT, along with such company’s officers, directors, employees, agents and representatives.

“Technology” means technical information or business information related to exploitation of the IP in a Lot including, for example, production or design specifications, prototypes, trade secrets, and know how, bills of material, sources of supply, customer lists, advertising and promotional materials, advertising plans and other information necessary to or reasonably associated with the business and products utilizing or represented by the IP.

“Term” means the time period from the effective date of a Bidder Agreement until three (3) months after the Live Auction Date; provided, however, that certain agreements, covenants and obligations shall survive the expiration of the Term.

Bidding Procedures

Registration Requirements

Before any participation in the Live Auction, OT must receive the Bidder Registration Fee and the following forms in the Bidder Registration Package:

- (a) a Bidder Agreement;
- (b) if Bidder is a Telephone Bidder or Proxy Bidder, a completed Alternative Bid Form;
- (c) a completed Bidder Registration Form;
- (d) a completed Bank Letter of Guarantee (unless other acceptable credit is established); and
- (e) if Bidder is acting as an agent, a written confirmation of Bidder’s authority from the Principal.

Upon purchasing the Bidder Registration Package through the OT web site, Bidder will receive the Bidder Agreement and all other necessary documentation to become a registered Bidder. The Bidder

Registration Package is also available from any OT professional. Upon payment of the Bidder Registration Fee and return of a signed Bidder Agreement, OT will provide Bidder with a unique password and appropriate instructions for access to the Data Rooms for performing due diligence.

Unless already received by Bidder, upon complete registration, OT will deliver to Bidder a Catalogue and confirmation of admission for two to the Live Auction and associated events.

Bidding In Person

OT will deliver to Bidder a paddle and paddle number at the site of the Live Auction on the Live Auction Date, provided Bidder's registration has been completed and approved. Bidder may bid in person at the Live Auction by raising the assigned paddle for acknowledgment by the Auctioneer.

Successful Bidders will be identified by paddle number only.

Telephone Bidding

A Representative will enter bids pursuant to telephone instructions from a Telephone Bidder. Not less than 5 days prior to the Live Auction Date, a Telephone Bidder must provide in writing to OT contact information, including codes for identity confirmation, and the Lot(s) on which the Telephone Bidder wishes to bid. OT will call the number provided shortly before the identified Lot(s) comes up for bid and will bid at the Live Auction as instructed on the telephone by the Telephone Bidder. OT assumes no responsibility for any failure to connect by telephone. Provided the Representative follows the telephone instructions of the Telephone Bidder, neither OT nor the Representative will be liable for any damages caused by success or failure in bidding on the identified Lot(s), and the Telephone Bidder hereby waives any claim against OT and its Representative.

Internet Bidding

An OT representative shall provide each Internet Bidder with instructions and a unique paddle or other identifying number of indica for making bids at the Live Auction by internet. OT assumes no responsibility for any failure to connect by telephone or for any failures or delay in the internet, or the software and hardware utilized by either OT or Bidder for placing and receiving bids, or any failure to faithfully execute internet bids. Neither OT nor their representative will be liable for any damages caused by success or failure in bidding on the identified Lot(s), and Bidder hereby waives any claim against OT and its representative.

Currency Converter

OT may provide a currency converter during the Auction as an accommodation to Bidders who wish to follow the bidding in foreign currencies. OT will not be liable for any errors or omissions in connection therewith and the Bidder accepts and assumes all responsibility and liability for any errors or omissions relating thereto and for calculating any conversion rates.

Bidding Disputes

The Auctioneer's decision as to the winning bid and with respect to any dispute between bidders will be final. The Auctioneer, in its sole discretion, may choose to continue bidding, cancel a bid, restart

bidding or cancel bidding as to a particular Lot. The Auctioneer's records, whether audio, video or written, will be conclusive.

The Auctioneer may choose not to accept bids that are in excess of the amount specified in Bidder's Bank Letter of Guarantee or established credit. No Indemnified Party will be liable for any damage arising from acceptance of a bid in excess of Bidder's Bank Letter of Guarantee. If such bid is the winning bid, Bidder shall be liable for the entire amount in accordance with the terms of the Bidder Agreement notwithstanding that the amount is greater than that specified in the Bank Letter of Guarantee.

OT's Rights

OT reserves the right, in its sole discretion, to refuse to issue a paddle number and paddle to anyone. If OT refuses to issue a paddle number and paddle to Bidder, or for any other reason prevents Bidder from participating in the Live Auction, OT shall refund to Bidder the Bidder Registration Fee which shall be complete satisfaction for any alleged damage caused by such refusal and will be Bidder's sole and exclusive remedy. In no event shall OT be liable to Bidder for any direct, indirect or consequential damages arising from any such actions.

OT reserves the right, in its sole discretion, to: (a) withdraw any Lot at any time prior to its auction for any reason; (b) cancel the Live Auction for any reason; and (c) reject any bid during the Live Auction. Bidder's sole remedy for any such actions will be refund of the Bidder Registration Fee.

In no event will OT be liable to Bidder for any direct, indirect or consequential damages arising from any such actions.

OT reserves the right to change the Live Auction Date to any date or place within 30 days after the Live Auction Date. OT will provide Bidder notice of any such change. If for any reason the Live Auction does not occur on the Live Auction Date or within 30 days thereafter, OT shall have the right to terminate a Bidder Agreement upon notice to Bidder, without any liability or obligation to Bidder, other than refund of the Bidder Registration Fee within 30 days after such notice, and in no event shall OT be responsible or liable for any damages or claims of any kind relating to such termination, including, without limitation, any lost profit, appreciation or other claim.

Due Diligence Procedures

There are a variety of ways in which prospective buyers may conduct due diligence related to the IP listed for sale in the auction.

Catalogue

The auction catalogue with Lot descriptions will include the following information about the IP listed for sale:

Patent Numbers/Trademarks/Copyrights/Domain Names
Seller
Brief description of property being sold
Sample forward citation analysis
Potential licensees

The auction catalogue may be viewed online at www.OceanTomoAuctions.com or a hardcopy may be requested by contacting Ocean Tomo Auctions at 312.377.4851 or auctions@oceantomo.com.

Online Secure Data Room

Qualified Bidders will have access to a password-protected online secure data room that will contain detailed information regarding the intellectual property and related items for sale.

One-to-One Meetings

Potential Bidders will have the option of arranging private due diligence meetings or conference calls with the Seller prior to the event and during the event. Prior to the event, potential Bidders interested in contacting a seller should arrange such conference calls through Ocean Tomo to protect anonymity. At the Live Auction event, please check the registration desk for a representative who will arrange the meeting if not already scheduled.

These meetings will provide the potential Bidder with the opportunity to interact with the seller and/or corporate representative and conclude any remaining due diligence.

If you would like to request a diligence meeting/conference call with a seller please contact Ocean Tomo via email at auctions@oceantomo.com.

Bidder Protection

Confidential Due Diligence

Bidders may utilize the online secure data room that will be maintained by an independent third-party to assist their due diligence process. During the auction event, Ocean Tomo will make available a due diligence library consisting of documents provided by the seller for each Lot. Registered Bidders will have access to this diligence library.

Blind Bidding

Bidders will be identified by paddle number only. For those Bidders that prefer “double-blind” anonymity, an Ocean Tomo representative may execute bids on your behalf in accordance with your written instructions.

Seller Agreements

Each Seller will enter into a consignment contract. As a condition of participation, each Seller and Bidder agree not to use the participation of any registered Seller or Bidder as evidence in any action seeking to enforce a patent, copyright or trademark for any purpose.

Conditions of Sale

The Sellers' Assignment, the Important Notice for Buyers, Bidding Procedures, Registration Form and Alternative Bid Form, and these Conditions of Sale (collectively, the "**Conditions**"), constitute OT's and each Seller's entire agreement with the Bidder with respect to the Lots offered for sale at the Live Auction. By registering to bid or placing a bid at the Live Auction, whether in person, through an agent or representative, by internet bid or by telephone bid, Bidder accepts the Conditions and enters into a legally binding, enforceable contract with OT and with each Seller on whose Lot(s) Bidder places a bid.

Any announcements made by OT at the Live Auction site, whether written or verbal, shall supersede any prior published information, regardless of whether such announcement is inconsistent with the Conditions. If Bidder continues to participate in the Live Auction after such announcement, Bidder will be deemed to have agreed to amendment of the Conditions in accordance with such announcement. Bidder hereby acknowledges and agrees that OT may have a proprietary interest in one or more Lots, and that such interests will be identified prior to the bidding on any such Lot(s). All descriptions of the Lots within the Catalogue are based upon information provided to OT by the Sellers. OT has not undertaken any independent investigation of the information provided to OT by the Sellers. All written or oral descriptions of any Lot, including but not limited to descriptions in the Catalogue, are statements of opinion by OT and may not be relied upon by Bidder. All Lots are sold by OT "AS IS" and Bidder acknowledges and agrees that no description of any Lot shall be deemed a covenant, representation or warranty of or by OT with regard to the Lot.

OT makes no representations or warranties of any kind to Bidder with respect to any Lot or its value or selling price.

All representations and warranties with respect to title, or any liens or encumbrances thereon, to any Lot will be made by the Seller. It is the Bidder's responsibility to examine any documentation pertaining to title prior to the Live Auction. OT disclaims any guarantee that any or all title documentation is either complete or accurate, or will satisfy the requirements of any jurisdiction, and OT accepts no liability in connection therewith.

Bidder is solely responsible for carrying out any due diligence necessary to satisfy Bidder as to title to and condition of any Lot offered for sale.

Any information contained within the Lot descriptions regarding the rights of first refusals, right-to-match, encumbrances, other licensing rights, or any other information which may affect the ultimate value or status of any IP within a Lot, or that otherwise may be of material importance to a potential

purchaser is intended to only be representative. Such information may not be complete, accurate, up-to-date or may fail to contain all material facts. Registered Bidders, Catalogue purchasers, and other third parties may not rely on such information, and must conduct their own investigation of any and all such information through the Data Room, independent due diligence, contact with the Sellers and other sources as they shall deem appropriate.

Any information contained within the Lot descriptions regarding Technology is intended to only be representative of such collateral material and other IP and non-IP assets may be included with the particular Lot. Any list in the Catalogue is not intended to be exhaustive. Registered Bidders, Catalogue purchasers and other third parties must check the Data Rooms for a complete list of all collateral materials to be included for sale with the Lot.

OT has requested each Seller to provide documents and related information relevant to each of Seller's Lots that, in Seller's view, are appropriate for due diligence by Bidder. Such documents and information received by OT from Seller may be made available in the Data Rooms.

OT will facilitate individual, pre-arranged meetings (either in person or telephonically) between Bidder and any Seller for due diligence purposes before the Live Auction. Other than making available to Bidder any documents provided to OT by Seller and facilitating such due diligence meetings, OT has no obligation to Bidder in conjunction with Bidder's performance of due diligence of any Lots.

OT has relied solely on the information provided by the Seller, has not conducted any due diligence, shall not be obligated to conduct any due diligence and has not verified the accuracy of any documents or information provided by the Seller. OT EXPRESSLY DISCLAIMS, AND BIDDER IS NOT RELYING ON OT FOR ANY REPRESENTATION OR WARRANTY REGARDING TITLE TO, THE VALIDITY OR SCOPE OF, OR THE ENFORCEABILITY OF ANY CONSIGNED IP LOT. BIDDER ASSUMES ALL RISK ASSOCIATED WITH FAILURE TO CONDUCT ITS OWN DUE DILIGENCE.

Unless otherwise specified in the Catalogue or by announcement at the Live Auction, all Lots are subject to a Reserve Amount set by the Seller. If, at the close of bidding, the highest bid is less than the Reserve Amount, the Lot will be withdrawn and not sold.

No Lot will be accepted for auction unless the Seller has executed a consignment agreement. In addition to consigning the Lots to OT for auction, in the consignment agreement and Assignment, Seller will represent possession of title to the Lots and will agree not to use any Bidder's participation in the Live Auction or the related diligence activities as evidence in any proceeding for enforcement of any item of IP within such Lots. A copy of each Seller's Assignment, which is an exhibit to the consignment agreement, will be available in the Data Room associated with that Seller's Lot. The terms and conditions of each Seller's Assignment are incorporated herein by reference, and Bidder is responsible for reviewing such terms and conditions with respect to any Lot on which Bidder wishes to bid. SELLER'S ASSIGNMENT MAY CONTAIN IMPORTANT ADDITIONAL CONDITIONS OF SALE (E.G., RESERVATION OF A NON-EXCLUSIVE LICENSE, ETC.). BIDDER, AS PART OF ITS DUE DILIGENCE,

SHOULD REVIEW THE SPECIFIC SELLER'S ASSIGNMENT FOR THE CONSIGNED IP LOT IN WHICH THEY ARE INTERESTED IN BIDDING.

A contract of sale between winning Bidder (i.e. Buyer) and Seller will exist as to a Lot upon fall of the Auctioneer's hammer and announcement of Buyer's paddle number as having made the winning bid. Subject only to Buyer's compliance with the Conditions and the specific payment obligations, title to the Lot will pass to Buyer upon fall of the Auctioneer's hammer. Buyer hereby agrees to assume all responsibility for the Lot at that time. All sales are final.

OT is not a party to the contract between Seller and Buyer and will not be liable for any breach of that contract. OT will not be liable for any expiration, cancellation, termination or other impairment to or loss of any Lot (or the legal rights therein) either before or after title passes to Buyer.

Upon fall of the Auctioneer's hammer and announcement of Buyer's paddle number as having made the winning bid, Buyer is obligated to pay to OT the bid amount plus a 10% premium in addition to any applicable taxes or duties. Buyer must pay the full amount to OT within ten (10) calendar days after receiving an auction invoice from OT or Services Company following close of the Live Auction. All payments must be by certified bank check, cashier's check or wire transfer. Specific payment instructions will be provided to the Buyer at the Live Auction.

OT may impose 12% interest per annum, or the maximum allowed by law, on any late payment. No Assignment or other documents evidencing transfer of title of any Lot will be released to Buyer until OT has received full payment in good, cleared funds.

Upon receipt of payment in full from Buyer, OT shall complete the applicable Assignment(s) for the Lot(s) submitted by Seller pursuant to the applicable Seller's consignment agreement by inserting Buyer's name and the effective date, and will thereafter deliver the completed Assignment(s) to the Buyer.

If Buyer purchases any Lot by making the highest bid and then fails to comply with payment obligations, OT, in addition to all other available legal remedies, may: (a) hold the defaulting Buyer liable for the purchase price; (b) cancel or rescind the sale; (c) resell the Lot without reserve either privately or at a public auction on seven day's notice to Buyer, and hold Buyer liable for any deficiency between the purchase price (plus all expenses incurred by OT as a result of Buyer's non-compliance) and the price received upon the resale; or (d) take any other action that OT, in its sole discretion, deems necessary. If Buyer has purchased more than one Lot and OT receives payments that are less than the total due for all Lots purchased, OT may apply the received funds toward payment of whichever Lot it determines to be appropriate in its sole discretion.

If Buyer fails to comply with any of the Conditions, Buyer is deemed to and hereby does grant OT a security interest in all Lots that Bidder purchased, and OT may retain the Assignment for the Lot in OT's possession as collateral security for Buyer's payment obligation to OT.

OT may, in its sole discretion, cancel or rescind the sale of any Lot if it believes that the offering of the Lot for sale has subjected or may subject any Indemnified Party, Seller, or any of their successors or privies to any liability, including, without limitation, any reasonable and good faith claim by the purchaser of the Lot, any third-party claim relating to title to the Lot, or any breach of Seller's representations, warranties, covenants or otherwise.

In such event, OT may refund or credit the purchase price to Buyer. If OT has already remitted to Seller any proceeds from the sale, OT will seek a refund from Seller. Buyer agrees to accept from OT or Seller a refund of all amounts paid as full and final settlement of any and all claims and actions against OT and/or Seller. OT's right to rescind or cancel the sale shall survive for 90 days after the sale of the subject Lot from Seller to Buyer.

If, at any time after the Live Auction Date and during the Term, Bidder, its successors, assigns, subsidiaries, agents or other affiliated entities, directly or indirectly either purchases, licenses or otherwise in any manner receives the benefit of any Lot (or any item of IP therein) from any entity (a "**Later Sale**"), OT shall treat such Later Sale as a sale to Bidder at the Live Auction. Thus, Bidder agrees to pay to OT an amount equal to 10% of the proceeds or, if no proceeds, 10% of the value to Bidder from such Later Sale, plus any applicable taxes and fees. Bidder further agrees that OT may seek 15% of such proceeds or value from such person or entity that was a Seller, or if they share/shared common principals with, or was/were an affiliate of, a Seller.

Buyer will be responsible for recording the transfer of any IP rights purchased at the Live Auction with the U.S. Patent and Trademark Office, U.S. Copyright Office, authorized U.S. registrars, and foreign patent, trademark, copyright, and registrar offices around the world, as applicable. With respect to any Lots containing domains, OT will transfer such domain to Buyer on an "AS IS, WHERE IS" basis, such that OT will direct the Buyer to create an account at the registrar through which the domain is currently registered at the time of sale to effect an ownership transfer. Should Buyer desire to subsequently transfer the domain to a different registrar, Buyer may do so at their own expense.

Buyer will be responsible for obtaining and paying for any permits or licenses necessary to export from the United States anything purchased at the Live Auction. OT makes no representation that any permit or license is needed or can be obtained.

Bidder agrees that in no event shall OT or the Auctioneer be liable for, nor shall Bidder seek, any increased, exemplary, consequential, incidental or special damages relating in any way to the Auction including, without limitation, any breach or failure to perform by OT, and Bidder hereby waives any and all of the foregoing.

The Auction shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to principles of conflicts of laws. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHTS SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. Any legal action or proceeding arising out of or in connection with the Auction shall be brought in the federal or state

courts in San Francisco County, California. The prevailing party shall recover its reasonable attorneys' fees, and costs from the opposing party.

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