

# Auction Terms and Conditions

## 1. The Auction

**1.1** By authorizing an auction (the "Authorization") or registering as a bidder with IP Auctions GmbH, Tölzer Str. 5, 82031 Grünwald for submitting bids, the participants in auctions organized by IP Auctions GmbH expressly accept these Auction Terms and Conditions for any and all business activities in accordance and in connection with the auction of the intellectual property right. These terms and conditions are published in the auction catalogs, on the Internet and in the business offices of IP Auctions GmbH and apply equally to all auction participants.

**1.2** In addition to the auctioning of intellectual property rights, license agreements may also be auctioned. The term "intellectual property rights", as used in these Auction Terms and Conditions, also applies to license agreements, if the context permits.

**1.3** The auctioning of intellectual property rights occurs voluntarily on the basis of the Authorization by the client. IP Auctions GmbH auctions the intellectual property rights on a commission basis in its own name and for the account of the authorizing person ("Authorizing Principal"). The auction is public within the meaning of § 383 para. 3 sentence 1 German Civil Code [*Bürgerliches Gesetzbuch* or "BGB"].

## 2. Conduct of the Auction

### 2.1 *Issuing bidder numbers*

**2.1.1** During the auction, only those bids will be considered for which a bidder with a valid bidder number has submitted the bid after admission to the auction.

**2.1.2** An application for a bidder number may be filed with IP AUCTIONS GMBH by presenting a valid personal identity card or a suitable travel document and after signing the Terms and Conditions of Bidding. In the case of bidders who are still unknown to IP AUCTIONS GMBH at the beginning of the auction, suitable proof of identity must be presented by the last business day prior to the day of the auction and no later than 24 hours prior to the beginning of the auction, since otherwise an examination and the assignment of bidder numbers will no longer be possible.

**2.1.3** Bidder numbers will be issued only if, upon application, proof from a bank is provided showing sufficient account funds or a credit line, which certifies that the bidder has a certain quantitative level of financial capability. The level of the proven coverage will determine the intellectual property rights on which the bidder may bid. As a rule, bids will be rejected if the bidding price is not covered by the bidder's proven credit standing.

**2.1.4** The bidder may prove its credit standing at various quantitative levels. Proof of credit standing may be established at either EUR 50,000.- (fifty-thousand), EUR 100,000.- (one-hundred thousand), EUR 250,000.- (two-hundred and fifty thousand), EUR 500,000.- (five-hundred thousand), EUR 1,000,000.- (one million) or can be unlimited. Bank guarantees must be irrevocable, unconditional, paid upon first request and valid at least until the follow-up sale phase has ended pursuant to **Subsection 8.2** below.

### 2.2 *Opening bids*

#### 2.2.1 *"English" Auction*

**2.2.1.1** The price will be set by the auctioneer during the opening bid solicitation in consensus with the Authorizing Principal. If the Authorizing Principle does not set an opening bid price, then the bidding for the intellectual

property right will normally open at € 25,000.- (twenty-five thousand). Lower opening bids are the exception and are made only if the Authorizing Principal is a university or comparable research institution and has requested a lower opening bid solicitation from IP AUCTIONS GMBH.

**2.2.1.2** The bidding is ordinarily increased in approx. 10% increments over the previous bid in Euros.

## **2.2.2** *"Dutch" Auction*

**2.2.2.1** At the explicit request of the Authorizing Principal and subject to the prior announcement of this type of auction, IP AUCTIONS GMBH may also auction the intellectual property right through a so-called "Dutch" auction. In this event, the auctioneer opens the bidding with the price set by the Authorizing Principal at the time of the Authorization. If no bid is made at this price, then the auctioneer reduces the price until a bid is submitted. The first bidder is awarded the intellectual property right. Otherwise, the same provisions, which apply to an "English" auction, also apply to the "Dutch" auction.

**2.2.2.2** If no bid is made after the relevant price is solicited, then the next price will typically be approx. 5% below the last-mentioned price in Euros.

## **2.3** *No registration of the intellectual property right for the auction*

IP AUCTIONS GMBH reserves the right not to register the intellectual property right for the auction if legitimate reasons for such refusal exist, especially if the Authorizing Principal has grossly breached the provisions of these Auction Terms and Conditions. In this case, IP AUCTIONS GMBH may one more time include the intellectual property right at the next scheduled auction, if the reasons for the refusal no longer exist.

## **2.4** *Catalogue numbers*

During the auction, IP AUCTIONS GMBH reserves the right to consolidate, divide or withdraw numbers in the catalogue or, if special reasons exist, to even solicit bidding outside of the stipulated sequence.

## **2.5** *Bidding*

### **2.5.1** *Bids by persons in attendance*

As a general rule, bids are submitted orally by bidders in attendance and using the bidder number.

### **2.5.2** *Bids by persons not in attendance*

Bids may also be submitted in writing or by telephone. Telephonic and written bids will be considered, only if they contain exact personal information about the bidder in accordance with the requirements under **Subsection 2.1** and only if the respective bidder has been admitted to the auction by IP AUCTIONS GMBH after an individual examination and has received a bidder number.

**2.5.2.1** The intellectual property right must be identified exactly by stating the catalogue number and the catalogue designation. In case of any uncertainty, the designation in the catalogue is determinative. The bidder bears the consequences of any lack of clarity.

**2.5.2.2** Bids submitted in the absence of the bidder, must in any event indicate the successful bid award price for the intellectual property right (successful bid amount excluding the premium and applicable value added tax prescribed by law).

**2.5.2.3** Written bids will be used by IP AUCTIONS GMBH only in the amount, which is necessary for outbidding another submitted bid.

**2.5.2.4** In the case of *telephonic* bids, the bidder declares its consent to the recordation of such calls by IP AUCTIONS GMBH. Telephonic bids may be submitted by IP AUCTIONS GMBH during live auctions only. Telephonic bids will be treated as bids from within the auction room.

**2.5.2.5** The *written bid* must be signed by the bidder. Written bids are deemed to be bids that have already been submitted in the auction.

**2.5.2.6** In connection with the submission of absentee bids, IP AUCTIONS GMBH does not guarantee that telecommunications connections will be established or maintained and that no transmission errors will occur. Furthermore, IP AUCTIONS GMBH is also not liable for processing of bids from absentee parties, unless IP AUCTIONS GMBH or its employees acted intentionally or in a grossly negligent manner.

**2.5.2.7** For purposes of awarding the successful bid, bids made by absentee parties will be treated the same as bids made by parties in attendance. More specifically, the provisions under German civil law relating to long-distance sales (§§ 312 b to 312 d BGB) do not apply.

**2.5.2.8** Bids, which are made by persons in attendance and which are received at IP AUCTIONS GMBH by the time set forth in **Subsection 2.1**, will be deemed to be at the same time a submission of an offer for entering into a purchase contract in a follow-up sale, assuming that the intellectual property right even enters a follow-up sale stage. A purchase contract for the intellectual property right in the follow-up sale will not be formed until IP AUCTIONS GMBH accepts the offer.

### **2.5.3** *Bids for third parties*

All bids are deemed to have been submitted by the bidder in its own name and for its own account. If a bidder wishes to submit a bid in the name of a third party, then the bidder must disclose this fact to IP AUCTIONS GMBH prior to the beginning of the auction in accordance with the requirements under **Subsection 2.1**, both for the bidder as well as for the third party and must submit a written power of attorney from the third party. If the bidder does not disclose the fact that it is acting as a representative, then the bidder will be treated in the case of a successful bid award as if the contract had been formed directly with the bidder.

### **2.5.4** *Own bids*

The Authorizing Principal is not permitted to submit its own bids. This prohibition also applies to bids, which are submitted by third parties for intellectual property rights of the Authorizing Principal while concealing the relationship to the Authorizing Principal. If the Authorizing Principal or such third party nonetheless bids and receives the awarded sale, then the Authorizing Principal or the third party will be treated the same as any other bidder. IP AUCTIONS GMBH reserves the right to reject any own bid and/or to refuse to award the sale to the own bidder.

### **2.5.5** *No bids subject to reservation; no withdrawal of bids*

**2.5.5.1** Any bids submitted subject to a reservation are not valid and will not be considered.

**2.5.5.2** Once submitted, bids cannot be withdrawn.

### **2.5.6** *Rejection of bids*

**2.5.6.1** IP AUCTIONS GMBH reserves the right to reject a bid and not to consider it in the course of an auction if legitimate reasons for the rejection exist. This applies above all, if the bidder has not proven its identity pursuant to **Subsection 2.1** and/or provided sufficient security to cover the value of the bid and when a bid is noticeably not serious. The bidder cannot assert any claims in this regard. IP AUCTIONS GMBH agrees to inform the rejected bidder about the reasons for the rejection without undue delay after the rejection.

**2.5.6.2** IP AUCTIONS GMBH reserves the right to exclude bidders from the live auction and/or future auctions, specifically if these bidders have grossly breached these Auction Terms and Conditions.

### **2.5.7** *Expiration of bids*

A bid expires when rejected by IP AUCTIONS GMBH and/or when the auction of the intellectual property right is concluded without a successful bid award and/or IP AUCTIONS GMBH opens a new round of bidding for the intellectual property right. A bid does not expire as a result of a subsequent, higher invalid bid.

## **2.6 Simultaneous and/or identical bids**

**2.6.1** If more than one identical written bid is received by IP AUCTIONS GMBH for the same intellectual property right, then the bidder, whose bid was first received at IP AUCTIONS GMBH or of which the auctioneer first obtained knowledge, will be awarded the auction sale, provided that there is no higher bid present or submitted.

**2.6.2** If there is any uncertainty about which of the two identical bids for the same intellectual property right was first submitted, then the decision will be made by drawing lots. Lots will be drawn by a notary, who is in attendance during the auction process, immediately upon the occurrence of such uncertainty.

## **2.7 Successful bid award [Zuschlag]**

**2.7.1** Intellectual property rights authorized for auction will be awarded to the highest bidder if no other higher bid is made after the auctioneer has called for a higher bid three times. In the case of a "Dutch" auction pursuant to **Subsection 2.2.2**, the intellectual property will be awarded to the first bidder without any further waiting.

**2.7.2** The auctioneer may award the auction sale subject to a reservation. The highest bidder remains bound to its bid for one month after the successful bid award if an award is made under reservation. The successful bid award granted under a reservation is effective only if IP AUCTIONS GMBH confirms the bid in writing within one month after the auction by submitting a corresponding invoice. If the award is made under a reservation because a reserve price stipulated by an Authorizing Principal was not reached, then the Authorizing Principal must promptly notify IP AUCTIONS GMBH in writing about the Authorizing Principal's decision regarding the reservation, and such notice must be made no later within 14 days after the successful bid award.

**2.7.3** IP AUCTIONS GMBH may refuse to award the auction sale if the highest bid was submitted in violation of **Subsection 2.5** and the requirements under **Subsection 2.1** have not been met, especially in the case of an unclear identity of the bidder and/or a lack of adequate security. If an award is rejected, then the previous bid remains in effect.

**2.7.4** A previously made successful bid award may be withdrawn by IP AUCTIONS GMBH if IP AUCTIONS GMBH mistakenly overlooked a timely submitted bid and the overlooked bidder complains about this to the auctioneer without undue delay after the successful bid has been awarded. In this case, the previous bid award will become invalid.

**2.7.5** When an intellectual property right is auctioned, the purchase contract will be formed between the highest bidder and the Authorizing Principal once the successful bid is awarded. The successful bid award obligates the highest bidder to accept the intellectual property right and to pay the purchase price and obligates the Authorizing Principal to deliver and assign the intellectual property right.

**2.7.6** When an intellectual property right is auctioned, all risks pass to the purchaser the moment the successful bid is awarded.

**2.7.7** When license agreements are auctioned, a license agreement between the highest bidder and the Authorizing Principal will be formed the moment the successful bid is awarded and such agreement will be in accordance with the conditions, which the Authorizing Principal disclosed in the data room prior to the auction. IP AUCTIONS GMBH is not responsible for the further course and content of the license relationship.

## **2.8 No right to demand execution of the auction**

Neither Authorizing Principal nor Bidder shall have the right to demand execution of the auction. IP AUCTIONS GMBH reserves the right to have the auction executed by a competent third party.

## **3. Purchase Price or License Price**

**3.1** The purchase price or the license price consists of the successful bid price awarded plus the premium, the statutory value added tax (as amended from time to time) charged on the purchase price or license price and on the premium, as well as other taxes prescribed by law.

**3.2** For each intellectual property right or, if more than one intellectual property right is offered in a pool, then for each successful bid award, IP AUCTIONS GMBH will charge the purchaser per award a flat-fee premium in the amount of 10% of the successful bid price awarded plus the applicable statutory value added tax (as amended from time to time), which is charged on this amount.

#### **4. Payment of the Purchase Price or License Price; No Set-off**

**4.1** The payment of the total amount calculated pursuant to **Section 3** shall be made to IP AUCTIONS GMBH in Euros. Any losses resulting from currency exchange rates on payments in a foreign currency must be borne by the purchaser.

**4.2** Checks will be accepted only on the basis of an individual agreement and only up to an amount of € 50,000.- (fifty-thousand), provided that the purchaser presents an enforceable bank guaranty [*Bankbürgschaft*] for the issued amount in accordance with the requirements of **Subsection 2.1**. In any event, checks are accepted subject to the condition that there are sufficient funds to cover their payment [*erfüllungshalber*]. All costs in connection with the payment, such as taxes, wire transfer fees or the honoring of the check must be borne by the purchaser.

**4.3** The purchaser may not exercise a right of set-off against IP AUCTIONS GMBH with claims under a previous business relationship unless such claims are undisputed or have been reduced to final judgment. To the extent that the purchaser qualifies as a full merchant [*Vollkaufmann*], the purchaser waives its rights under §§ 273, 320 and 322 of the BGB.

#### **5. Due Date, Default and Rescission**

**5.1** The purchase price or the license price is due upon successful bid award. Notwithstanding the fact that the purchase price is immediately due, the purchaser will be in default if IP AUCTIONS GMBH has not received the purchase price or license price in the form of an unconditional credit to its bank account within 14 days after the end of the auction. If the successful bid award was granted under a reservation according to **Subsection 2.7.2**, the purchase price is due only after the final positive decision of the Authorizing Principle regarding the sale.

**5.2** In the case of payment default, default interest will be charged. For private purchaser, the interest rate is 5 percentage points above the base interest rate, and in the case of commercial purchaser it is 8 percentage points above the respective base interest rate of the European Central Bank.

#### **6. Reservation of Title**

When intellectual property rights are auctioned, title to the awarded intellectual property right will pass to the purchaser only when all claims in connection with the auction have been paid to the business accounts of IP AUCTIONS GMBH in accordance with **Subsections 3 and 4**.

#### **7. Liability of IP AUCTIONS GMBH**

##### **7.1** *General*

IP AUCTIONS GMBH mediates the contact between the purchaser and the Authorizing Principal when conducting an auction. IP AUCTIONS GMBH does not act as an advisor to the Authorizing Principal or the purchaser when conducting the auction. All information relating to and in connection with the auction of the intellectual property right are deemed to be information from the Authorizing Principal.

## **7.2** *No liability for the existence and validity of the intellectual property right*

IP AUCTIONS GMBH does not warrant and will not assume liability before, during or after the auction for the existence and validity of the auctioned intellectual property right, especially with regard to the duration of protection, cancellation or declaration of invalidity, termination or other events or circumstances affecting the continued validity or existence of the intellectual property right which is the subject matter of the auction. IP AUCTIONS GMBH is also not liable for the continued validity or existence of the contracts related to the intellectual property right which is the subject matter of the auction, above all the license agreements and/or cooperation agreements.

## **7.3** *No liability for the rights of third parties to the intellectual property right*

IP AUCTIONS GMBH assumes no liability for the existence or non-existence of third party rights to the intellectual property right.

## **7.4** *Due Diligence*

**7.4.1** All intellectual property rights, which are intended for auction and listed in the catalogue as well as the related contracts, may be reviewed and checked in advance in the connection with a due diligence examination organized by IP AUCTIONS GMBH in a data room established for this purpose. IP AUCTIONS GMBH has not conducted any inspection with regard to the correctness, completeness and validity of the statements made there and the documents available for review. The Authorizing Principal is solely responsible for the content of the information and files provided in the course of the due diligence examination. Each Authorizing Principal undertakes towards IP AUCTIONS GMBH to provide the documents and information in the data room, which is necessary for an adequate evaluation of the intellectual property right. The bidder and/or purchaser cannot assert any claims against IP AUCTIONS GMBH resulting from the incorrectness or incompleteness of the documents in the data room or for missing documents.

**7.4.2** If a license agreement is auctioned, then such agreement must be provided by the Authorizing Principal in the data room in advance of the auction. No changes may be made to the content of the contract after auction authorization.

## **7.5** *No liability for analyses or information*

To the extent that information is provided by and through IP AUCTIONS GMBH during the course of the due diligence examination - for example relating to the state of technology and the legal validity of the intellectual property right for auction - this information will be expressly designated as such. In this event, the information provided in the data room constitutes a voluntary service on the part of IP AUCTIONS GMBH intended to make it easier for the potential bidders to assess and value the intellectual property right. This information is an expression of the personal estimate of the corresponding appraiser and does not establish the basis for any liability *vis-à-vis* bidders or purchasers. This also applies with respect to information or analyses conducted by third parties, which are available for review in the data room. None of the statements made in this context represents a statement about the characteristic of the intellectual property right within the meaning of the statutory provisions.

## **7.6** *No liability for the completeness of the documents available in the data room*

IP AUCTIONS GMBH assumes no liability for the correctness or completeness of the documents and records available for review in the data room. Bidders should not make their decision about submitting an offer solely on the basis of the information provided in the data room in the context of the due diligence examination. Instead, the bidders are called upon to themselves investigate the validity and protected scope of the intellectual property rights for auction in an appropriate manner and to assume responsibility for managing possible litigation related thereto.

## **7.7** *Mediation of the contact to the Authorizing Principal*

In advance of the auction, IP AUCTIONS GMBH may create an opportunity for individual discussions between potential bidder and the Authorizing Principal (one-to-one discussions), whether by telephone or in the form of a face-to-face meeting.

## 8. Follow-Up Sale

8.1 If the intellectual property right for auction is not sold during the auction, especially, because the reserve price set by the Authorizing Principal has not been reached, then the intellectual property right will, as a general rule, be placed in a follow-up sale.

8.2 The follow-up sale will begin of the day following the respective auction and lasts 6 months.

8.3 These Auction Terms and Conditions apply *mutatis mutandis* to the follow-up sale.

## 9. Obligation of the Authorizing Principal to Pay IP AUCTIONS GMBH

9.1 If the intellectual property right is awarded in the auction, then the Authorizing Principal undertakes to pay a commission to IP AUCTIONS GMBH in the amount of 15% of the successful bid price awarded plus the applicable statutory value added tax (as amended from time to time) charged on the commission.

9.2 If the Authorizing Principal revokes its authority prior to conducting the auction or if IP AUCTIONS GMBH refuses to award the auction sale for reasons for which the Authorizing Principal is responsible, then the Authorizing Principal must pay liquidated damages to IP AUCTIONS GMBH in the amount of 15% of the reserve value, plus any disbursements which have already been incurred, together with any value added tax in the respective statutory amount. If no reserve price has been set, then the Authorizing Principal undertakes towards IP AUCTIONS GMBH to pay € 2,000 per intellectual property right or € 5,000 if more than one intellectual property right was intended to be offered at the same time. A refund of the auction authorization fees pursuant to **Subsection 2.7 of the Terms and Conditions for Authorizing Auctions** will not be made.

9.3 If the intellectual property right authorized for auction is not sold in the auction because the reserve price set by the Authorizing Principal was not reached, then IP AUCTIONS GMBH will be paid, in addition to the auction authorization fee, a reserve price supplemental charge pursuant to **Subsection 2.8 of the Terms and Conditions for Authorizing Auctions** plus the applicable statutory value added tax (as amended from time to time).

9.4 The Authorizing Principal is not permitted to reach any arrangements with the bidder in connection with the auction of the intellectual property right.

9.5 If an intellectual property right is not sold in an auction, regardless of the reason why no sale was made, and if the Authorizing Principal - within one-half year after the respective auction - sells, licenses or otherwise grants rights to an intellectual property right, which is offered in the context of an auction conducted by IP AUCTIONS GMBH, to a party who is registered as a bidder with IP AUCTIONS GMBH, then the Authorizing Principal undertakes towards IP AUCTIONS GMBH to pay a broker commission in the amount of 15% of the contract value plus the applicable statutory value added tax and fees, which amounts are payable within 14 days after the contract of sale is concluded. This also applies with respect to intellectual property rights, which are withdrawn prior to the auction. If the intellectual property right has been placed in a follow-up sale and was not sold there, the Authorizing Principal has the same obligation within the first half-year after conclusion of the period for the follow-up sale.

## 10. Arrangements with the Bidder in Breach of the Contract

10.1 The bidder may not enter into any arrangements with the Authorizing Principal or with other bidders with regard to the auction of the intellectual property right.

10.2 If the bidder registered with IP AUCTIONS GMBH or a related legal entity or natural person acquires an intellectual property right, which is offered there within one half-year after the respective auction, whether through purchase, licensing or another right of use and/or realization of the relevant intellectual property right, then such acquisition will be treated with regard to IP AUCTIONS GMBH as a sale (successful bid award) in the context of the auction. This obliges the bidder, as registered with IP AUCTIONS GMBH, to pay a premium under **Subsection 3.2** in the amount of 10% of the contract value plus the applicable statutory value added tax (as amended from time to time). Payment is due upon conclusion of the acquisition agreement and must be made within 14

days. This also applies to intellectual property rights, which are withdrawn prior to conducting the auction or which have not been awarded because the reserve price was not reached or for other reasons. If the intellectual property right has been placed in the follow-up sale and was not sold there, the registered bidder has the same obligation within the first half-year after the expiration of the follow-up sale period.

## **11. Terms and Conditions for Authorizing Auctions and Terms and Conditions of Bidding**

**11.1** In addition to these Auction Terms and Conditions, there are separate agreements concluded with each Authorizing Principal and each bidder, which apply in addition to the provisions of these Auction Terms and Conditions. If there are any conflicts and inconsistencies between these different sets of terms and conditions, then these Auction Terms and Conditions will prevail.

**11.2** There are no agreements between the participants in the auction and IP AUCTIONS GMBH other than the agreements set forth in **Subsection 11.1** or, in any event, such other agreements have no influence on the contractual relationship between the participants in the context of the auctioning of intellectual property rights. Any conflicting standard terms and conditions of the participants do not apply.

## **12. Other Provisions**

**12.1** In case of change of control or ownership at IP AUCTIONS GMBH, agreements concluded with IP AUCTIONS GMBH prior to this event be transferred to the new owner of the business.

**12.2** The relationship between IP AUCTIONS GMBH and the auction participants with respect to conducting the auction of the intellectual property right will be governed definitively by these Auction Terms and Conditions as well as the Terms and Conditions for Authorizing Auctions and the Terms and Conditions of Bidding. No oral side agreements exist between IP AUCTIONS GMBH and the Authorizing Principal. Any modification to these terms and conditions must be made in writing. This writing requirement also applies to any modification of this clause.

**12.3** There are German and English versions of these Auction Terms and Conditions. In the event of any ambiguities and/or deviations between the different versions, the German version will control.

**12.4** German law governs. The UN Convention on Contracts for the International Sale of Goods does not apply.

**12.5** The place of performance is Munich. If the Authorizing Principal and/or bidder qualifies as a merchant [*Kaufmann*] or is subject to general jurisdiction in Germany, then jurisdiction and venue shall likewise lie in Munich.

**12.6** Should any one or more provisions of these Auction Terms and Conditions be invalid, either in whole or in part, then the validity of the remaining provisions hereof will not be affected thereby. In order to fill in any invalid provision, the parties agree to include a rule, which most closely reflects the economic purpose for conducting the auction. The same applies in the event that these Auction Terms and Conditions contain a gap and do not address specific issue.