

## SEDO.COM, GMBH .DE PRE-AUCTION

### TERMS AND CONDITIONS

Dear Bidder,

Welcome to Sedo's .DE Pre-auction ("Pre-Auction"). By participating in this special auction event ("Auction"), You ("You", "User") agree to the additional terms and conditions ("Terms and Conditions") as set forth below as well as Sedo's normal website terms and conditions. In case of a dispute relating to the Pre-Auction, the below conditions shall govern. You acknowledge and agree to be bound by the following:

#### **1. Pre-Auction Process**

The goal of the Pre-Auction, sponsored by Sedo GmbH, is to attempt to procure one, two and three character .DE domain names ("Domain(s)") previously not available for registration, once such domains have been made available by the responsible contracting bodies. On submission of the highest bid on a Domain(s), the highest bidder enters a service contract with Sedo GmbH, which states that Sedo shall attempt to obtain the Domain Name on Your behalf and if Sedo is successful, You are bound to make payment in the amount that You bid for the Domain.

#### **2. Duties of Sedo GmbH**

Sedo GmbH will work to obtain the domain for the highest bidder, for the amount of the highest bid offered for the Domain. Sedo shall try to obtain the domain either through its Brokerage Service or via direct registration through the registry. Sedo GmbH has fourteen (14) calendar days following the close of the Pre-Auction to secure the Domain on Your behalf. Sedo GmbH does not guarantee that it has the ability secure the domain on your behalf. Should Sedo GmbH unexpectedly fail to obtain the Domain within this time frame, You will not be subjected to any costs or further liabilities.

#### **3. Your Duties**

If you are the highest bidder for a Domain, You affirmatively give Sedo the authority to act on Your behalf, as Your agent, to negotiate and close a sales contract on Your behalf with the successful registrant of the Domain for a value up to Your highest bid amount.

#### **4. Exclusivity**

You agree not to use the services of another provider with regards to the acquisition of the desired Domain. In addition, You agree to refuse to employ the services of any other intermediary. Should You breach any of these obligations You will be liable to pay a commission comprising of 20% (twenty) percent of Your highest bid. However, You are not prohibited from applying for the Domain(s) directly at a registrar as well as making offers for other Domain(s) though the Pre-Auction.

#### **5. Third party rights**

You expressly agree and warrant that the Domain(s) to be acquired and its intended use does not infringe any third party rights, including but not limited to intellectual property rights, and that your sole intention for acquiring the domain is for legitimate purposes.

#### **4. Auction Period**

The timing for the end of each Pre-Auction shall be determined on an individual basis. Auction timing as well as bidding will be visible on the Pre-Auction page for each Domain. Each Pre-Auction period shall last seven (7) days. Should a valid bid be made in the last five (5) minutes of a Domain(s)' Pre-Auction, the auction time will be extended by ten (10) minutes. The ten (10) minute extensions may run indefinitely should bids continue to be made within the last five (5) minutes of the Auction. Sedo reserves the right to extend the length of a Pre-Auction for any reason at its own discretion for the purpose of fairness to all participants.

## **5. Transfer**

While the Pre-Auction is running, internet users can view the listed Domain(s) as well as the highest current bid from the Pre-Auction homepage. If Sedo is successful in acquiring the domain on Your behalf, the transfer and escrow of the Domain shall be conducted solely by Sedo GmbH. This process is covered by the current marketplace terms and conditions of Sedo GmbH, which can be viewed in its entirety at: [http://www.sedo.co.uk/about/policy.php?page=terms\\_e&language=e](http://www.sedo.co.uk/about/policy.php?page=terms_e&language=e).

## **5. Cancellation of Auction Bids**

Sedo reserves the right to delete individual bids during the Pre-Auction period if it believes that such bids were fraudulent, fake, "shill" bids or were determined not to be a bona fide firm offer. Sedo reserves the right to contact You to verify your identity, the validity of the bid, as well as request documents to support the validity of your bids. If Sedo is not able to verify the information in a reasonable amount of time, please be advised that Sedo has the right to delete the bid without objection. Sedo may suspend Your account at anytime if you have been found to have placed a fraudulent bid during an auction period. In the event that Sedo invalidates a current high bid, the next highest bid, including the previous high bid, shall take the place of the active high bid with all due obligations should such bid remain the high bid at the close of the Pre-Auction.

## **6. Site Warranty Disclaimer**

Sedo in no way guarantees or further warrants that the web page on which bids can be placed ("Bidding Page") during the Auction Period is permanently accessible. If a Bidding Page is not accessible, the Seller may not, in the future, refer to a potentially higher bid during this time period as a mechanism for not following through with a sale. Furthermore, a potential bidder may not argue, for the same purposes, that he would have been the highest bidder for the Auction if the webpage would have been available.

With regards to auctions other than the .DE Pre-Auction, such as Sedo's standard marketplace triggered auctions, broker assisted auctions, promotional auctions, or auctions held at affiliate websites like GreatDomains.com, in the case of technical issues which may occur within Sedo's servers, networks, or other mechanisms, Sedo may, to the extent they are within Sedo's control, take actions reasonably necessary to remedy such issues as they occur. Such actions include, but are not limited to, extending the length of time the auction is active and/or canceling such auctions.

## **6. Fees**

There are no fees associated with the .DE Pre-Auction other than the value of Your bids. If You are the highest bidder for a Domain and Sedo procures that Domain on Your behalf, You are obligated to pay Your highest bid as the purchase price for the Domain. Please be advised that this excludes any administrative or registration fees set forth by the respective registrar.

## **7. Publication of Domain and Purchase Price**

As bids made in the course of the .DE Pre-Auction are available for others to view, Sedo GmbH reserves the right to publish the Domain and the final purchase price upon completion of the Pre-Auction event.

## **8. Changes to the terms and conditions**

Sedo GmbH reserves the right to modify or extend these Terms and Conditions at its own discretion. Before participating in any Sedo auction event, You must review and agree to the Terms and Conditions published on the Sedo website and active at that time.

## **9. Miscellaneous Provisions**

### **9.1. Applicable law and Jurisdiction**

These Terms and Conditions as well as the contractual relationship between You and Sedo GmbH shall be governed by and construed in accordance with the domestic laws of Germany, without giving effect to any choice-of-law or conflict-of-law provision or rule (whether of Germany or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than Germany. Should arbitration become necessary, You agree that such arbitration shall take place in Cologne, Germany, and all proceedings shall be conducted in German.

### **9.2 Liability Disclaimer and Indemnification**

YOU AGREE THAT USE OF SEDO'S AUCTION SERVICES AND THE SITE IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND AN "AS AVAILABLE" BASIS. SEDO EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SEDO MAKES NO WARRANTY TO YOU OR TO ANY PROSPECTIVE BUYER THAT THE DOMAINS LISTED AND/OR REQUESTED IN THIS AUCTION ARE OR WILL BE AVAILABLE, NOR DOES SEDO GUARANTEE THAT IT WILL PROCURE THE DOMAIN ON YOUR BEHALF. SEDO MAKES NO WARRANTY THAT YOU MAY USE THE DOMAIN OR THAT THE RELEVANT DOMAIN REGISTRAR MAY TRANSFER THE DOMAIN WITHOUT VIOLATING ANY RIGHTS OF A THIRD PARTY. SEDO MAKES NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, NOR DOES SEDO MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED FROM THE SITE. YOU UNDERSTAND AND AGREE THAT YOUR USE OF ANY MATERIAL AND/OR DATA DOWNLOADED FROM THE SITE OR ANY SERVICES OBTAINED THROUGH OR PROVIDED BY SEDO IS AT YOUR SOLE DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM ANY SUCH DOWNLOAD OR USE OF SUCH INFORMATION OR OTHER RELATED TRANSACTION. NO ADVICE OR INFORMATION THAT YOU MAY OBTAIN FROM SEDO OR THROUGH THE SERVICES PROVIDED BY SEDO SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED THEREIN.

You agree that, regardless of any statute or law to the contrary, except as prohibited by law, any claim or cause of action arising out of or related to this Pre-Auction, these Terms and Conditions, the Site, or Sedo's products or Services, must be commenced within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

IN NO EVENT SHALL SEDO, ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, OR SUPPLIERS BE LIABLE FOR LOST PROFITS OR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SITE, THE SERVICES, OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE). SEDO'S LIABILITY, AND THE LIABILITY OF ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES YOU HAVE PAID TO US IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY, AND (B) \$100. YOU AGREE TO INDEMNIFY AND HOLD SEDO AND (AS APPLICABLE) SEDO'S PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES HARMLESS FROM ANY CLAIM OR DEMAND, INCLUDING REASONABLE ATTORNEYS' FEES, MADE BY A THIRD PARTY DUE TO OR ARISING OUT OF YOUR USE OF THE SITE OR THE SERVICES, YOUR BREACH OF THIS AGREEMENT OR THE DOCUMENTS IT INCORPORATES BY REFERENCE, OR YOUR VIOLATION OF ANY LAW OR THE RIGHTS OF A THIRD PARTY.

### **9.3. Entire Agreement**

These Pre-Auction Terms and Conditions hereby incorporate by reference Sedo's normal website Terms and Conditions. Together with the website Terms and Conditions, this document contains the entire agreement between the parties concerning its subject matter and replaces all other agreements between them, whether written or oral, concerning this subject matter.

### **9.4. Severability**

If a provision in these general terms and conditions or any other contractual provision in full or in part should be invalid or rendered invalid, the validity of the rest of this contract will not be affected. The ineffective provision shall be replaced by a valid one that approaches the ineffective provision as closely as possible.