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ESI Ventures LLC dba Touche Lighting Control

Sealed Bid Auction Terms and Conditions

BIDDING PROCEDURE BUYERS ARE TO FOLLOW WITH NO WAIVER

Thank you for participating in Ness Bros Online Auctions. It is important that you familiarize yourself with the terms and conditions as all sales are final and irrevocable. The terms of sale are non-negotiable. Good luck and good bidding!

- **BIDDERS PACKET:** All bidders who have registered online for the auction can view copies of the terms at www.nessbros.com on the specific property Auction Detail Page.
- **ONLINE REGISTRATION:** Registration for this auction (online) finalizes each bidder's agreement to the terms and conditions of sale which are incorporated by reference into your bidding. Do not bid until you have read the terms and conditions. In order to bid on the Personal Property, all bidders must be signed in through www.BidNessBros.com. There is no fee to register, but a valid credit card will be required to verify identity. By bidding you are representing to Ness Bros. Realtors & Auctioneers ("Ness Bros."), and the Seller that you have read and agree to be bound by the terms and conditions for this sale as stated herein. If you do not agree with any of the terms and conditions stated, **DO NOT SUBMIT YOUR SEALED BID** or you will be bound by those terms and conditions.
- **CONDUCT OF THE AUCTION:** The Seller and selling agents reserve the right to preclude any person from bidding if there is any question as to the person's identity, credentials, validity of the credit card, fitness to bid, financial ability to buy, etc. All decisions of the Auctioneer are final. Bankruptcy Trustee reserves the right to cancel or withdraw any personal property item at any time or adjust the terms and approve all final bids.
- **ASSET OFFERING (SOLD AS A BUNDLE):** The following assets are being sold as a single package only. No assets will be separated or sold individually. The Personal Property and inventory, Two (2) Patents and intellectual property, Molds/Dies and Production Materials, Customer Lists and Business-Related Data.
- **SEALED BIDDING:** This is a confidential sealed bid auction. Bidders will submit one (1) highest and best bid only and no competing bids will be visible. No incremental bidding or bid increases are allowed and once submitted, bids cannot be withdrawn or modified. The bidding will be open for minimum of 7 days. The auction ends at a predetermined time and no late submittals will be accepted. All final bids will be submitted to the Bankruptcy Trustee at the end of Auction. The Bidder is responsible for knowing which item he is bidding on. Auctioneer cannot honor "mistakes".
- **TIE BIDS:** In the event of any tie bids, Trustee may accept the bid of their choice or may elect to allow the tie bidders to submit a best and final offer within 2 Business Days.
- **AGENCY DISCLOSURE & GENERAL OFFICE POLICIES:** Ness Bros. represents the Sellers only and does not inspect merchandise on bidder's behalf.
- **DISCLAIMER & ABSENCE OF WARRANTIES:** All items are sold "AS IS, WHERE IS" basis. No warranty or representation, either expressed or implied, concerning the Personal Property, its condition, or the condition of any other components on the Personal Property, is made by the Seller or Ness Bros. The information contained online or in the Brochure is subject to verification by all parties relying on it. No liability for its accuracy, errors, or omissions is assumed by the Seller or Ness Bros. Each potential bidder is responsible for conducting his or her own independent inspections, investigations, inquiries, and due diligence concerning the personal property. Many items are unboxed and some boxes may not contain the exact quantity listed on the container.

- **TERMS:** **A Buyer's Premium of 10%** will be added to final bid and included in the total contract price. Buyer is responsible for costs related to preparing and filing a patent assignment agreement with the United States Patent and Trademark office. All bids accepted are subject to the Bankruptcy Trustee and the Bankruptcy Court's approval.
- **SALES TAX:** **As part of the final purchase price there will be a 7% Sales Tax charged unless the buyer is Tax Exempt and provides Ness Bros with a Tax Exemption Number at Registration.**
- **EARNEST MONEY DEPOSIT:** **With each sealed bid the bidder must wire to Ness Bros a 10% Deposit within 24 hours** (account information to be given to the bidder at time the bid is submitted) Bidders are responsible for the \$15 processing fee, which shall be added to the deposit upon wiring funds. Non-Winning bidder funds will be wired back to them minus any wiring fees within 10 days after the bidding has ended.
- **EXECUTION OF PURCHASE:** **The balance is due in full 24 hours after Bankruptcy Court Approval and will be paid by Wire Transfer including a \$15.00 Processing Fee.**
- **BANKRUPTCY COURT APPROVAL:** Once the auction is concluded the winning bid will be submitted to the Bankruptcy Trustee for approval. **The Bankruptcy Trustee has up to 30 business days to obtain Bankruptcy Court approval.** If Bankruptcy Court approval is not obtained, all funds paid to Ness Bros. will be returned, without interest.
- **POSSESSION/REMOVAL:** **Pickup in person of items will be within 7 Days of Bankruptcy Court Approval and Buyers Final Payment @ 2085 Humphry St., Fort Wayne, IN 46803 during a scheduled time with Auction Manager. Buyer agrees to a \$1,000 daily occupancy rate beyond the 7 days if personal property items are not removed.**

Do not move merchandise without auction personnel present to check you out. Buyers are responsible for all risk of loss, property damage, personal injury caused by removal, and all costs of removal of items/lots purchased. Buyer is responsible for repairing any damage or void created in the building from the removal of their items. **Moving & loading services contracted with any transport company, rigging company or moving company are independent of the Auctioneer, and Auctioneer shall be held harmless from any claims arising between the buyer and said company.**

- **MISSING / LOST:** The auction company and sellers are not liable for lost or stolen items purchased at the sale. However, a refund shall be given in the amount of the final bid price if the personal property item is cataloged as a single lot item. If the personal property is in a grouped lot with multiple items, the auctioneer will determine a commensurate amount based upon the missing item for refund.
- **DEFAULT:** If the winning bidder refuses or fails to complete the transaction for ANY reason (including, but not limited to, remitting the total purchase amount, or arranging pickup of the item), Buyer shall relinquish ANY right to complete the transaction and shall have no rights or interest in the property. Any property forfeited by the buyer may be resold, and any cost of removal, deficiency or loss may be charged to the buyer for liquidated damages to Seller. PLEASE BE ADVISED: Various state statutes give Seller the right to pursue legal action against bidders who refuse to complete transactions. This may include (but is not limited to) suit to compel completion of the sale, and/or criminal charges of fraud or other intentional act.
- **AUCTIONEER RESERVES:** Auctioneer Reserves the right to make changes to an auction, to split or combine lots, cancel, suspend or extend the auction event.
- **DISPUTES:** If any dispute arises concerning any part of the online auction process, payment of items, quality, quantity of merchandise being sold or if an item has been paid for by an buyer and then the item is no longer available for buyer to obtain. The auctioneer has final say so on resolving said dispute and auctioneer may elect to refund to the buyer their total funds used to purchase said items as resolving the dispute. If the auctioneer elects to refund buyer their money, buyer herein agrees that this will terminate all said buyer's rights to any future claims against Ness Bros and the seller concerning this matter.

YOU ARE ENTERING INTO A BINDING CONTRACT. THERE ARE NO REFUNDS OR BID CANCELLATIONS. THE REGISTERED BIDDER IS PERSONALLY RESPONSIBLE, LEGALLY AND FINANCIALLY FOR ALL AUCTION ITEMS BID UPON WHETHER REPRESENTING ONE'S SELF OR ACTING AS AN AGENT. AN ONLINE BID ACCEPTED AT PUBLIC AUCTION IS A LEGAL AND BINDING CONTRACT TO PURCHASE. ANY BIDDER WHO FAILS TO CONSUMMATE A PURCHASE WILL BE BANNED FROM BIDDING AT ALL FUTURE SELLER AUCTION EVENTS AND MAY BE PURSUED FOR CIVIL AND/OR CRIMINAL VIOLATIONS.

STATEMENTS MADE BY THE AUCTIONEER WILL TAKE PRECEDENCE OVER PREVIOUS PRINTED MATERIALS OR ANY PREVIOUS ORAL STATEMENTS