

## AFTERMARKET.COM SELLER AGREEMENT

---

THIS EXCLUSIVE RIGHT TO SELL AGREEMENT (the "Agreement") is made and entered by and between Thought Convergence, Inc., a Delaware corporation doing business as Aftermarket.com ("Company"), and you, the owner of the domain name(s) submitted to Company under this Agreement ("Seller"), with reference to the following facts:

**WHEREAS**, Seller desires to grant to Company the exclusive right and authority to sell the Internet domain name(s) submitted via Company's online auction platform ("Domain Name(s)") subject to the terms and conditions contained herein; and,

**WHEREAS**, Company desires to use its commercially reasonable efforts to procure and secure purchasers for the Domain Name(s) subject to the terms and conditions contained herein;

**NOW, THEREFORE**, in good consideration of the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, Seller and Company agree to the following terms and conditions:

**1. Term.** The Term of this Agreement shall be for ninety (90) calendar days from the date of submitting the Domain Name(s) to Company via Company's online auction platform or thirty (30) days from the conclusion of the September 2008 auction at the T.R.A.F.F.I.C. Domain Conference & Expo, whichever occurs later.

**2. Exclusivity.** During the Term of this Agreement, Seller grants to Company the exclusive right and authority to sell and market the Domain Name(s). Seller shall not use, appoint or engage any person or entity other than Company to act as its agent, sales representative or act in a similar capacity with respect to the Domain Name(s) for the Term of this Agreement. Company is entitled to receive from Seller the Commission (as defined below) in the event that the Domain Name(s) are/is sold to any third party during the Term of this Agreement, whether or not through the efforts of Company.

**3. Commission.** Seller agrees to pay to Company a "Commission" for each Domain Name sold, which shall be equal to fifteen percent (15%) of the Total Sales Amount. The "Total Sales Amount" shall be the total purchase price of a Domain Name, whether the consideration paid is monetary or otherwise. Company will handle escrow transactions for all domain transfers under this Agreement and may withhold its Commission before remitting the remainder of the Total Sales Amount to Seller at the close of escrow.

**4. Non-Circumvention.** For a period of one (1) year following the termination of this Agreement, Seller agrees not to solicit or attempt to solicit, negotiate or initiate negotiations, enter into or attempt to enter into any agreement, transact or attempt to transact, whether directly or indirectly, with any potential purchaser or purchaser's agent(s) whose identity was revealed to Seller or Seller's representative(s) through the efforts of Company. In the event that Seller breaches this Section, Company shall be entitled to receive its Commission from Seller.

5. **Seller's Responsibilities.** During the Term of this Agreement, Seller agrees to:
- a) Provide Company with complete information regarding Seller's identity and legal entity (if applicable) and information regarding the Domain Name(s) promptly upon request of Company.
  - b) Refer to Company all previous, pending and future inquiries regarding the Domain Name(s) from brokers, prospective purchasers and/or any other individuals or entities.
  - c) Provide Company such information as is reasonably necessary to facilitate Company's performance of its duties under this Agreement. This information shall include, but is not limited to, PPC earnings, traffic statistics, previous purchase prices and/or any other facts that may affect the value of the Domain Name(s).
  - d) Cooperate with Company to mutually agree upon the Reserve Price of each Domain Name. The "Reserve Price" will be the price fixed as the minimum amount at which the Domain Name(s) will be sold. The Reserve Price for each Domain Name will be the amount declared on Company's online auction platform unless a subsequent change is agreed upon by Seller and Seller confirms the change in the Reserve Price through the Company's online auction platform.
  - e) Refrain from bidding on any of the Seller's Domain Name(s) in any auction held during the Term of this Agreement.
  - f) Within ten (10) days of a consummated sale of a particular Domain Name, transfer the Domain Name into an escrow account designated by Company.

6. **Company's Responsibilities.** During the Term of this Agreement, Company agrees to:
- a) Use commercially reasonable efforts to procure and secure purchasers for the Domain Name(s), which may include conducting a live and/or online auction of the Domain Name(s). Company will determine which Domain Name(s) to attempt to sell in its sole and absolute discretion.
  - b) Use commercially reasonable efforts to prevent and curtail fraudulent activities relating to any live or online auction of the Domain Name(s).
  - c) Prevent any stakeholder or employee of Thought Convergence, Inc. or any of its subsidiaries from bidding during the live and online auction.
  - d) Not sell a Domain Name for an amount below the Reserve Price mutually agreed upon by Seller and Company, without the prior written consent of Seller.
  - e) Act as the escrow agent for the transfer of funds and Domain Name(s) between Seller and a purchaser.

7. **Cancellation of Transaction:** Company is not responsible for any failures of a purchaser to perform their obligations with respect to the purchase of the Seller's Domain Name(s), such as a failure to transfer the purchase price into the escrow account. In the event that a purchaser fails to transfer the purchase price to an escrow account after the Seller has transferred a Domain Name to the escrow account, Company will transfer the Domain Name back to the Seller.

8. **Seller's Warranties.** Seller represents and warrants to Company that: (a) Seller has the full right, power and authority to enter into this Agreement and to perform the acts herein; (b) Seller is the sole owner of all right, title and interest in the Domain Name(s); (c) Seller acquired right, title and interest in the Domain Name(s) through solely legitimate means; and (d) the transfer of the Domain Name(s) shall be free and clear of all liens, claims or encumbrances. Seller further represents and warrants that (1) neither Seller, nor any other entity owned or controlled by Seller, owns any trademarks or copyrights in the Domain Name(s); (2) the

Domain Name(s) does/do not infringe or violate any third party rights including, but not limited to, intellectual property rights; and (3) the Domain Name(s) has/have not been the subject of any litigation, arbitration, claim or other legal proceeding whether past, present, contemplated or threatened, for which Company has not received notice from Seller in writing.

**9. Indemnification.** Seller agrees to indemnify, defend and hold harmless Company, its affiliates, subsidiaries, officers, directors, shareholders, employees, agents, successors and assigns from any and all third party actions, claims, demands, losses, liabilities, damages, recoveries, settlements and/or costs (including attorney, accountant, and expert witness fees and costs), known or unknown, contingent or otherwise, arising directly or indirectly out of or relating to Seller's breach of this Agreement and specifically to Seller's breach of Seller's warranties and failure to fulfill its responsibilities; provided that Company promptly notifies Seller in writing of any such claim, promptly tenders the control of the defense and settlement of any such claim to Seller (at Seller's expense and with Seller's choice of counsel), and cooperates fully with Seller (at Seller's request and expense) in defending or settling such claim including, but not limited to, providing any information or materials necessary for Seller to perform the foregoing. Seller will not enter into any settlement or compromise of any such claim without Company's prior written consent which will not be unreasonably withheld. Seller agrees to hold harmless Company from any failures by a purchaser to meet its obligations with respect to a purchase of Seller's Domain Names.

**10. General.**

**10.1. Parties' Relationship.** Seller retains Company as an independent contractor and no agency, partnership, joint venture or employee-employer relationship is contemplated, intended or created by this Agreement. Seller acknowledges that Company is not precluded by this Agreement from acting as the sales or marketing agent or representative for third parties.

**10.2. Litigation Expenses and Attorney's Fees.** If any legal action or proceeding is brought under this Agreement, in addition to any other relief to which the successful or prevailing party (the "Prevailing Party") is entitled to, the Prevailing Party is entitled to recover, and the non-Prevailing Party shall pay, all (a) reasonable attorney's fees of the Prevailing Party, (b) court costs, and (c) expenses, even if not recoverable by law as court costs (including, without limitation, all fees, taxes, costs and expenses incident to any legal action, appellate, bankruptcy, or post-judgment proceedings). For purposes of this Section, the term "attorney's fees" includes, without limitation, paralegal fees, investigative fees, expert witness fees, administrative costs, disbursements, and all other charges billed by the attorney(s) of the Prevailing Party.

**10.3. Governing Law and Choice of Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of law rules. The parties hereby irrevocably agree to submit to the sole and exclusive jurisdiction of the Superior Court of the State of California for the County of Los Angeles in any action or proceeding arising out of, or relating in any way to, this Agreement.

**10.4. Severability; Headings.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Headings are for reference

purposes only and in no way define, limit, construe or describe the scope or extent of such section, or in any way affect this Agreement.

**10.5. Notice.** Except where provided otherwise, notices under this Agreement shall be in writing and shall be deemed to have been fully given and received when delivered by hand, certified or registered mail, overnight courier or facsimile with confirmation to the place of business or residence of the Party to whom the notice is being given.

**10.6. Amendment; Waiver.** This Agreement may be amended only by a written instrument signed by each of the parties. A waiver of any right under any provision of this Agreement by either party shall be valid only if such waiver is in writing and signed by the party to be charged. No waiver of any right under any provision of this Agreement on any occasion shall be a waiver of any other right, under any other provision, or on any other occasion. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

**10.7. Entire Agreement.** No other agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof.

**10.8. ADVICE OF COUNSEL.** THE PARTIES ACKNOWLEDGE THAT, IN EXECUTING THIS AGREEMENT, THEY HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL AND THEY HAVE READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

**I, Seller, hereby accept the terms and conditions set forth by this Agreement concerning the exclusive right of Company to market and sell my Domain Name(s) by checking the box and clicking the “I accept” button.**