

## TERMS OF SALE

Daley-Hodkin LLC (the "Auctioneer") hereby sells the machinery and equipment and furniture (the "Assets ") of Phoenix Labs Rising, LLC, located at 200 Adams Boulevard, Farmingdale, New York. ("Phoenix" or the "Debtor") on behalf of the secured party. All of the Assets are sold "AS IS" and "WHERE IS" without any representation or warranty whatsoever, either expressed or implied, including but not limited to: representations or warranties as to quality, quiet enjoyment, condition, mileage, description, merchantability or fitness for any particular purpose.

All bidders must register to become eligible to bid. **All bidders attending the auction** are required to provide their bid paddle number at time of knockdown and a minimum first deposit of \$200 or twenty-five (25%) percent of the Bid Price, whichever is greater. **To be eligible to bid online, all internet bidders must register with [www.bidspotter.com](http://www.bidspotter.com) and provide a deposit, which must be no less than twenty-five (25%) percent of the total anticipated purchases to: Daley-Hodkin LLC, no later than 3:00 PM on Monday, July 27, 2008.** Payment of the entire balance must be made within 72 hours after the sale is concluded and, if required, notification of acceptance of their bid has been provided. Payment of the entire balance must be made prior to the removal of any Asset(s) purchased.

In the event a bidder fails to provide the required deposit, the Auctioneer may, without notice to the purchaser, resell the Asset anytime during or after the sale. All deposits and payments shall consist of cash, cashier's check, cash equivalent, wire transfer or certified funds made payable to Daley-Hodkin LLC. SIGNED CHECKS WILL BE ACCEPTED ONLY IF ACCOMPANIED BY A BANK LETTER, DRAWN ON A BANK WHICH IS REASONABLY ACCEPTABLE TO THE AUCTIONEER, AND WHICH STATES THAT THE BANK WILL GUARANTEE PAYMENT UP TO A SPECIFIED AMOUNT (THIS LETTER MUST CONTAIN THE WORDS "GUARANTEE PAYMENT"). Signed checks delivered to the Auctioneer by the buyer, omitting the dollar amounts will be completed and deposited by the Auctioneer at the conclusion of the auction sale.

Bidders attending the sale will be subject to a thirteen (13%) percent buyer's premium and internet bidders will be subject to a sixteen (16%) percent buyer's premium. The buyer's premium will be added to the purchase price of each lot and will be included in your invoice.

The Auctioneer reserves the right to sell in bulk, consecutive lot number order, or in any order deemed suitable. To be successful, the cumulative total of the individual bids must exceed any bulk bid(s) by five (5%) percent. In the event of a disputed bid the Auctioneer reserves the right to put the disputed lot up for rebid. The auction sheets and records of sale as set forth by the Auctioneer must be accepted as final by all purchasers. The Auctioneer is not bound by any actions or statements made by any person other than himself. In the event the Auctioneer is unable to release any lot to a purchaser, the extent of the Auctioneer's liability will be to refund any funds collected from the purchaser against that lot.

All Assets must be removed by the purchaser at its own risk and expense and in compliance with all applicable laws, regulations or ordinances, and completed in accordance with the terms stated by the Auctioneer. No allowances or adjustment of any kind will be made once the Asset purchased is removed from the sale premises. Assets CANNOT be removed until WEDNESDAY, JULY 29, 2009. All Assets must be removed from the premises MONDAY THROUGH FRIDAY BETWEEN 8:00 A.M AND 5:00 P.M and must be completed as set forth in the following removal schedule:

Assets	Starting Removal Date	Final Removal Date
All readily movable Machinery & Equipment, Packaging Equipment, Capsule Fillers, Tablet Presses, Forklifts and Pallet Jacks, Maintenance Room, Office Furniture & Equipment, Laboratory Equipment and Furniture (All Laboratory Furniture will be removed by appointment subject to availability)	<b>Wednesday, July 29</b>	<b>Friday, August 14</b>
All Granulation, Blending and Coating Equipment, Dust Collectors, Air Compressors, Dryers, Vacuum Equipment, Boilers and Pallet Racking (All Pallet Racking, which is holding materials, will be subject to removal by appointment)	<b>Wednesday, July 29</b>	<b>Friday, August 21</b>

Removal on Saturdays and Sundays will be at the Auctioneer's discretion and by appointment only. The Auctioneer, at his discretion, may modify or extend any of the above referenced removal deadlines. Buyers will be assigned a checker to escort them to their purchases on a first come, first served basis.

Any Asset which is not removed by the final removal date shall be deemed abandoned and forfeited. If the purchaser fails to comply with the terms of final payment and/or removal, the Auctioneer reserves the right to resell the lot(s) concerned, without notice to the purchaser and any payments made by purchaser will be forfeited. The purchaser will remain liable for any deficiency as well as expenses incurred in connection with the resale or removal of any abandoned and forfeited Asset.

All lots offered for sale that have drawers, storage compartments or any other areas for storage are sold empty, unless specifically announced otherwise by the Auctioneer. The obligation to obtain applicable permits, licenses and registration fees are the sole

responsibility of the purchaser. Computers are sold as hardware only; purchasers do not have rights to any information or software which may be in the system.

Purchasers and their agents involved in the removal of the Assets may, at the Auctioneer's discretion, be required to provide a Certificate of Insurance naming Daley-Hodkin LLC, Evergreen I Investments, LLC and BPF Adams LLC as loss payees with a minimum coverage of one-million (\$1,000,000) dollars. All chemicals, fluids, filters or storage containers associated with any Asset purchased must be removed by qualified and licensed personnel in an environmentally safe and commercially reasonable manner before any Asset will be released. All overflows or spills must be cleaned up with absorbent material, which must be removed from the premises. Removal will not be permitted until the Auctioneer has inspected the clean up. All purchasers are required to disconnect and cap electrical and fluid lines in a professional and commercially reasonable manner. Failure to do so will result in the purchaser being held responsible for any costs or damages incurred.

All information, materials and reports, either verbal or printed that have been provided by the Auctioneer are correct to the best of our knowledge, but in no other way is accuracy of same guaranteed by the Auctioneer. Purchasers shall rely on their own due diligence and inspection.

The Secured Party(s) reserve the right to confirm and/or reject any and all bids. Confirmation of bids shall occur as soon as possible following conclusion of the Auction sale. Deposits retained by the Auctioneer will be returned to the bidder(s) if any of the lots are not confirmed.

**SALES TAX: Applicable 8.625% sales tax must be paid to the Auctioneer.** Exceptions: Properly completed New York State Resale Certificates and/or Exemption Certificates will be accepted. Sales tax will be collected from all out of state purchasers and will be refunded directly to the purchaser upon receipt of a properly completed bill of lading from a common carrier showing out of state delivery, if received prior to the 15<sup>th</sup> day of next month. Otherwise, refunds must be obtained directly from the New York State Sales Tax Bureau. IRS regulations require us to report all cash payments, as defined by the IRS, exceeding \$10,000.00 from any one purchaser for one transaction or two or more related transactions.

Any disputes, controversies or claims arising out of these Terms of Sale shall be irrevocably and unconditionally submitted to arbitration pursuant to the rules of the American Arbitration Association and the customs and practices applying to arbitration in the State of New York. The decision of the Arbitrator shall be final, binding and non-appealable. The prevailing party shall be entitled to collect any costs and expenses incurred in connection with such arbitration, including without limitation, all reasonable legal fees and expenses.

These terms supersede any other posted or printed Terms of Sale and are read at the beginning of the sale, available online, posted on the premises and made available to bidders at the time of registration. Prospective purchasers are deemed to have full knowledge of same regardless of what time they entered the sale premises or method of bidding. Modification or waiver of any portion of these Terms of Sale or additional terms and conditions of sale may be made by the Auctioneer at any time and said modification shall not affect any other portion of the Terms of Sale. A successful bid is considered acceptance of the above terms and is a binding contract.

I hereby acknowledge that I have read, understand and agree to the Terms of Sale as detailed above.

X \_\_\_\_\_  
Signature

\_\_\_\_\_ Date

\_\_\_\_\_ Buyer Number