

# Term Sheet Battle™ DTU - 2021

*an improvised  
Mock Negotiation  
of a “Spin-Out” and Venture Financing  
from a Top Research-Intensive  
University*

Term Sheet Battle™ - DTU (2021)  
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HEHE..  
WAIT TILL I  
SPRING SOME  
PROTECTIVE  
RIGHTS ON  
HIM!



THAT  
FOOL! - HE  
THINKS I'M  
GOING TO SIGN  
AN ANTI-  
DILUTION-  
CLAUSE!

# Cast & Crew

Jacob L. Philipsen, CEO, Advalight, as:  
Co-Founder & Entrepreneur, PureLaser ApS

Ole Kring, Partner, VaekstFonden, as:  
General Partner, RedHot Ventures, L.P.

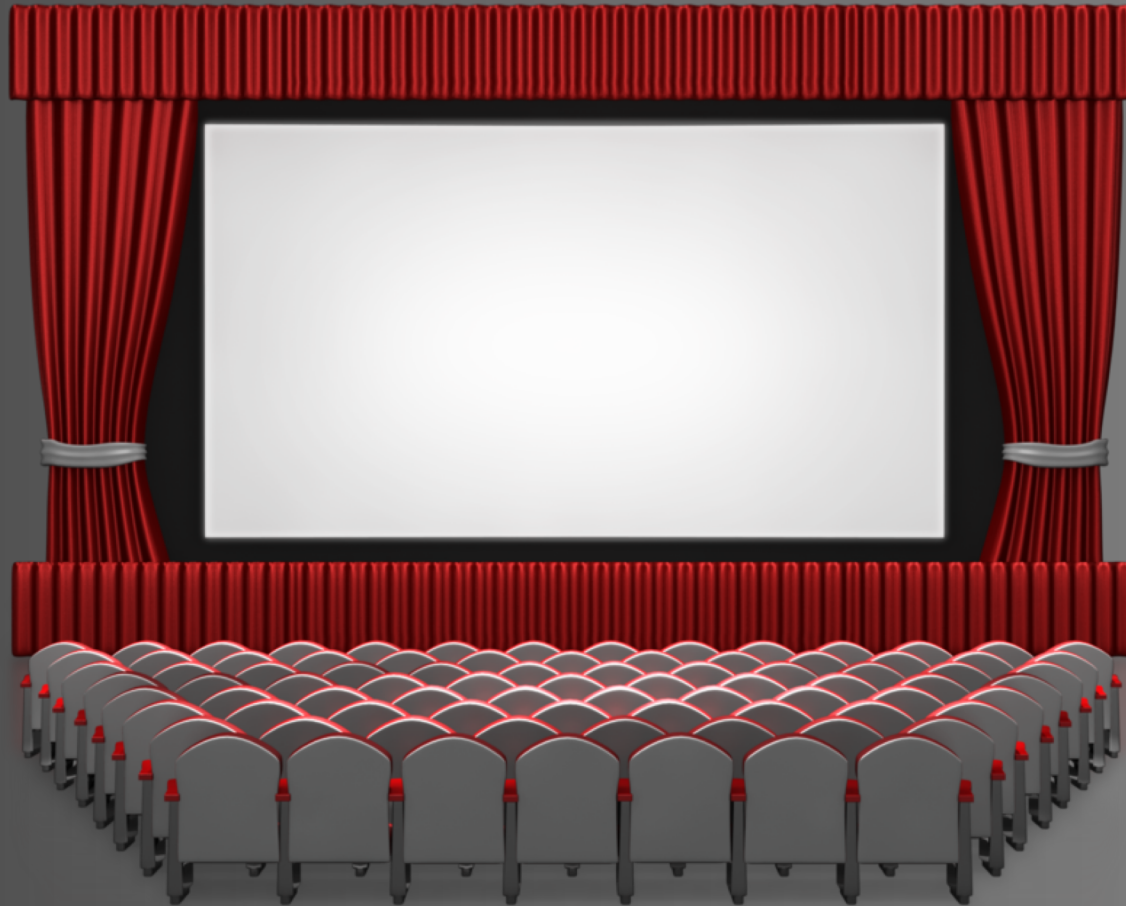
Soren Holmark, Partner, PACTUM, as:  
Partner, Schwartz & Shields LLP

Jes Broeng, *Making Things Happen in CPH and beyond*, as:  
Master of Ceremony

Brad Furber, Creator of the Term Sheet Battle <sup>TM</sup>, as:  
Referee



# Setting the stage...





# PureLaser ApS

- Fresh Spin-Out from Technical University of Denmark, DTU.
- Mission to become a dominant supplier of low-cost, compact laser solutions to medical industry.
- Technology developed over 5 years. Two patents pending, owned by DTU. LOI from DTU to give exclusive license once seed investor signed; and IPR transfer once it is “sustainable”.



# PureLaser ApS. Continued

- Originally organized as an ApS under Danish law, by four co-founders, an esteemed DTU professor, two senior researchers (10 years experience each), and Ph.D. student about to achieve degree (desires to become CEO). Shares split evenly (25% each).
- Founding team thinks it is possible with seed financing to achieve profitability in 3 years, with government funding for research and selling prototypes. Goal then to secure a contractor with major player in laser industry.
- Receives Term Sheet proposal for up to 4.5M DKK from RedHot Ventures



# Economic & Control Issues



Delusions of Dilution

The best defense is a  
good offense



# Economic Issues

- Price
- Liquidation Preference
- Vesting/Reverse Vesting on Founders Stock and Options
- Option Pool Size
- Anti-Dilution Formula



# Control Issues

- Composition and Election of Board of Directors
- Protective Provisions/Veto Rights
- Drag-Along Rights
- Redemption Rights
- Right of First Refusal/Right of Co-Sale
- No Shop/Confidentiality



# Price



- Pre- and Post-Money Valuation
- Tranched proposal
- Dilution



# Liquidation Preference

- Gives preferred seniority over common
- 2X liquidation preference proposal
- Participation rights – two bites at the apple
- UK vs Continental Europe vs USA – what is “market”?





# Vesting/Reverse Vesting on Founders Stock and Options

- Why VCs want (and even co-founders might want) “reverse vesting” on founders stock?
- Vesting/reverse vesting periods
- Tax issues for holders
- What is “market” – UK vs Continental Europe vs USA
- Acceleration – single and double triggers



# Option Pool

- How much is “enough”?
- How does size of unallocated option pool affect pre- and post-money valuation?
- Equity compensation governed by both the plan/agreements and the employment laws where holders are resident



# Anti-dilution Formulas

- “full-ratchet” vs “weighted average”
- “broad-based and “narrow-based”
- Economic issue only (USA), but both economic and control/voting issue (much of Continental Europe)



# Composition and Election of Board of Directors

- What is the right number of directors?
- Methods to select outside/independent director(s)
- CEO serving on Board of Directors – differences between UK vs Continental Europe vs USA
- Board observers
- Compensation of outside/independent directors



# Protective Provisions

(see Appendix to Term Sheet: Important Decisions  
Board Matters & Shareholder Matters)

- Why do VCs want/get “veto rights”
- Should not intrude on ordinary course of business
- Use of “materiality” qualifiers
- Use of “belt and suspenders”
- When do these go away?



# Drag-Along Rights

- Gives a subset of investors ability to force, or drag-along, all others in a sale of company
- A big issue, sometimes
- Liquidation preferences matter here
- What is market?



# Redemption Rights

- Rationale is to enable investors to get liquidity in companies that are going concerns but unlikely to go public or be acquired within life of fund
- Redemption infrequently exercised, but a good lever
- What is a reasonable time period?
- Be careful for “adverse change” (evil) and “mandatory” (accounting) provisions





# Right of First Refusal / Co-Sale

- Once universally agreed to by founders
- Emergence of active secondary market for unregistered securities changing the stakes
- If it's good for the geese (founders), should it also be good for the ganders (investors)?
- What is market?



# No-Shop/Confidentiality

- Rationale for shutting down the dating process
- Is a non-solicitation good enough?
- What is a reasonable term?
- Should acquisition proposals be carved out?





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LIGHT



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**ADVA**  
LIGHT





**Ole Kring – VaekstFonden (Copenhagen)**

**Jacob L. Philipsen – Advalight (Copenhagen)**

**Soren Holmark - PACTUM (Copenhagen)**

**Jes Broeng - DTU (Copenhagen and Beyond)**

**Brad Furber – Aery Advisors (Switzerland and USA)**



# Venture On

## To Follow-up With the Cast & Crew

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# For Additional Information about Venture Finance visit

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