

## GAVELHOUSE PLUS TERMS AND CONDITIONS

The **GAVELHOUSE PLUS TERMS AND CONDITIONS** (“these Conditions”) adopt the **GAVELHOUSE.COM Terms and Conditions** subject to the following additions, amendments and Special Conditions (set out in the Schedule), which shall apply mutatis mutandis to the **GAVELHOUSE.COM Terms and Conditions**. If there is a conflict between the additions, amendments and Special Conditions and the **GAVELHOUSE.COM Terms and Conditions** these additions, amendments and Special Conditions, shall prevail.

**The additions, amendments and Special Conditions are:**

### **A. CLAUSE 1.3 DEFINED TERMS**

At Clause 1.3 the definition of “Us” or “We” and “Our” shall be:

*Any reference to “Us” or “We” jointly refers to **Gavelhouse Limited** a company registered in New Zealand with the number 5284741 and **New Zealand Bloodstock Limited** a company registered in New Zealand with the number 33590 both having their registered office at 10 Hinau Road, Karaka, Papakura, 2113, New Zealand including their respective employees and contractors and “Our” has a corresponding meaning.*

and the following definition shall be added as follows:

*“Amount Owning” means in relation to a Lot and the Buyer of that Lot the purchase price and all other moneys payable from time to time by the Buyer to Us or the Seller in relation to that Lot including without limitation all monies payable under sub-clause 6.6 (a) of these conditions, or otherwise payable by the Buyer to Us or any of Our affiliates upon any other account whatsoever including:*

- (i) All monies lent or secured by Us or an Affiliate to the Buyer with respect to any other bloodstock, either by the Buyer alone or in connection with any other person or persons, or for which the Buyer is jointly or severally liable, and*
- (ii) All monies lent or secured by Us or an Affiliate to any other person at the Buyer’s order or request or upon the Buyer’s authority or to any person under the Buyer’s control, either alone or together with any other person or persons, and whether such order, request, authority or control is express or implied.*

### **B. REGISTRATION**

At clause 3 additional clauses shall be added as follows:

**3.7** *To register and to create a username and password to bid at a Gavelhouse Plus Auction You must complete the online “Gavelhouse Plus Registration Form” and submit it to Us together with such further information as We may require. You will be issued with a “Gavelhouse Plus” username and password if We approve your registration. We reserve the right to decline your registration and shall not be obliged to give any reason for doing so; and*

- (i) If the Buyer is a limited liability company We may require a personal guarantee to support its obligations in relation to all Lots purchased by the company; and*
- (ii) The company shall procure a guarantor approved by Us to execute a guarantee in the form required by Us; and*
- (iii) The guarantee must be executed prior to the commencement of the sale or within such further time as We may allow but not in any event more than two (2) days after the last day of the sale.*

**3.8** *A Gavelhouse.com username and password will NOT permit You to bid at Gavelhouse Plus Auction. You MUST hold a “Gavelhouse Plus” username and password.*

## C. PAYMENT AND TAKING POSSESSION

Clauses 6.1 (a) to (e) shall be amended as follows:

*The timeline for payment of the purchase price plus GST (if any) ("the purchase price") and the transfer of possession shall be as follows:*

- (a) **Acknowledgment of purchase:** As soon as practicable following the close of the auction You as the Buyer must complete and sign an acknowledgment of purchase in such form (including an electronic form) and providing such information as We may require including but not limited to that You are bound by these Conditions of Sale;*
- (b) **Invoice:** As soon as Practicable after the close of the Auction We will invoice the Buyer for the purchase price, GST and ancillary charges;*
- (c) **Due date for Payment:** Full payment of the purchase price is due within the number of days specified upon the invoice;*
- (d) **Possession Notice:** When We are satisfied that the Buyer has met out requirements we will notify the Seller and the Buyer that possession of the Lot may be given and taken ("the possession notice");*
- (e) **Possession:** Within 5 Working Days after the date of the possession notice but not before the Buyer must take possession of the Lot (or in the case of a share in a horse be deemed at law to have taken possession);*  
And the following sub-paragraph shall be added as follows:
- (f) **Payment of the purchase price to the seller:** Subject to the Seller's strict compliance with clause 7.2 (a) We will pay the net purchase price after deduction of commission, ancillary charges, unpaid Governing Body fees or charges, any money owing to Us or an Affiliate and other authorized deductions, if any, ("the net sale proceeds"), to the Seller within 30 Working Days after the possession notice or when the Seller has complied with clause 9.1 (d) if applicable, whichever is the later.*

## D. TITLE AND RISK

- At Clause 6 additional clauses 6.6 to 6.14 shall be added as follows:

**6.6** *If full payment of the purchase price is not paid in accordance with this clause 6, time being of the essence:*

- (a) The Buyer must in addition to the purchase price pay:*
  - (i) Interest on the outstanding balance at the rate of 12% per annum calculated daily in arrears from the date of sale up to and including the date of payment; and*
  - (ii) All costs and expenses, incurred by Us in recovering payment including without limitation debt collection fees and legal costs on an indemnity basis, the costs of repossession and resale; and*
  - (iii) All losses and damages including consequential losses of whatever nature; and*
  - (iv) The cost to insure the horse for all risks, (without being under any obligation to do so we may insure the horse at the Buyer's expense for the purchase price and shall ensure that the interests of Us and the Seller are noted on such policy); and*
- (b) We reserve the right to withhold delivery, at the Buyer's expense and risk, until full payment of the purchase price and ancillary charges has been made, including but not limited to amounts payable pursuant to this clause.*

**6.7 Notice of Change of Ownership:** *We reserve the right to withhold forwarding a notice of change of ownership form to the Buyer until full payment of the purchase price and any monies payable pursuant to sub-clause 6.6 (a).*

**6.8 Buyer as Bailee:** *If delivery of any Lot is made to the Buyer prior to title passing to the Buyer under these Conditions, the Buyer shall hold the Lot as Bailee only and:*

- (a) *The Buyer must:*
  - (i) *Keep the Lot in good condition and protect it from any loss or damage; and*
  - (ii) *Insure the Lot for its full replacement value against all risks or as We may require and shall have Our interest as secured party noted against the policy,*
  - (iii) *When asked by Us immediately notify Us of the location of the Lot.*
  
- (b) *The Buyer must not:*
  - (i) *Deal with the Lot in any manner inconsistent with the reasonable directions which may be given from time to time by Us; and*
  - (ii) *Exercise or purport to exercise any rights of ownership or possession including, without limitation, registering or racing the horse; and*
  - (iii) *Sell or in any way mortgage or charge or create any security interest or any lien in the Lot without Our prior written consent; and*
  - (iv) *Do anything which may prejudice the title or security interest of the Seller or Us in the Lot; and*
  - (v) *Move the Lot outside New Zealand without Our prior written consent.*

#### **6.9 Security Interest**

- (a) *The Buyer of each Lot by signing the acknowledgment of purchase and in consideration of the Lot being delivered to the Buyer grants to Us (for the respective interests of Us and the Seller) a Security Interest in the Lot (including proceeds) under the PPSA as security for the Amount Owing; and*
- (b) *The Security Interest granted under these Conditions is a purchase money Security Interest to the extent it secures the Buyer's obligation to pay the purchase price for the Lot or value given by Us to enable the Buyer to acquire the Lot; and*
- (c) *The Buyer acknowledges that it receives valuable consideration as at the date of delivery of the Lot, it acquires rights in the Lot and the Security Interest has attached to the Lot which in no way has been deferred or postponed; and*
- (d) *The Buyer will promptly provide all information and do all things that We may require to perfect and maintain any such Security Interest, including registering a financing statement or any financing change statement; and*
- (e) *The Buyer waives its rights under the PPSA to:*
  - (i) *Receive a copy of any verification statement; and*
  - (ii) *Receive a copy of any financing change statement.*
- (f) *The Buyer agrees, to the extent permitted by section 107 of the PPSA, that the provisions of Part 9 of the PPSA regarding enforcement of Security Interests which are for the Buyer's benefit, or place obligations on Us, shall apply only if they have to by law or We agree to their application.*
- (g) *The Security Interest is a continuing security, notwithstanding intermediate payment or anything else and is in addition to, and not to be merged in, any other security agreement, guarantee or other agreement (present or future) expressed or intended to be security for the Amount Owing.*

*The Buyer must immediately notify Us if the Buyer commits any breach of clause 6.8 or of any action by third parties (including any of its creditors) affecting Our Security Interest in the Lot.*

**6.10 Events of Default: The Buyer is in default under these Conditions if the Buyer:**

- (a) Fails to pay any Amount Owing on the due date for payment; or
- (b) Fails to perform any of the Buyer's other obligations under these Conditions or any other contract between Us and the Buyer; or
- (c) Commits any act of bankruptcy or enters any composition or arrangement with the Buyer's creditors; or
- (d) Dies; or
- (e) If a company does any act which would make it liable to be wound up or if a resolution is passed or proceedings are commenced for its winding up; or
- (f) Has a receiver appointed over all or any of the Buyer's assets, or
- (g) The Lot is "at risk" as that term is defined in section 109 (2) of the PPSA.

**6.11 Full Payment Due:** If the Buyer is in default under these Conditions We may without notice to the Buyer, cancel the sale, and payment for all Amounts Owing shall immediately become due and payable notwithstanding any other contract between Us or an Affiliate and the Buyer.

**6.12 Repossession:** Upon cancellation of the sale by Us, without prejudice to any other rights or remedies We may have, We may exercise all or any of the rights available to Us under the PPSA or at law, and We may take possession of the Lot and for that purpose We are authorised by the Buyer to enter any property or premises where the Lot may be located or is supposed to be located to take possession of the Lot. The Buyer gives Us this authority as the owner of the property or premises or if not the Owner, the Buyer authorises Us as the agent of the owner.

**6.13 Resale:** In the event of the repossession of any Lot in accordance with this clause We may, in Our discretion, reoffer the Lot for sale either privately or by auction at the Buyer's risk and expense in all things and the net proceeds applied to the Amount Owing and any deficit shall be recoverable by Us from the Buyer as a debt due on demand and We may retain any monies paid on account for the purchase and/or any surplus on any such resale, as liquidated damages or on account of any Amount Owing.

**6.14 Cancellation of Sale by Buyer:** If the Buyer cancels the sale of a Lot under any provision of clause 7 then:

- (a) The Seller fully indemnifies Us against any action by the Buyer and any costs and expenses incurred by Us in connection therewith; and
- (b) The Buyer will be entitled to a refund of all purchase monies paid in respect of such Lot from the Seller or from Us if We still hold the same; and
- (c) Subject to sub-clause 6.14 (d), the Seller will be responsible for:
  - (i) The cost of return of the Lot to the Seller; and
  - (ii) The cost of transport, agistment and upkeep incurred by the Buyer from the date of sale to the date of cancellation, if applicable; and
  - (iii) All commission and fees on the sale and entry which would have been payable had the sale not been cancelled; and
  - (iv) All the costs of the process including sampling and testing, if applicable.
- (d) If a sale is cancelled under clause 7.4 (windsuckers and wobblers) or clause 7.6 (rigs) or otherwise in accordance with these Conditions and if the Lot has been exported within 7 days of the day of sale and before the sale is cancelled:
  - (i) the Buyer is responsible for the cost of airfreight to the Buyer's nominated destination; and
  - (ii) The Seller is responsible for the cost including airfreight of returning the Lot to the Seller's farm.

- **Clause 9.1 (a) and (b) shall be amended as follows:**

- (a) *Title in a Lot shall pass from the Seller or Us, whatever the case may be, to the Buyer when We have received payment in full of the purchase price and all monies payable pursuant to clause 6.6 (a) in cleared funds;*
- (b) *If We account to the Seller for the purchase price less any monies owed by the Seller to Us, before the purchase price and other amounts payable by the Buyer have been paid, title to the Lot shall thereon pass to Us and We shall have the rights and remedies under these conditions as if We were the Seller including the rights to a security interest in the Lot.*

## **E. GENERAL PROVISIONS**

### **Clause 18 shall be amended as follows:**

- (a) **Waiver:** *No failure or delay or indulgence on Our part or by the Seller or by the Buyer in exercising any power or right under these Conditions will operate as a waiver, nor will any single or partial exercise of such right or power preclude any other or future exercise of the same, or any other right or power hereunder.*
- (b) **Rights of Set Off**
  - (i) *As between the Buyer and Us, the Buyer waives all rights of set-off, if any, which the Buyer, may have against the Seller.*
  - (ii) *We may appropriate any monies in Our possession belonging to the Buyer and apply them towards any Amount Owing by the Buyer to Us in such order of priority as We shall in Our sole discretion think fit.*
  - (iii) *We shall be entitled to deduct any monies owing to Us or an Affiliate by the Seller from any monies owing by Us to the Seller.*
  - (iv) *We may, in addition to recovering any offering fee, entry fee or commission or any other monies owing by the Seller to Us, recover all costs and expenses of whatsoever nature, including without limitation legal costs on a solicitor to client basis, expended by Us in recovering the payment of debt from the Seller or in recovering the Purchase price from the Buyer of a Lot sold by the Seller. Such costs and expenses shall be payable by the Seller to Us on an indemnity basis upon demand being made.*
- (c) **Power of Attorney:** *For the purpose of enabling Us to give full effect to these Conditions, the Seller and the Buyer each irrevocably appoints Us as their lawful attorney to do all things and to sign and execute documents and to give instructions for the purposes of carrying out Our duties hereunder as may in Our opinion be necessary or desirable and each agrees to ratify and affirm anything We do pursuant to this Power of Attorney.*

## **SCHEDULE**

The following Special Conditions shall apply:

### **KARAKA MILLION**

1. All qualifying unbroken Yearling and Weanling Lots that are
  - (a) Purchased at this Sale, or
  - (b) Passed through the ring at the Sale but are sold within 30 days at no less than the passed-in amount and full commission is paid to NZB in accordance with these Conditions of Sale, shall, subject to this clause 3, be eligible for the races that comprise the New Zealand Bloodstock Karaka Million Series.
2. All Lots in 1(a) and (b) above shall be eligible to be nominated for the Karaka Million Series subject to all payments for such Lot being received by the Us in full, including the Entry Fee in accordance with

the Karaka Million Conditions of Entry, and all other Karaka Million Series Conditions of Entry have been complied with.

3. A copy of the Karaka Million Series Conditions of Entry may be requested from New Zealand Bloodstock and is published at [www.nzb.co.nz](http://www.nzb.co.nz).
4. The Karaka Million Series is promoted and conducted solely by Us and We shall not be liable in any respect should any race in the Karaka Million Series not proceed for any reason, or should the format, dates or any aspect of the race(s) be altered, or should the rules relating to the conduct thereof be varied in any matter whatsoever.
5. Without limiting clause 4, We reserve the right at Our sole discretion and without providing any reason therefor to permit or preclude any horse from starting in any race in the Karaka Million Series, or from altering or removing any race in the Series.
6. The Karaka Million Series for horses from this Sale shall comprise a \$1 million dollar 1200m race for two-year-olds in January 2023 (yearlings)/2024 (weanlings), a \$1 million 1600m race for three-year-olds in January 2024 (yearlings)/2025 (weanlings), and a minimum \$100,000 staying event from 2025 (yearlings)/2026 (weanlings) onwards.

#### **COMMISSION AND FEES**

Clause 10.1 and 10.2 shall be replaced as follows:

10.1 We shall charge fees to enter a Lot for sale. We may provide pricing tiers for different Sales.

- For the NZB 2022 National Online Sale, (20 April) \$450 plus GST.
- For the NZB 2022 National Online Broodmare Sale, (20 July) \$450 plus GST.

10.2 A commission rate of 7.5% plus GST will be charged on all Lots sold.

#### **REPOSITORY**

Clause 8.1 shall be replaced as follows:

- 8.1** Sellers may place pre-Sale x-rays and may place other information in the Repository. Only registered veterinarians (who may act on Your behalf) are entitled to lodge or view material with the Repository. Use of the Repository is subject to the Repository Terms and Conditions available at [www.gavelhouse.com](http://www.gavelhouse.com).