

# CONDITIONS OF SALE

A Vendor, by offering a Lot for sale, a Bidder, by bidding on a Lot and a Purchaser by purchasing a Lot agree to these Conditions of Sale and each is deemed to have knowledge of and be bound by them even though they may not be read out.

## 1.0 INTERPRETATION

### 1.1 Defined Terms

In these Conditions, unless the context requires otherwise:

Any reference to “You” refers to You as a Vendor or Purchaser or Agent as the case may be and “Your” has a corresponding meaning.

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

“Affiliate” means any company associated with New Zealand Bloodstock Limited as defined by Subpart YB2 of the Income Tax Act 2007 such as without limitation New Zealand Bloodstock Finance & Leasing Limited, Gavel House Limited, New Zealand Bloodstock Pty Limited and Gavel House Pty Limited;

A “Bidder” is taken to be a Principal unless, before bidding, the bidder has given Us a copy of a written authority from a Principal of the bidder’s appointment as Agent and We have given approval for the bidder to bid in that capacity subject sub-clause 2.5 (c);

“Amount Owning” means in relation to a Lot and the Purchaser of that Lot the purchase price and all other moneys payable from time to time by the Purchaser to Us or the Vendor in relation to that Lot including without limitation all monies payable under sub-clause 6.2 (b) (i) of these conditions, or otherwise payable by the Purchaser 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 Purchaser with respect to any other bloodstock, either by the Purchaser alone or in connection with any other person or persons, or for which the Purchaser is jointly or severally liable, and

(ii) All monies lent or secured by Us or an Affiliate to any other person at the Purchaser’s order or request or upon the Purchaser’s authority or to any person under the Purchaser’s control, either alone or together with any other person or persons, and whether such order, request, authority or control is express or implied.

“these Conditions” means these conditions of sale;

“GST” means Goods and Services Tax;

“Lot” means a horse, share in a horse, and in case of mare with foal at foot, both the mare and the foal or other stock or goods offered for sale as one item and described and identified in the Sale Catalogue;

“NZTR” means New Zealand Thoroughbred Racing Inc.;

“PPSA” means the Personal Property Securities Act 1999;

“Purchaser” means the person to whom any Lot is sold;

“Purchase Price” means the purchase price and including without limitation the cost of endoscopic examination, entry fees, insurance, blood testing and GST;

“Repository” means Our computer data storage system for lodgement, storage and viewing of veterinary digital imaging and information including without limitation radiographs relating to any Lot;

“Repository Access Area” means the area at the sale grounds designated by Us for authorised persons to access the Repository retained on Our server via computer terminals;

“Reserve Card” means the Vendors written advice to Us of the reserve price;

“Security Interest” means a security interest as defined by the Personal Properties Security Act 1999 (“the PPSA”) and includes ‘purchase money security interest’;

“Services” means the services provided by Us;

“Vendor” means the person who offers a Lot for sale or who sells a Lot and includes the holder of a lien or security interest.

## **1.2 Construction**

In the interpretation of these Conditions, unless the context otherwise requires:

- (a) Any reference to a person shall include reference to a body corporate and to an unincorporated body of persons;
- (b) An obligation or liability of a person, if more than one, shall bind them jointly and each of them severally;
- (c) Any reference to a statute or regulation includes a replacement or modification of that statute or regulation
- (d) Any reference to a document includes a reference to any original, a facsimile copy, a photocopy, a PDF or email image copy of the document.
- (e) Writing and written includes hand writing, typing, printing, photography and other modes of representing or reproducing words, figures, or symbols in an enduring visible form.
- (f) Clause headings will be disregarded.
- (g) Words importing the singular shall include the plural and vice versa.
- (h) Words importing one gender shall include the other genders.

## **2.0 CONDUCT OF SALE**

### **2.1 Bidding and Reserves**

Bidding for Lots shall be in New Zealand Dollars and a Lot shall be sold at the highest bid accepted by Us which is equal to or above the reserve price, if any; and

- (a) The person that made the highest bid accepted by Us shall be the Purchaser;
- (b) All bidders must register with Us prior to the commencement of the sale and provide us with their name and address and such other information as We may require; and
  - (i) If the Purchaser 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.
- (c) Any bid may be withdrawn before the end of the auction of a Lot;
- (d) The Vendor must provide us with a Reserve Card before the Lot is offered; or
  - (i) The Vendor or his representative may attend the rostrum to advise the reserve price and must sign a Reserve Card before leaving the rostrum if the reserve price is not met and the Lot is passed in;
  - (ii) If there is a conflict between a reserve card and the recorded spoken advice of the Vendor or his representative as to the reserve price, the recorded spoken advice prevails;
  - (iii) If no Reserve Card is provided or the Vendor or his representative does not attend the rostrum to advise the reserve price the Lot may be sold to the highest bidder and the Vendor shall pay the commission and all other charges;
- (e) The last bidder shall have the option to be exercised before the Lot leaves the sale ring to purchase the Lot at the reserve price.

### **2.2 Bid Disputes**

Should any bid dispute arise:

- (a) The Lot shall immediately be re-offered at the last undisputed bid; or
- (b) The dispute may be determined by Us; and
- (c) Our decision shall be final and binding.

### **2.3 Our Rights**

We have the right in our absolute discretion to:

- (a) Bid as agent on behalf of the Vendor on any Lot with a reserve price up to that reserve price provided we identify such a bid as a bid on behalf of the Vendor;
- (b) Bid as agent on behalf of a principal;
- (c) Determine the Purchaser;
- (d) Nominate or direct from time to time the amount by which bidding may be advanced;
- (e) Refuse to accept any bid without giving any reason;

- (f) Settle any dispute in such manner as we think fit;
- (g) Have any Lot examined by a veterinarian of our choosing before or after the sale;
- (h) Withdraw any Lot before or during the sale;
- (i) If a Lot is passed in We may canvass prospective purchasers with a view to arranging a sale at a price satisfactory to the Vendor and subject to these Conditions.
- (j) Use or publish details of bidding, the identity of the Vendor, and the Purchaser in all matters related to the sale of any Lot as We think fit;
- (k) Provide the name and address of the Vendor to a prospective bidder or Purchaser.

## **2.4 Vendor Bids Prohibited**

You as Vendor or any person acting as Your Agent must not bid on any Lot if You are the owner of the Lot, nevertheless:

- (a) A co-owner of a Lot (such as a partner or syndicate member) may bid if intending to purchase the Lot; and
- (b) You must in relation to any improper bidding by You or on Your behalf:
  - (i) Pay full commission on any Lot that You buy back; and
  - (ii) Indemnify Us for all losses, costs and expenses that We incur whether as a result of a sale being rescinded or otherwise.

## **2.5 Purchase Acknowledgement**

As soon as practicable following the fall of the hammer You as the Purchaser 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:

- (a) That You are bound by these Conditions of Sale; and
- (b) If You are an Agent Your guarantee as principal debtor of the obligations of the Purchaser; unless
- (c) You have given Us, before bidding, a copy of a written authority from a Principal of Your appointment as Agent and We have given approval for You to bid in that capacity and in that case You shall not be held responsible for the payment of the purchase price unless You have breached or exceeded the terms of Your actual or apparent authority or any parameters specified by Us.

## **3.0 LIMITED WARRANTIES**

### **3.1 Title and Description**

You, as Vendor:

- (a) Declare Your clear title to each of Your Lots entered for Sale and confirm that all requirements of NZTR have been adhered to and that at the close of Auction the Lot is or will be free of all liens, charges and security interests; and
- (b) Declare that each Lot meets the description and parentage that You supply; and
- (c) Are alone responsible for the accuracy of the information that You supply under this clause and if the information is materially misleading or inaccurate:
  - (i) The Purchaser is, without prejudice to the other remedies available to the Purchaser at law (including to sue for damages or to sue for specific performance), entitled to cancel the sale and the provisions of clause 9.5 shall apply.

### **3.2 Veterinary Examination**

Prior to Auction any horse which is being offered for sale must be available for a limited veterinary clinical examination in the privacy of a box if requested by and at the expense of a prospective Purchaser, to whom the veterinarian will solely make his report.

### **3.3 Windsucker (aerophagia) or a Wobbler**

Should any horse be a windsucker (aerophagia) or a wobbler this must be disclosed by the Vendor prior to the sale of that horse and the fact will then be announced by Us at the time of the sale. Should any Lot be found to be a windsucker (aerophagia) or a wobbler within 7 days of the day of sale and such fact was not disclosed by the Vendor then the Purchaser may cancel the sale by notice to Us subject to the Purchaser producing a veterinarian certificate signed by a veterinarian approved by Us certifying that the horse is a windsucker (aerophagia) or a wobbler, within the 7 day period and the provisions of clause 9.5 shall apply.

### **3.4 Colts**

Where any Lot is described as a 'colt' the Purchaser shall not be entitled to make any objection and shall not have a claim against Us or Vendor if such Lot is a horse in which one or both testes have not descended into the scrotum.

### **3.5 Rigs**

Notwithstanding clause 3.4, excluding yearlings, should any horse described as a colt be a Cryptorchid (rig) this must be disclosed by the Vendor prior to the sale of that horse in writing and the fact will then be announced by Us at the time of the sale. Should any Lot be found to be a Cryptorchid (rig) within 7 days of the day of sale and such fact was not disclosed by the Vendor then the Purchaser may cancel the sale by notice to Us, subject to the Purchaser producing a veterinarian certificate signed by a veterinarian approved by Us certifying that the horse is a Cryptorchid (rig), within the 7 day period and the provisions of clause 9.5 shall apply.

### **3.6 Endoscopic Examination**

(a) Any one or more of the following conditions shall be referred to in this clause as “an upper respiratory condition”:

- (i) Laryngeal hemiplegia (Grossly deficient abductor function of one or both Arytenoid cartilages, Grades 4 and 5 Lane Bain Fallon Proceedings 1993)
- (ii) Rostral displacement of the palatopharyngeal arch
- (iii) Persistent epiglottic entrapment
- (iv) Persistent dorsal displacement of the soft palate
- (v) Arytenoid chondritis or chondroma
- (vi) Subepiglottic cyst(s)
- (vii) Cleft palate

(b) If requested by the Purchaser, yearlings which are sold may be subject to a post-sale upper respiratory endoscopic examination at rest (excluding the trachea) by a suitably qualified veterinarian approved by Us at the expense of the Purchaser. Such examination shall take place within 24 hours of the fall of the hammer and before the horse is removed from the sale grounds.

(c) If the examining veterinarian is of the opinion that the horse has an upper respiratory condition it shall be reported to Us and the Purchaser; and

- (i) If the upper respiratory condition was not disclosed by the Vendor; then
- (ii) The Purchaser may cancel the sale by notice to us by the end of the day following the day of the examination and the provisions of clause 9.5 shall apply.

(d) The Vendor agrees to allow an endoscopic examination to be carried out in accordance with this clause.

(e) In the event of any dispute We reserve the right to obtain an opinion by a panel of not more than three (3) veterinary surgeons appointed by Us before We accept a notice of cancellation of sale and our decision shall be final.

(f) The veterinarian carrying out the examination acts at the request of the Purchaser and the Vendor acknowledges that We are not responsible for or have any liability for injury or illness suffered by the horse during or as a result of such examination.

(g) The Vendor and the Purchaser acknowledge that the examining veterinarian:

- (i) Is only required to report to Us whether the horse is suffering from an upper respiratory condition; and
- (ii) He is not under any obligation to report to Us or any other party, including the Purchaser, any information other than whether the horse is suffering from an upper respiratory condition.

### **3.7 Anabolic Steroids**

(a) The Vendor warrants that any yearling entered for sale shall not have been administered any anabolic steroids or selective androgen receptor modulators (“SARM”).

(b) No later than 60 minutes after the fall of the hammer, the Purchaser may at his expense, request that blood samples be taken from the horse.

(c) The horse may not be removed from the sale grounds until the samples have been taken by an independent service provider such as a veterinarian approved by Us.

(d) The methods and standards relating to the collection, transportation and chain of custody of samples may vary, however, We will endeavour to meet the requirements and standards approved and applied by NZTR and the samples shall be tested by the appropriate testing agency approved by NZTR.

(e) The results of the test will be provided to the Vendor and Purchaser as soon as practicable. If, for any reason the testing has not been carried out, or the results not conveyed in writing to Us within 7 days of the day of sale of the Lot, the Purchaser will not have any right to cancel the sale.

(f) Should a positive test for anabolic steroids or SARM be found:

(i) We shall report the positive test to NZTR; and

(ii) The Purchaser may by notice to Us cancel the sale forthwith and the provisions of clause 9.5 shall apply.

### **3.8 Repository**

(a) If any Lot has undergone invasive joint surgery, surgery to repair a fracture, surgical intervention of the upper respiratory tract, or has undergone abdominal surgery of any type (other than surgery to treat an umbilical hernia) the Vendor must provide full and complete disclosure by way of veterinary certificate lodged in the Repository; and

(b) A Vendor may lodge images and other information in the Repository in accordance with the Repository Terms;

(c) The Repository Terms are displayed at Our office, in the sale ring and at the Repository Access Area and the Repository may only be used by You in accordance with the Repository Terms. In the event of any inconsistency between the Repository Terms and these Conditions, these Conditions shall prevail.

(d) The Vendor warrants that images and information lodged in the Repository is in all respects:

(i) Complete; and

(i) Compliant with the specifications and requirements set out in the Repository Terms; and

(ii) Accurate and authentic as at the date it was lodged.

(e) You, as Vendor are alone responsible for the accuracy of the information that You supply under this clause and if the information is materially misleading or inaccurate.

(f) The Purchaser is, without prejudice to the other remedies available to the Purchaser at law (including to sue for damages or to sue for specific performance), entitled to cancel the sale and the provisions of clause 9.5 shall apply.

(g) We do not review the images or information in the Repository and give no warranty or assurance of any kind in respect of the completeness, accuracy or authenticity of the images or information all of which is the responsibility of the Vendor.

### **3.9 Fitness for Purpose**

You, as Purchaser acknowledge, subject only to the limited warranties expressed in these Conditions:

(a) The purchase is made solely in reliance upon Your own:

(i) Enquiries and inspection; and

(ii) Skill and judgement.

(b) That no guarantee, representation or warranty of any kind is made or given as to the fitness for purpose, soundness, condition or other quality of any Lot sold, either by:

(i) The Vendor or

(ii) By Us and,

(iii) The auction is not an auction of goods of a kind ordinarily acquired for personal, domestic or household use or consumption; and

(iv) All conditions and warranties, expressed or implied, statutory or otherwise, are hereby excluded to the maximum extent permitted by law.

(c) It is Your responsibility as a prospective Purchaser to arrange for any veterinary inspection or inquiry that You may require and You assume all consequences and risk from failure to do so.

(d) You have not relied on any statement made by or on behalf of the Vendor or by Us in relation to any Lot.

### **3.10 Roarers**

Should any horse be a roarer (laryngeal hemiplegia) this must be disclosed by the Vendor in writing prior to the sale of that horse and the fact will then be announced by Us at the time of the sale. Should any Lot be found to be a roarer within 7 days of the day of sale and such fact was not disclosed by the Vendor then the Purchaser may cancel the sale by notice to Us subject to the Purchaser producing a veterinarian certificate signed by a veterinarian approved by Us certifying that the horse is a roarer, within the 7 day period and the provisions of clause 9.5 shall apply.

### **3.11 Warranty Disputes**

In the case of any dispute, the remedy of the Purchaser shall be against the Vendor and in no case or under no circumstances shall it be against Us as agent of the Vendor. Any disputes which arise between the Vendor and the Purchaser in relation to any Lot shall be resolved between them and no Lot shall be returned to Us or to the sale grounds.

## **4.0 KARAKA MILLION**

### **4.1 All Lots that are**

- (a) Purchased at the Premier, Select and Festival sessions of this Sale, or
- (b) Passed through the ring at the Premier, Select or Festival sessions of this 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 4, be eligible for the races that comprise the New Zealand Bloodstock Karaka Million Series.

4.2 All Lots in 4.1(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 Auctioneer 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.

4.3 A copy of the Karaka Million Series Conditions of Entry may be requested from New Zealand Bloodstock and is displayed in full in the Sale Day Office.

4.4 The Karaka Million Series is promoted and conducted solely by the Auctioneer itself and for those for whom they act and the Auctioneer 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.

4.5 Without limiting clause 4.4, the Auctioneer reserves the right at its 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.

4.6 The Karaka Million Series for horses from this Sale shall comprise a \$1 million dollar 1200m race for two-year-olds in January 2018, a \$1 million 1600m race for three-year-olds in January 2019, and a minimum \$100,000 staying event from 2020 onwards.

## **5.0 TITLE AND RISK**

### **5.1 Title**

(a) Title in a Lot shall pass from the Vendor or Us, whatever the case may be, to the Purchaser when We have received payment in full of the purchase price and all monies payable pursuant to clause 6.2 (b) (i) in cleared funds;

(b) If We account to the Vendor for the purchase price less any monies owed by the Vendor to Us, before the purchase price and other amounts payable by the Purchaser 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 Vendor including the rights to a security interest in the Lot.

### **5.2 Risk**

The risk of loss or damage or injury to the Lot, whether by disease, accident or otherwise is:

- (a) Yours as Vendor until the fall of the hammer; and
- (b) Remains with You as Vendor if the Lot is not sold; and
- (c) If the Lot is sold shall pass from the Vendor to the Purchaser, upon fall of the hammer; and
- (d) We shall not be responsible for loss, damage or injury to a Lot at any time nor shall We be liable for any loss, damage or injury whatsoever to persons or property caused by any Lot whether by disease, accident or otherwise.

### **5.3 Delivery**

- (a) Unless these conditions provide something else, upon delivery of the Lot to You as Purchaser, You will lose the right, if any, to reject the Lot.
- (b) The Vendor or the Auctioneer may insist upon proof of insurance cover before allowing the Purchaser to take delivery of the Lot.
- (c) The Vendor shall be responsible for immediately removing the horse from the sale grounds if the Lot is not sold.

### **5.4 Notice of Change of Ownership**

- (a) The Vendor must provide Us with the certificate of registration/document of description.
- (b) The Purchaser must complete and register the notice of change of ownership with NZTR, including engagements to his own name.
- (c) Each horse is sold with its engagements.
- (d) We accept no responsibility through failure of the Purchaser to complete and register the notice of change of ownership to NZTR, including engagements to his/her own name.
- (e) We reserve the right to withhold forwarding a notice of change of ownership form to the Purchaser until full payment of the purchase price and any monies payable pursuant to sub-clause 6.2 (b) (i).

(f) We are appointed by the Vendor as the Vendor's agent to sign and forward the change of ownership form to the Purchaser after the Lot has been paid for in full and You as Vendor indemnify Us for all losses, costs and expenses that We incur, if any, for doing so whether as a result of some dispute or otherwise.

## **6.0 PAYMENT PROCEDURE**

### **6.1 Pro Forma Invoice**

You as a Purchaser must sign a Pro Forma Invoice and provide consignment instructions at the designated sales office at the sale grounds no later than 60 minutes after the fall of the hammer in respect of each Lot purchased by You.

### **6.2 Purchase Price Payable on Fall of the Hammer**

(a) The Purchaser must make full payment of the purchase price in cash within 60 minutes of the fall of the hammer unless We have agreed in writing to other arrangements.

(b) If full payment of the purchase price is not paid in accordance with this clause, time being of the essence:

(i) The Purchaser must in addition to the purchase price pay:

(1) 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

(2) 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

(3) All losses and damages including consequential losses of whatever nature; and

(4) The cost to insure the horse for all risks, (without being under any obligation to do so we may insure the horse at the Purchaser's expense for the purchase price and shall ensure that the interests of Us and the Vendor are noted on such policy); and

(ii) We reserve the right to withhold delivery, at the Purchaser'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.

## **7.0 GOODS AND SERVICES TAX (GST)**

### **7.1 Imposition of GST**

All Lots offered are subject to GST, whether or not the vendor is GST registered in New Zealand. Bidding will be on a GST exclusive basis and GST will be added to the purchase price when invoiced; and

(a) GST collected by Us on behalf of a GST registered Vendor will be paid to that Vendor; and

(b) GST collected by Us on behalf of an unregistered GST Vendor will be paid to the Inland Revenue Department; and

(c) GST is payable on all services provided by Us.

### **7.2 Export to Non Resident Purchaser**

If You as the Purchaser (being a non-resident for tax purposes) advise Us that the horse is to be exported to You so that the sale is zero rated for GST purposes then:

(a) You the Purchaser appoint Us as your agent for the export of the horse; and

(b) The Vendor or his agent (which may be Us) shall, in the course of making the sale, enter the horse for export and export it out of New Zealand provided that the Purchaser shall bear all costs attendant upon the export; and

(c) The horse shall be exported out of New Zealand within 28 days of the sale or within such further time as the Inland Revenue Department may permit; and

(d) If the requirements of sub-clauses 7.2 (b) and (c) of these Conditions or any other requirement for the zero rating of the horse under the Goods and Services Act 1985 are not complied with, the Purchaser will pay GST in addition to the purchase price; and

(e) The shipping/freighting agent is responsible for the due and proper compliance with all Acts and Regulations concerning the export of horses and the receipt of overseas funds.

### **7.3. Section 8 (4) GST Act**

The Purchaser and the Vendor agree that the provisions of Section 8 (4) of the GST Act do not apply.

## **8. DEFERRED PAYMENT**

### **8.1 Purchaser as Bailee**

If delivery of any Lot is made to the Purchaser prior to title passing to the Purchaser pursuant to clause 5.1 of these Conditions, the Purchaser shall hold the Lot as Bailee only and:

- (a) The Purchaser 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 Purchaser 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 Vendor or Us in the Lot; and
  - (v) Move the Lot outside New Zealand without Our prior written consent.

## **8.2 Security Interest**

- (a) The Purchaser of each Lot (described and identified in the sale catalogue) by signing the acknowledgment of purchase and/or the pro forma invoice and in consideration of the Lot being delivered to the Purchaser grants to Us (for the respective interests of Us and the Vendor) 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 Purchaser's obligation to pay the purchase price for the Lot or value given by Us to enable the Purchaser to acquire the Lot; and
- (c) The Purchaser 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 Purchaser 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 Purchaser 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) To the extent permitted by section 107 of the PPSA, We and the Purchaser agree to contract out of Part 9 of the PPSA including the Purchaser's rights as debtor.
- (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.
- (h) The Purchaser must immediately notify Us if the Purchaser commits any breach of clause 8.1 or of any action by third parties (including any of its creditors) affecting Our Security Interest in the Lot.

## **9. DEFAULT**

### **9.1 Events of Default**

The Purchaser is in default under these Conditions if the Purchaser:

- (a) Fails to pay any Amount Owing on the due date for payment; or
- (b) Fails to perform any of the Purchaser's other obligations under these Conditions or any other contract between Us and the Purchaser; or
- (c) Commits any act of bankruptcy or enters any composition or arrangement with the Purchaser'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 Purchaser's assets, or
- (g) The Lot is "at risk" as that term is defined in section 109 (2) of the PPSA.



## **9.2 Full Payment Due**

If the Purchaser is in default under these Conditions We may without notice to the Purchaser, 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 Purchaser.

## **9.3 Repossession**

- (a) 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
- (b) We may take possession of the Lot and for that purpose We are authorised by the Purchaser 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 Purchaser gives Us this authority as the owner of the property or premises or if not the Owner, the Purchaser authorises Us as the agent of the owner.

## **9.4 Resale**

In the event of the repossession of any Lot in accordance with clause 9.3 We may, in Our discretion, reoffer the Lot for sale either privately or by auction at the Purchaser'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 Purchaser 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 re-sale, as liquidated damages or on account of any Amount Owing.

## **9.5 Cancellation of Sale by Purchaser**

If the Purchaser cancels the sale of a Lot under any provision of clause 3 then:

- (a) The Vendor fully indemnifies Us against any action by the Purchaser and any costs and expenses incurred by Us in connection therewith; and
- (b) The Purchaser will be entitled to a refund of all purchase monies paid in respect of such Lot from the Vendor or from Us if We still hold the same; and
- (c) Subject to sub-clause 9.5 (d), the Vendor will be responsible for:
  - (i) The cost of return of the Lot to the Vendor; and
  - (ii) The cost of transport, agistment and upkeep incurred by the Purchaser 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 3.3 (windsuckers and wobblers) or clause 3.5 (rigs) or clause 3.10 (roarers) and if the Lot has been exported within 7 days of the day of sale and before the sale is cancelled:
  - (i) the Purchaser is responsible for the cost of airfreight to the Purchaser's nominated destination; and
  - (ii) The Vendor is responsible for the cost including airfreight of returning the Lot to the Vendor's farm.

## **10. GENERAL PROVISIONS**

### **10.1 No Liability**

- (a) We shall be under no liability for the loss, of any kind whatsoever, incurred by the Vendor for any reason whatsoever arising out of before, during or after the auction or sale in respect of the Vendor's Lot or Lots entered in the Sale.
- (b) We shall not be responsible for any Lot or liable for any damage or injury to that Lot at any time whilst the Lot is in Our possession, custody or control nor shall We be liable for any loss, damage or injury whatsoever to persons or property caused by any Lot whether by disease, accident or otherwise.
- (c) Every person attending the Sale or entering the sale grounds shall do so at his own risk and We shall not in any way be held liable or responsible for any accident whatsoever to any such person.

### **10.2 No Merger**

Our rights and remedies under these Conditions shall not be affected by reason of Our selling commission and charges having been deducted by Us in any payment made to the Vendor.

### **10.3 Rights of Set Off**

- (a) As between the Purchaser and Us, the Purchaser waives all rights of set-off, if any, which the Purchaser, may have against the Vendor.
- (b) We may appropriate any monies in Our possession belonging to the Purchaser and apply them

towards any Amount Owing by the Purchaser to Us in such order of priority as We shall in Our sole discretion think fit.

(c) We shall be entitled to deduct any monies owing to Us or an Affiliate by the Vendor from any monies owing by Us to the Vendor.

(d) We may, in addition to recovering any offering fee, entry fee or commission or any other monies owing by the Vendor 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 Vendor or in recovering the Purchase price from the Purchaser of a Lot sold by the Vendor. Such costs and expenses shall be payable by the Vendor to Us on an indemnity basis upon demand being made.

#### **10.4 No Waiver**

No failure or delay or indulgence on Our part or by the Vendor or by the Purchaser 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.

#### **10.5 Power of Attorney**

For the purpose of enabling Us to give full effect to these Conditions, the Vendor and the Purchaser 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.

#### **10.6 Health and Safety**

The Vendor agrees to comply with all his obligations under the Health and Safety at Work Act 2015 and in particular:

- (a) To take all practicable steps to ensure the safety of its employees, contractors and other persons on the sale grounds.
- (b) To ensure that its employees and contractors are provided with adequate training and supervision and that first aid equipment is available at all times.
- (c) To complete any documents required by the Act in respect of notification of accidents and ensure that these are forwarded to WorkSafe New Zealand within the prescribed time periods.
- (d) To meet any requirement that may become necessary to ensure compliance with the provisions of the Act.

#### **10.8 Jurisdiction**

These Conditions of Sale and all contracts made under them shall be governed by the laws of New Zealand and the Vendor and the Purchaser submit to the Jurisdiction of the New Zealand Courts and any actions that may be necessary, will be brought in a court held at Auckland or elsewhere should We in writing consent.



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knowledge of and be bound by them.