

# CONDITIONS OF SALE

The Conditions of Sale set out hereunder shall apply to all transactions entered into at the 2015 Ready to Run Sale of Two-Year-Olds ("the Sale"). They shall be binding notwithstanding that they may not be read out. All persons entering into any transaction at this Sale shall be deemed to have knowledge of and be bound by them.

## INTERPRETATION

in these Conditions:-

**Auctioneer:** means New Zealand Bloodstock Limited together with its employees, officers and authorised agents.

**He or His:** where that word appears, shall also mean she, they, or it where appropriate.

**Lot:** means horse, share in a horse, horses in case of mare with foal at foot, or other item sold by the Auctioneer in connection with this Sale.

**Person:** wherever it appears shall include a partnership and a company or other corporation.

**Purchaser:** means the person or corporation to whom any Lot is sold, and shall mean each severally and any two or more jointly. Where the purchaser of any Lot shall comprise more than one person, these Conditions shall bind each person severally and any two or more persons jointly.

**Repository:** means the area designated by the Auctioneer as being for the lodgement and inspection of certain information relating to any Lot, including x-rays.

**Security Interest:** as per the Personal Properties Security Act 1999 as amended ("the PPSA") and includes 'purchase money security interest'.

**Vendor:** means the person or corporation on whose behalf any Lot is sold by the Auctioneer and, where more than one, shall mean each severally and any two or more jointly.

## CONDUCT OF SALE

- 1 SUBJECT to any reserve price, the highest bidder acceptable to the Auctioneer shall be the Purchaser. Should any dispute arise, the Lot shall immediately be re-offered at the last undisputed bid or the dispute may be determined by the Auctioneer whose decision shall be final and binding.
- 2 THE Auctioneer expressly reserves the right to refuse to accept any bid and shall not be obliged to give any reason for doing so.
- 3 THE Auctioneer shall have the right to bid as agent on behalf of the Vendor on any Lot on which a reserve price has been placed up to that reserve. No Vendor shall in any circumstances whatsoever bid or allow any agent or other person to bid on his behalf for any Lot owned by such Vendor except that this restriction shall not extend to partners, syndicate owners or other joint owners. Any partner, syndicate member, or other joint owner may bid thereon either personally or through an agent. Notwithstanding any permission in this clause, should any improper bidding either by or on behalf of a Vendor or part owner be discovered, full commission will be charged on any horse bought in and should there be any improper bidding either by or on behalf of a Vendor or part owner which results in the sale and purchase of a Lot being rescinded, the Vendor shall accept the return of the Lot, and in the event of the Auctioneer suffering any loss as a result of such improper bidding the Vendor shall fully indemnify the Auctioneer for all costs and expenses incurred by the Auctioneer in relation thereto.
- 4 NO person shall advance in bidding less than an amount from time to time nominated or directed by the Auctioneer.
- 5 RESERVE Cards are mandatory. The Vendor must advise the Auctioneer in writing of his reserve price ("Reserve Card") before his Lot is offered. It is the Vendor's responsibility to submit the Reserve Card. Where no Reserve Card is provided the Lot may be sold to the highest bidder, regardless of price, and the Vendor shall pay the full commission.
- 6 THE option of the last bidder to buy at the reserve price of a passed-in Lot must be exercised before the horse leaves the sale ring.
- 7.1 ON the fall of the hammer the Purchaser shall give his name and address (and the name and address of the principal for whom he bids, if applicable, and date of



birth if an individual) to the Auctioneer and shall immediately complete, sign and hand to the Auctioneer an acknowledgment of his purchase in such form as shall be required by the Auctioneer and shall provide to the Auctioneer any other information in respect of the purchase as the Auctioneer may reasonably require.

- 7.2 AS a condition of sale, if the Purchaser is a limited liability company then the Auctioneer may at its sole discretion require a guarantor to support the obligations of the Purchaser in relation to that sale and the Purchaser shall procure such guarantor to execute an unconditional guarantee as principal debtor in a form satisfactory to the Auctioneer (which form can be obtained upon request of the Finance Manager of the Auctioneer) for such purpose. Unless such guarantee shall be executed to the satisfaction of the Auctioneer within seven days of the sale, then the sale shall at the option of the Auctioneer be cancelled but without affecting the liability of the Purchaser hereunder.

## **AGENCY**

- 8 THE Auctioneer is agent for the Vendor for the purpose of achieving a sale of the Vendor's Lot or Lots by auction or private purchase or otherwise and for the purpose of completing the sale including delivery and payment, and the Auctioneer is hereby given authority in its discretion to do all things necessary to achieve these purposes and without limiting the generality of the foregoing to allow credit on such terms as it thinks fit, to release and deliver up (whether locally or overseas) the Lot to a purchaser, and to take such steps to recover payment as it thinks fit.
- 9 SUBJECT to a bidder expressly satisfying the conditions specified in clause 10 each bidder shall be deemed, as between the Vendor, the Auctioneer and such bidder, to bid as principal party, and accordingly, notwithstanding any subsequent disclosure of agency, shall be and remain responsible for the payment of the purchase price of any Lot or Lots in respect of which he is the highest bidder.
- 10 WHERE the bidder has lodged with the Auctioneer, prior to the auction taking place, written evidence of that bidder's appointment as agent for another party, and where the Auctioneer has given approval for the bidder to bid in that capacity, such bidder shall not be held responsible by the Auctioneer for the payment of the purchase price of any Lot or Lots in respect of which he, as agent for the approved principal party, is the highest bidder, unless the agent has breached or exceeded the terms of the actual or apparent authority given to him by his principal.
- 11 THE Auctioneer may at its discretion disclose any defects coming to its attention in respect of any Lot but is under no liability whatsoever to do so, and subject to the terms hereof the Purchaser shall rely upon his own examination, skill and judgement in relation to any defects in any Lot.

## **VENDOR REPRESENTATIONS**

- 12 THE Vendor declares his clear legal title to each of his Lots entered for sale and confirms that all requirements of New Zealand Thoroughbred Racing Inc. have been adhered to and that at the fall of the hammer the Lot is or will be free of all liens, charges and security interests. In the event that clear legal title cannot be given to the Purchaser, the Vendor shall fully indemnify the Auctioneer against any action by the Purchaser and any costs and expenses incurred by the Auctioneer in connection therewith.
- 13 THE description and parentage of each horse is supplied by the Vendor who alone is responsible for the accuracy of that information and for ensuring the correct Lot is presented for sale as described. The Vendor shall fully indemnify the Auctioneer against any costs and/or expenses incurred in connection therewith if the information or Lot supplied by the Vendor to the Auctioneer for the purposes of the Sale is inaccurate.
- 14 PRIOR to the Sale, the Vendor of any horse which is being offered for sale may be called upon to submit his horse to a limited veterinary clinical examination. Such examinations must be done in the privacy of a stable and may not be done in the sale ring or within the public view. The cost of such examination will be paid for by the prospective Purchaser to whom the veterinarian will solely make his report.
- 15.1 SHOULD any horse be a windsucker (Aerophagia) or a wobbler this must be disclosed by the Vendor prior to the auction of that Lot, and the fact will be announced by the Auctioneer at the time of the sale.
- 15.2 SHOULD such fact not be disclosed prior to the sale of the horse and should any horse, within seven days of the date of sale of that Lot, time being of the essence, prove to be a windsucker (Aerophagia) or a wobbler then the Purchaser shall immediately notify the Auctioneer and provide, at his own expense, a veterinarian's certificate signed by a veterinary surgeon nominated by the Auctioneer, certifying that the horse is a windsucker (Aerophagia) or a wobbler.
- 15.3 IF the certificate is produced to the Auctioneer within the seven day period specified

- above then the sale of that Lot may be cancelled and in such case the horse shall then be delivered to the Vendor at the Vendor's expense. Any transportation and/or agistment costs incurred by the Purchaser from the date of purchase to the date of cancellation of the sale shall be borne by the Purchaser.
- 15.4 WHERE the Purchaser or the Auctioneer cancels the sale of a Lot in accordance with clause 15.3 and the Purchaser returns the Lot to the Vendor the Purchaser shall be entitled to a refund of all purchase monies paid in respect of such Lot from the Vendor or from the Auctioneer if the Auctioneer still holds the same and upon receiving the same shall have no further claim against the Auctioneer.
- 15.5 WHERE the Purchaser has purchased the Lot after having received notice of the fact that the horse is a windsucker (Aerophagia) or a wobbler he shall have no claim whatsoever against the Auctioneer or the Vendor because of that fact.
- 15.6 WHERE any Lot is described in the Sale catalogue or by the Auctioneer or Vendor as a 'colt' the Purchaser shall not be entitled to make any objection and shall not have a claim against the Auctioneer or Vendor if such Lot is an animal in which one or both testes have not descended into the scrotum.
- 15.7. NOTWITHSTANDING clause 15.6, excluding weanlings and yearlings, should any horse described as a colt be a Cryptorchid (rig) this must be disclosed by the Vendor prior to auction of that Lot and the fact will be announced at the time of the sale of such Lot. Should any Lot be found to be a Cryptorchid (rig) within seven days of the fall of the hammer on that Lot, and such fact was not disclosed at the time of sale, then subject to the Purchaser producing to the Auctioneer within seven days of the sale of the relevant Lot, at his expense, written evidence signed by a veterinary surgeon nominated by the Auctioneer certifying that the horse is a Cryptorchid (rig), such sale may be cancelled and in such case the Lot shall be delivered to the Vendor's farm at the Vendor's expense. Any transportation and/or agistment costs incurred by the Purchaser from the date of purchase to the date of delivery to the Vendor shall be borne by the Purchaser.

#### **ENDOSCOPIC EXAMINATION**

- 16.1 NOTWITHSTANDING any other provision of these Conditions of Sale and notwithstanding any prior custom and usage of the trade, yearlings, two-year-olds, unraced horses and racehorses which are sold in this Sale may be subject to a post-sale upper respiratory endoscopic examination at rest (excluding the trachea) by a veterinary surgeon approved by the Auctioneer at the Purchaser's request and expense. Such examination shall take place within 24 hours of the fall of the hammer and before the horse is removed from the Sales complex. Weanlings and broodmares are excluded from an endoscopic examination.
- 16.2 IF a veterinary surgeon, approved by the Auctioneer, is of the opinion that the horse has any of the following conditions:
- (a) Laryngeal hemiplegia (Grossly deficient abductor function of one or both Arytenoid cartilages, Grades 4 and 5 Lane Bain Fallon Proceedings 1993)
  - (b) Rostral displacement of the palatopharyngeal arch
  - (c) Persistent epiglottic entrapment
  - (d) Persistent dorsal displacement of the soft palate
  - (e) Arytenoid chondritis or chondroma
  - (f) Subepiglottic cyst(s) or
  - (g) Cleft palate
- and this/these condition/s have not been disclosed by the Vendor prior to sale or announced by the Auctioneer at time of sale of that Lot, then the Purchaser may cancel the sale by notice in writing to the Auctioneer within 24 hours of the fall of hammer on that Lot. The horse shall then be delivered to the Vendor's farm at the Vendor's expense. Any transportation and/or agistment costs incurred by the Purchaser from the date of purchase to the date of delivery to the Vendor shall be borne by the Purchaser.
- 16.3 THE Vendor agrees to allow the Purchaser of the Lot to arrange for an endoscopic examination of the horse to be carried out in accordance with these Conditions of Sale.
- 16.4 ANY Purchaser who wishes to exercise his right under clause 16.1 above is advised that this examination must be conducted by the veterinary surgeon so approved by the Auctioneer, within 24 hours of the fall of the hammer and before the horse is removed from the Auctioneer's complex.
- 16.5 THE Auctioneer reserves the right to obtain an opinion by a panel of not more than three (3) veterinary surgeons appointed by the Auctioneer before a notice of cancellation of sale is accepted by it. The decision of the panel shall be final, binding and conclusive on all parties. Arbitration by the panel may take beyond the initial 24

- hours from the fall of the hammer.
- 16.6 THE Vendor acknowledges that the Auctioneer shall not be responsible for or have any liability for damages, injury or illness suffered by the horse during or as a result of such examination. The Veterinary Surgeon carrying out the examination acts at the request of the Purchaser not the Auctioneer. Where the Purchaser requests an endoscopic examination be carried out pursuant to clause 16.1 herein, the Vendor and the Purchaser acknowledge that the veterinary surgeon carrying out the examination is required to report the results of such examination to the Auctioneer only. All parties further acknowledge that the Veterinary Surgeon is not under any obligation to report to the Auctioneer or any other party, including the Purchaser, any information other than whether the horse is suffering from one or more of the conditions described in clause 16.2.
- 16.7 THE endoscopic examinations, as outlined herein, will only be applicable to yearlings, two-year-olds and racehorses either tried or untried.

### **ANABOLIC STEROIDS**

- 17.1 UPON signing the Acknowledgement of Purchase but no later than 60 minutes after the fall of the hammer of any Lot time being of the essence, the Purchaser may request that the Lot (except in the case of broodmares and stallions) be tested for the presence of anabolic steroids. In such case, the Vendor will deliver the Lot to the Auctioneer and the Auctioneer will use reasonable endeavours in the circumstances to expedite and arrange for blood samples to be taken by an independent qualified veterinarian approved by the Auctioneer. While retaining the risk in the Lot, the Purchaser will not be entitled to possession or control (including removal from the Sales complex) until sampling has been completed. The samples will then be provided by the Auctioneer or veterinarian to New Zealand Racing Laboratory Services Limited or other authorised person for testing. In this, the veterinarian shall act as agent for the Purchaser and both the sampling and the testing shall be at the expense of the Purchaser. The results of the test will be provided to the Vendor and Purchaser as soon as practicable but no later than 7 days from submission.
- 17.2 SHOULD a positive test be found, the sale is to be cancelled forthwith. In such circumstances, the Purchaser will be entitled to the return of all monies paid and payment of any costs incurred; the Vendor will be responsible for the return or cost of return of the Lot and its upkeep, all commission and fees on the sale and entry which would otherwise be payable and the costs of the process including sampling and testing; and the Vendor will indemnify the Auctioneer, the Purchaser and all those involved against all claims and liability for any aspect of this process. Further, given the zero tolerance approach of New Zealand Thoroughbred Racing, any such Lot testing positive for anabolic steroids (both in and out of competition) will be banned from racing in New Zealand in accordance with its policy and other consequences may follow for those who are responsible.

### **FITNESS FOR PURPOSE**

- 18.1 EXCEPT as otherwise expressly provided in these Conditions, the Purchaser must accept the Lot in its present condition and with all faults imperfections and other defects whether patent or latent and the Purchaser makes the purchase solely in reliance upon his own enquiries and inspection subject only to the limited warranties expressed in these Conditions of Sale. No guarantee representation or warranty of any kind is made or given as to the fitness for purpose, soundness, condition or any other quality of any Lot sold in the Sale either by the Vendor or the Auctioneer and, subject to these Conditions of Sale, all conditions and warranties, express or implied, statutory or otherwise, are hereby excluded. Without limiting the generality of the foregoing, neither the Vendor nor the Auctioneer give any guarantee, warranty or representation of any nature or kind that the Lot is fit for the purpose of training, racing or breeding.
- 18.2 EXCEPT as expressly provided in these Conditions, the Purchaser acknowledges that he has made the purchase solely in reliance on his own enquiries and inspection, and subject only to the limited warranties expressed in clause 20.3 and in these Conditions of Sale, the Purchaser acknowledges that it is his responsibility to arrange for any veterinary inspection required and that he assumes all consequences and risk from failure to do so and that he purchases solely in reliance upon his own skill and judgement and that he has not relied on any statement made by or on behalf of the Vendor or Auctioneer. No compensation shall be payable by either the Vendor or the Auctioneer for any faults, imperfections or other defect.
- 18.3 THE name, description and address of the Vendor will in all cases be furnished by the Auctioneer to a prospective bidder or Purchaser if deemed necessary by the Auctioneer.
- 18.4 IN the case of any dispute, the remedy of the Purchaser shall be against the Vendor

only and in no case or under any circumstances shall it be against the Auctioneer who is the duly authorised agent of the Vendor. Any disputes which arise between the Vendor and the Purchaser in relation to any Lot shall be resolved between them only and no Lot shall be returned to the Auctioneer or its property.

#### **DISCLOSURE OF DRUGS & DRUG TESTING**

- 19.1 THE Vendor shall disclose to the Auctioneer any medication or drug administered to the Lot at any time during the 7 days prior to the Lot performing its official breeze up, and shall further disclose any medication or drug administered to the Lot at any time during the 7 days prior to the sale of that Lot. Notification of medication or drug administration pre-breeze up shall be provided by the time of its breeze up gallop. Notification of medication or drug administration pre-sale must be lodged by the Vendor no later than 24 hours before the Lot is to be offered for sale. Where treatment is given within 24 hours then notification must be lodged as soon as possible time being of the essence. In the event of any such disclosure, the Auctioneer may at its sole discretion call for such veterinary report as it considers appropriate and/or the Auctioneer may or may not, at its sole discretion and without liability for so doing, disclose the details of the medication or drug and/or disclose the report (if any) and/or cancel the Lot from the Sale.
- 19.2 THE Lot may be required to undergo blood testing for medication or drugs and for this purpose the Auctioneer may, at its sole discretion, arrange for a blood sample of the Lot to be taken at the breeze-up venue following the Lot's breeze-up, by persons nominated by the Auctioneer qualified for that purpose. The Purchaser may forthwith on the fall of the hammer request a blood sample of the Lot to be taken after sale of the Lot and may forthwith request that one or both of the samples shall be analysed and tested at the expense of the Purchaser by a qualified person or persons approved by the Auctioneer. If the tests reveal the existence of medication or drugs which have not been disclosed in writing to the Auctioneer prior to sale which in the opinion of the qualified person is material and masks any significant defect in the Lot, then the Purchaser shall have the right to reject the Lot within 24 hours of being advised of such report. If the Purchaser rejects the Lot, then the sale shall be cancelled and the Purchaser entitled to return of the monies paid and the Lot shall be returned to the Vendor's farm at the Vendor's expense. Any transportation, agistment and other costs incurred by the Purchaser subsequent to purchase and prior to return shall be borne by the Purchaser.

#### **REPOSITORY**

- 20.1 IN this Clause 20, the Repository Terms, Conditions & Procedures shall be those terms, conditions and procedures issued by the Auctioneer and published at the Auctioneer's office, sale ring and at the Repository from time to time relating information lodged and viewed in the Repository.
- 20.2 THE Repository may only be used by Vendors and Purchasers in accordance with the Repository Terms Conditions and Procedures and Vendors and Purchasers hereby agree to be bound by the same in all respects.
- 20.3.1 THE Vendor warrants that full and complete disclosure has been made to the Auctioneer by way of veterinary certificate lodged in the Repository as to whether 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).
- 20.3.2 WHERE the Vendor or agent of the Vendor has lodged material or information relating to a Lot in the Repository, the Vendor warrants to the Auctioneer and the Purchaser that the material and information for that Lot is in all respects complete (as to compliance with the specifications and requirements set out in the Repository Terms, Conditions and Procedures) accurate and authentic as at the date it was lodged. Should the Vendor breach this clause or clause 20.3.1 and such failure is materially misleading regarding the condition of the horse or its suitability for training and racing, then without limitation to the other rights and remedies of the Purchaser or the Auctioneer this may result in cancellation of the sale and payment by the Vendor of incidental expenses incurred by the Purchaser and Auctioneer.
- 20.4 PURCHASERS who fail or refuse to inspect for any reason material or information placed in the Repository in respect of any Lot purchase such Lot at their own risk. Given the limited warranties in this clause 20, Purchasers inspecting the material and information in the Repository should make such further enquiries and inspections of the Lot and the material or information (including as to sufficiency, quality and completeness) as they consider necessary or desirable.
- 20.5 THE Repository exists for the purpose of facilitating inspection by Purchasers of bloodstock for sale which they may be interested in buying. Subject to clause 20.3, the Repository and its operation shall not otherwise change any of the Conditions

of Sale herein and the Conditions of Sale shall continue to be binding on all parties. In the event of any inconsistency between the Repository Terms, Conditions and Procedures and these Conditions of Sale, these Conditions of Sale shall prevail.

- 20.6 THE Auctioneer does not review the material or information in the Repository and gives no warranty or assurance of any kind in respect of the completeness, accuracy or authenticity of the material or information all of which is the responsibility of the Vendor. If the Purchaser alleges breach of clauses 20.3.1 or 20.3.2, then the Vendor and the Purchaser must resolve their respective rights and liabilities and the Auctioneer shall have no responsibility in relation thereto.

## **PAYMENT PROCEDURE**

- 21.1 ALL payments shall be made in New Zealand currency.
- 21.2 A Purchaser must make full payment in cash and sign the Auctioneer's form of Acknowledgment of Purchase at the Auctioneer's Sales Office no later than 60 minutes after the fall of the hammer in respect of each purchase by that Purchaser unless other arrangements have been agreed to in writing by the Auctioneer.
- 21.3 WHERE the full purchase price is not paid in accordance with clause 21.2 (time being of the essence) the Auctioneer may, in its sole discretion, without any notice whatsoever to the Purchaser, at any time thereafter cancel the sale and may at its discretion re-offer the Lot for sale either privately or by auction, at the Purchaser's risk and expense in all things, any surplus to belong to the Vendor and any loss on any such re-sale, including any monies owing pursuant to clauses 21, 22 and 23 to be recoverable by the Auctioneer from the Purchaser as a debt due on demand.
- 22 FOR all accounts not paid in accordance with the provisions of clause 21.2, and where the Auctioneer has not exercised its right of cancellation pursuant to clause 21.3, the Purchaser will become liable for and will pay liquidated damages to the Vendor or Auctioneer, the amount of which shall be a sum equivalent to the sum which would have been payable by the Purchaser had interest been charged on the outstanding debt at the rate of 18% per annum as from the date on which payment becomes due, on a daily basis, up until the date of full repayment of the outstanding debt, including any amount owing pursuant to clause 23.
- 23 ALL costs, expenses and/or losses of whatever nature, including without limitation legal costs, incurred or expended by the Auctioneer or Vendor in recovering payment of the Purchaser's debt will be payable by the Purchaser on an indemnity basis on demand.
- 24 WHERE payment is not made in accordance with clause 21.2 the Vendor or the Auctioneer shall have the right but not the obligation to insure the horse for all risks at the discretion of the Auctioneer at the Purchaser's expense either through the agency of the Auctioneer or through any insurance company or broker approved by the Auctioneer, for the full purchase price and shall ensure that the interests of the Vendor and Auctioneer are noted on such policy. The Vendor or the Auctioneer shall be entitled to insist upon proof of insurance cover before allowing the Purchaser to take delivery of the horse.
- 25 IF the Purchaser shall fail to comply with these Conditions or any of them, any monies which he shall have paid to the Auctioneer on account of his purchase shall be absolutely forfeited and the Vendor or the Auctioneer shall be at liberty to sue such Purchaser for the purchase price, or the balance owing pursuant to the terms of the clauses 21, 22, 23 and 24 herein, and to re-sell the Lot in accordance with clauses 21.3 and 33 herein.
- 26.1 THE Auctioneer may appropriate any monies in its possession belonging to the Purchaser and apply them towards any monies owing by the Purchaser to the Auctioneer (including monies owing by the Purchaser to any subsidiary or related company of the Auctioneer as defined by the Companies Act) or to the Vendor from any source and in such order of priority as the Auctioneer shall in its absolute discretion think fit.
- 26.2 THE Auctioneer shall be entitled to deduct any monies owing to it by the Vendor from any monies owing by it to the Vendor.
- 26.3 THE Auctioneer may, in addition to recovering any offering fee, entry fee or commission hereunder, or any other monies owing by the Vendor to the Auctioneer, recover all costs and expenses of whatsoever nature, including without limitation legal costs on a solicitor to client basis, expended in recovering the payment of the debt. Such costs and expenses shall be payable by the Vendor to the Auctioneer on an indemnity basis upon demand being made.
- 26.4 IF the Auctioneer accounts to the Vendor for the purchase price or the balance of the purchase price owed to the Vendor, less any monies owed by the Vendor to the Auctioneer, before the purchase price and other amounts payable by the Purchaser have been paid, title to the Lot shall thereon pass to the Auctioneer and the Auctioneer shall have the rights and remedies under these conditions as if it were

the Vendor including the rights to any security interest of the Vendor in the Lot.

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

- 27.1 ALL lots offered are subject to GST. The bidding will be on a GST exclusive basis and GST will be added to the bid price when invoiced.
- 27.2 ALL horses destined to remain in New Zealand for more than 28 days, or such longer period as the Inland Revenue Department may allow, will have 15% GST added to the bid price when invoiced.
- 27.3 WHERE the Purchaser (being a non-resident for tax purposes) advises that the horse to be exported to him and that the horse is not intended for later importation into New Zealand for use other than in making taxable supplies so that the sale is zero rated for GST purposes then
- (a) the Vendor or his agent 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
  - (b) 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
  - (c) if the requirements of clause 27.3(a) and (b) 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 15% GST in addition to the bid price.
- 27.4 THE Vendor shall pay 15% GST on all services provided by the Auctioneer.
- 27.5 A Vendor who is not GST resident in New Zealand agrees that his Lot will be offered for sale on the basis that the sale will be deemed to be made in New Zealand for GST purposes. All Purchasers hereby agree to purchase on this basis and both the Purchaser and the Vendor therefore agree that the provisions of Section 8(2)(b) of the GST Act shall not apply.
- 27.6 GST collected by the Auctioneer on behalf of a registered Vendor will be paid to that Vendor. GST collected by the Auctioneer on behalf of a non-registered vendor will be paid direct to the Inland Revenue Department.

### **OVERSEAS PURCHASER**

- 28 WITHOUT in any way limiting the operation of clause 27 above, where a Lot is purchased by or on behalf of an overseas Purchaser and delivery is taken for shipment by a person or firm other than the Auctioneer that person or firm will be responsible for the due and proper compliance with all Acts and Regulations concerning the export of horses and the receipt of overseas funds.

### **POSSESSION AND TITLE**

- 29.1 THE Auctioneer reserves 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 due pursuant to clauses 21, 22 and 23 herein.
- 29.2 SHOULD the Purchaser take possession of the Lot prior to payment then although title remains with the Vendor until payment in full, the risk of loss or damage or injury to the animal shall be with the Purchaser, and subject to the provisions of these Conditions of Sale the Purchaser shall lose his right, if any, to reject the Lot.
- 30.1 IN all cases, notwithstanding that delivery has been made to the Purchaser, property and title in the Lot shall not pass to the Purchaser until payment in full, including any monies owing pursuant to clauses 21, 22 and 23 herein, has been made.
- 30.2 WHERE delivery of any Lot is made to the Purchaser prior to title in the Lot passing to the Purchaser pursuant to these Conditions, the Purchaser shall hold the Lot as bailee only and shall not deal with the Lot in any manner inconsistent with the reasonable directions which may be given from time to time by the Vendor and/or the Auctioneer as applicable.
- 30.3 UNTIL title in the Lot has passed to the Purchaser, the Purchaser shall not exercise or purport to exercise any rights of ownership or possession including, without limitation, registering or racing the horse.
- 31 EACH horse is sold with its engagements. The Purchaser must register the transfer of ownership, including engagements to his own name. The Auctioneer accepts no responsibility through failure of the Purchaser to complete the necessary transfer of the engagements or ownership. The Auctioneer reserves the right to withhold forwarding a change of ownership form to the Purchaser until full settlement of the purchase price, and any monies owing pursuant to clauses 21, 22 and 23 has been made. The Auctioneer has been appointed by the Vendor as the Vendor's agent to sign and forward the change of ownership form to the Purchaser after the horse has been paid for in full.

## **SECURITY AGREEMENT**

- 32.1 It is acknowledged that as security for the purchase monies or any part thereof owing by the Purchaser for any Lot purchased and for the security of the performance of all of the Purchaser's other obligations under these Conditions of Sale, the Purchaser hereby grants a Security Interest in favour of the Vendor and Auctioneer for their respective interests pursuant to the PPSA over any Lot hereby purchased and, if a mare, in any progeny thereof born after purchase and prior to payment in full and the 'proceeds' thereof within the meaning of the said Act, and that the Vendor and the Auctioneer shall have all of the rights available to them under these Conditions of Sale and the PPSA and at law in respect of such Security Interest.
- 32.2 WITHOUT limiting the obligations of the Purchaser under the Conditions of Sale, while the purchase monies or part thereof remain unpaid or any other obligations under the Conditions of Sale are unfulfilled, the Purchaser must:
- (a) keep the Lot in good condition and protect it from any loss or damage,
  - (b) insure the Lot for its full replacement value against all risks or as the Auctioneer may require and shall have the Auctioneer's interest noted against the policy,
  - (c) immediately deliver to the Auctioneer written notice of the present location of the Lot when asked to do so by the Auctioneer,
  - (d) not sell or in any way mortgage or charge or create any security interest or any lien in the Lot without the prior written consent of the Auctioneer,
  - (e) not do anything which may prejudice the security interest of the Vendor or Auctioneer in the Lot, and
  - (f) not to move the Lot outside New Zealand without the prior written consent of the Auctioneer.
- 32.3 EXCEPT as required by law or the terms of any instrument, the security holder need not give notice before exercising all or any of its rights and powers following a default.
- 32.4 THE Purchaser shall give the Vendor or Auctioneer every assistance to register details of the security interest in the Register of Security Interests, registration to be at the sole discretion of the Auctioneer. The Purchaser waives the right under the PPSA to receive a copy of the Verification Statement or a Financing Change Statement relating to the security interest created by this Agreement.

## **RE-POSSESSION AND RE-SALE**

- 33.1 SHOULD any payment be due and unpaid by the Purchaser on the date due for payment in terms of these Conditions of Sale or should there be any default by the Purchaser in any of the other terms hereof (including where there is an extended date agreed for payment or performance which extended date has expired or if any distress or execution is levied against the Lot or if any person seeks to assert a lien, charge or claim against the Lot or if the Purchaser dies or commits an act of bankruptcy or if the Purchaser, being a company, appears in the sole opinion of the Auctioneer to be likely to go into voluntary administration or to appoint a receiver, liquidator or statutory manager) then the Vendor or Auctioneer in their sole discretion may
- (a) without notice to the Purchaser, cancel such sale, and
  - (b) upon cancellation of the sale, without prejudice to any other rights the Auctioneer or Vendor may have, exercise all or any of the rights available to them under the PPSA or at law, and
  - (c) subject to the PPSA relating to the rights of third parties and any other rights which the Vendor or Auctioneer may have take possession of the horse and for that purpose the Purchaser hereby irrevocably gives the Vendor or the Auctioneer leave and license by their officers and agents without the necessity of giving any notice to enter into and upon and if necessary to break into any building or land occupied by the Purchaser where the Lot may be, or may be supposed to be, within or without New Zealand, and as the agent of the Purchaser to enter upon any other lands, buildings or premises, within or without New Zealand, which the Purchaser might enter upon and where the Lot may be or may be supposed to be and to search for, remove and take possession of the Lot without being liable in any way to the Purchaser or to anyone claiming under the Purchaser for doing so, and
  - (d) if the horse is re-possessed under the preceding sub-clause hereof then all monies payable by the Purchaser under the sale, including any monies owing pursuant to clauses 21, 22 and 23, and including all costs and expenses incurred in repossessing or attempting to re-possess the Lot shall forthwith become due and payable by the Purchaser, and all of the Purchaser's rights hereunder shall determine absolutely.



- 33.2 IN the event of repossession of any Lot in accordance with clause 33.1 the Auctioneer may, in its discretion, subject to the provisions of the PPSA relating to the rights of third parties, reoffer the Lot for sale either privately or by auction at the Purchaser's risk and expense in all things and any surplus shall belong to the Vendor and any loss incurred in respect of such re-sale shall be recoverable by the Vendor or the Auctioneer from the Purchaser as a debt due on demand, and the provisions of clauses 21, 22 and 23 shall continue to apply to any monies still outstanding at that time until such monies are paid in full.

## **RISK**

- 34.1 EACH Lot shall be at the Vendor's risk for any damage or injury whether by disease, accident or otherwise from the time of arrival of the Lot into the Auctioneer's custody until such time as the Lot has been sold. Any horse not sold shall remain at the risk of the Vendor and the Vendor shall be responsible for removing the horse forthwith from the Auctioneer's property.
- 34.2 AS between the Vendor and the Purchaser, the Lot shall be at the risk in all things of the Purchaser from the fall of the hammer notwithstanding that title may or may not have passed to the Purchaser.
- 34.3 THE Auctioneer 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 its possession, custody or control nor shall the Auctioneer be liable for any loss, damage or injury whatsoever to persons or property caused by any Lot whether by disease accident or otherwise.

## **COMMISSION**

- 35 THE full commission payable by the Vendor to the Auctioneer in respect of the sale price of each Lot sold or bought in shall be 10% whether the sale was by auction or by private treaty.
- 36 OF the full commission rate payable, 0.5% of the commission on all Lots sold at auction or by private contract from the date of acceptance of entry up to 30 days after the sale is held or is advertised to be held will be paid to the New Zealand Thoroughbred Breeders Association to be forwarded to New Zealand Thoroughbred Marketing.
- 37 NO Lot entered in this Sale is to be sold by the Vendor privately before the Sale. The Auctioneer shall have no liability for any breach of this condition by the Vendor. If the Lot is sold either by auction or privately between the date of acceptance of entry in the Sale and a date thirty days after the Sale is held or is advertised to be held, a commission is payable by the Vendor to the Auctioneer notwithstanding that the Lot may have been withdrawn from the Sale after acceptance of the entry. For the purposes of this condition, a sale is deemed to have taken place on the date the Lot is sold by the Auctioneer or on the date the Vendor, or his duly authorised agent, privately agrees on the terms of sale with a Purchaser. In the case of a private sale, the commission is payable to the Auctioneer on the date that the private sale is settled whether or not the sale is unconditional when entered into and whether or not settlement of the sale takes place within the time specified earlier in this clause.
- 38 AN offering fee of 2.5% of the Reserve Price will be charged on Lots passed unsold through the sale ring during the Sale. Where the Vendor advises the Auctioneer that a Lot is to be offered on an unreserved basis, should the Auctioneer receive no bid on that Lot and it passes unsold through the ring an offering fee of 1% of the overall session average will be payable. If the Lot is sold by the Vendor at a New Zealand Bloodstock auction, or privately by New Zealand Bloodstock, within 12 months of this Sale and the Auctioneer receives commission at the rate of at least 10% then the offering fee will be refunded in full to the Vendor, provided that the sale price is not less than the Ready to Run Sale Reserve Price, up to the session average.

## **GENERAL PROVISIONS**

- 39 THE Auctioneer shall be under no liability for the loss, if any, of any kind whatsoever incurred by the Vendor for any reason whatsoever arising out of or subsequently to the auction or sale in respect of the Vendor's Lot or Lots in this Sale, and without limiting the generality of the foregoing shall be under no liability for any loss of any kind caused by representation or warranty of any kind given by the Auctioneer, or failure of the Auctioneer other than as a result of dishonesty or deliberate act to disclose a bid made by the Auctioneer on behalf of the Vendor or to detect or identify a bid made by the Vendor or a person acting on behalf of the Vendor or failure of the Auctioneer to obtain payment for any Lot, or release of the Lot prior to payment, or the Auctioneer losing or giving up its lien on any Lot, or the Auctioneer giving credit to the Purchaser, or the Auctioneer's failure to use the reasonable care and skill expected of an Auctioneer, or the failure of the Purchaser for any cause to complete the purchase. The Vendor shall be responsible for insuring against such risks if required at the sole discretion of the Vendor.

- 40 THE Auctioneer reserves the right, in its sole discretion, to reject at any time any horse from the Sale. In such event, the entry fee will be refunded in full. Neither the Vendor nor any prospective buyer shall have any right whatsoever to make any claim against the Auctioneer arising out of the Auctioneer's decision to invoke its power pursuant to this clause.
- 41 EVERY person attending the Sale or entering the sale grounds shall do so at his own risk and the Auctioneer shall not in any way be held liable or responsible for any accident whatsoever to any such person.
- 42 THE rights and remedies of the Auctioneer under these Conditions shall not be affected by reason of the selling commission and charges of the Auctioneer having been deducted by the Auctioneer in any payment made by the Auctioneer to the Vendor, and as between the Purchaser and the Auctioneer, the Purchaser waives all rights of set-off, if any, which the Purchaser, as between the Purchaser and the Vendor, may have against the Vendor.
- 43 THE Auctioneer may at its discretion, either prior to or after the Sale, but without any obligation to do so examine or cause to be examined any Lot by a veterinary surgeon of its choosing.
- 44 WAIVER - No waiver or indulgence either by the Vendor or the Auctioneer shall relieve the Purchaser from strict compliance with the obligations of the Purchaser hereunder or restrict the Auctioneer from exercising any other rights or remedies available to it.
- 45 THE Auctioneer reserves all rights to 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 it thinks fit.
- 46 POWER OF ATTORNEY - For the purpose of enabling the Auctioneer to give full effect to these Conditions of Sale, the Vendor and the Purchaser each irrevocably appoint the Auctioneer as his lawful attorney to do all things and to sign and execute documents and to give instructions for the purposes of carrying out its duties hereunder as may in the Auctioneer's opinion be necessary or desirable. The Vendor and the Purchaser agree to ratify and affirm anything done by the Auctioneer pursuant to the Power of Attorney.
- 47 HEALTH & SAFETY - Under the Health and Safety in Employment Act 1992 the Vendor agrees:
- (a) To take all practicable steps to ensure the safety of its employees, other persons employed and other persons in the vicinity.
  - (b) To ensure that its employees and other persons employed 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 the Department of Labour within the prescribed time periods.
  - (d) To any reasonable requirement that may become necessary to ensure compliance with the provisions of the Act.
- 48 IF the Auctioneer becomes aware of a breach of any of the Vendor's undertakings the Auctioneer may require the Vendor to remedy that breach. In the event that the Vendor fails or refuses to do so the Auctioneer may take steps to remedy the breach and to seek from the Vendor reimbursement of expenses incurred by it.
- 49 IT is hereby acknowledged that these Conditions of Sale and all contracts made hereunder shall be governed by the law of New Zealand and that any actions or determinations of recourse for a Court of Law that may be necessary in terms of these Conditions of Sale or any contracts made hereunder shall be held at Auckland. Any actions that may be so necessary will be brought in a court held at Auckland or elsewhere at the Auctioneer's sole discretion and Purchasers and Vendors hereby irrevocably submit to such jurisdiction to hear any disputes arising herefrom.

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AUCTIONEERS

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Purchasers and Vendors of horses at this Sale should ensure they read and understand the  
Conditions of Sale as printed herein as they shall be deemed bound by them.