



## NEW ZEALAND BLOODSTOCK

# 2016 WINTER MIXED BLOODSTOCK SALE Conditions of Entry

**1. NOMINATIONS:** Nominations for the 2016 Winter Mixed Bloodstock Sale ("the Sale") close on **Friday 3 June 2016** and late nominations may not be accepted. All entries must be on the official Nomination Form. Any entry with paperwork and/or fees outstanding with NZTR may not be accepted.

**2. ENTRY FEE:** The Entry Fee for each Lot is payable at time of entry. The Entry Fee is \$400 + GST for all entries. No refund or part refund of entry fee will be given for entries in the main catalogue withdrawn after the catalogue has been dispatched to the printers unless, in the case of the horse dying or being injured, a veterinary certificate is supplied to the Auctioneer by the Vendor, in which case a refund of 50% of the entry fee will be given.

**3. EXAMINATION:** All Lots may be examined by an inspection panel on or before arrival at the sale grounds. The Auctioneer reserves the right in its sole discretion to reject at any time any horse from the Sale, and in such event the Entry Fee will be refunded in full.

**4. DATE OF SALE:** The Auctioneer reserves the right to alter the date of and/or format of any of the Sales Sessions at its discretion.

**5. COMMISSION:** No Lot entered in a Sale of the Auctioneer is to be sold by the owner privately before the Sale for which the Lot has been entered. The Auctioneer is not to be under any liability for any breach of this condition by the Vendor. If the horse is sold either by auction or privately between the date of acceptance of entry for the Sale and a date 30 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to be held a commission is payable by the Vendor to the Auctioneer notwithstanding that the horse may have been withdrawn from the Sale after acceptance of the entry. For the purpose of this condition, a sale is deemed to have taken place on the date the horse 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.

**6. COMMISSION RATE:** The full commission payable by the Vendor to the Auctioneer in respect of the sale price of each Lot sold or bought are as follows:

- (i) 10% +GST on the first \$100,000 of the purchase price and
- (ii) 5% +GST on the balance of the purchase

whether the sale was by auction or private treaty from date of acceptance of entry to within 30 days after the Sale is held or is advertised to be held.

**7. NZTBA/NZTM:** Of the full commission rate payable, 0.5% +GST will be paid to the New Zealand Thoroughbred Breeders Association to be forwarded to New Zealand Thoroughbred Marketing on all horses sold at auction or by private contract from the date of acceptance of entry to within 30 days after the Sale is held or is advertised to be held.

**8. PAYMENT:** Payment of proceeds will be made out to the payee nominated on the Nomination Form. Bank details must be supplied in full. A GST number must be entered if applicable. In the event that entitlement to payment is disputed by another party prior to disbursement of proceeds, the Auctioneer may at its discretion withhold payment until the dispute is resolved.

**9. RESPONSIBILITY FOR DESCRIPTIONS:** 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 that the correct Lot is presented for sale as described. The Vendor shall fully indemnify the Auctioneer if the information supplied by the Vendor to the Auctioneer for the purposes of the Sale is inaccurate.

**10. TITLE:** The Vendor declares, on behalf of the owner(s) (as stated on the Nomination Form), their clear legal title to their entries and confirms that all requirements of NZTR have been adhered to and that all security interests in respect of the lot or entry as at the fall of the hammer will at the Vendor's expense be discharged forthwith or, at the discretion of the Auctioneer, no later than at the settlement of the transaction. In the event that clear title cannot be given to the Purchaser, the Vendor will fully indemnify the Auctioneer against any action by the Purchaser.

**11. TRANSFER OF OWNERSHIP:** The Vendor hereby irrevocably appoints the Auctioneer as his agent to sign the Change of Ownership form and to forward the same to the Purchaser after the horse has been sold and also, at the discretion of the Auctioneer, to discharge any security interests on the Lot from monies owing to the Vendor.

**12. RISK:** Each Lot shall be at the Vendor's risk for loss of the animal and any damage or injury whether by disease, accident or otherwise from the time of arrival for the period the Lot shall be in the Auctioneer's custody until such Lot shall have been sold. Any horse not sold shall remain at the risk of the Vendor and the Vendor shall be responsible for removing the horse.

**13. RESERVE PRICES:** Reserve Cards are mandatory. Vendors must advise the Auctioneer in writing of their reserve price before their Lot is offered. Where no Reserve Card is provided the horse may be sold to the highest bidder, regardless of price, and the Vendor shall pay 10% commission.

**14. BIDDING:** 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 to bid on his behalf other than through the Auctioneer 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 of 10% 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. The Vendor acknowledges and accepts that the Auctioneer may bid on behalf of any person from whom it has instructions so to do.

**15. LIABILITY:** 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 subsequent to the auction or sale in respect of the Vendor's entry or entries in this Sale, and without limiting the generality of the foregoing shall be under no liability for any loss of any kind caused by any representation or warranty of any kind given by the Auctioneer, or failure of the Auctioneer to obtain payment for any Lot, or release of the animal 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 on the part of the Purchaser for any cause to complete his purchase or the Auctioneer failing to discharge any security interest. It is agreed that it shall be the Vendor's responsibility to insure against such risks if required at the sole discretion of the Vendor.

**16. TERMS AND CONDITIONS OF AUCTION & SALE:** The Sale shall be conducted in accordance with the procedures set out in the catalogue produced by the Auctioneer in connection with the Sale and the entry will be sold under the terms and conditions set out therein governing the Sale and the Vendor undertakes to be bound by the Conditions of Sale and undertake to the Auctioneer to do all things required of the Vendor under the Conditions of Sale.

**17. ACCOMMODATION:** A stabling and accommodation fee for the duration of the Sale is included in the Entry Fee. Any horses remaining at the sale grounds after the Sale may be moved by the Auctioneer at its convenience. All stabling arrangements and charges outside the Sale days shall be made at the discretion of the Auctioneer. A head collar shall be provided by the Vendor for each Lot's removal from the property. If a head collar is not provided it shall be supplied by the Auctioneer at the Vendor's cost.

**18. AGENCY:** The relationship between the Vendor and the Auctioneer is one of agency for the purpose of achieving a sale of the Vendor's entry or entries by auction or private sale or otherwise, and of completing such sale or sales including delivery and payment and at its discretion discharge any security interest in respect of the Lot and for these purposes the Auctioneer is hereby given authority to do all things necessary or desirable in its view to achieve these purposes and without limiting the generality of the foregoing to deliver up (whether locally or overseas) the horse to the Purchaser on such terms as it thinks fit, to release the horse without payment or on credit, to take security in lieu of payment, and to take such steps to recover payment as it thinks fit including but not limited to the right to sue for payment notwithstanding that any lien available to the Auctioneer has ceased to exist. It shall not be necessary for the Auctioneer to obtain the consent of the Vendor to such matters subject always to the right of the Vendor to give written instructions to the contrary. It is hereby agreed that the Auctioneer shall be under no obligation to the Vendor to obtain such instructions but that it is the responsibility of the Vendor to limit or restrict that authority of the Auctioneer hereunder.

**19. SECURITY INTERESTS:** The Auctioneer may at its discretion without any obligation to do so, register security interests on behalf of itself and the Vendor in respect of the purchase or other monies outstanding by the Purchaser in respect of the Lot. In the event that enforcement of the security interest is necessary, then the Vendor shall lend all possible assistance to the Auctioneer in enforcing any security interest in the Lot including but not limited to lending the Vendor's name to any proceedings which shall be initiated by the Auctioneer in relation to enforcing such security interest.

**20. WINDSUCKING (Aerophagia) or WOBBLERS:** Should any horse be a wobbler or addicted to windsucking (aerophagia), this must be disclosed by the Vendor to the Auctioneer prior to sale and the fact will be announced at the time of sale. Should any horse prove to be a wobbler or windsucker (aerophagia) within seven days of the date of the sale of that Lot (time being of the essence) 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 or wobbler. 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'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 cancellation of the sale shall be borne by the Purchaser.

**21. CRYPTORCHIDS:** Excluding weanlings and yearlings should any horse described as a colt be a Cryptorchid (rig) this must be disclosed by the Vendor to the Auctioneer prior to the auction of that lot and the fact will be announced at the time of sale. Should any horse be found to be a Cryptorchid (rig) within seven days of the sale of that lot (time being of the essence), and such fact was not disclosed at time of sale, 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 cryptorchid, the Purchaser may cancel the sale. 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 cancellation of the sale shall be borne by the Purchaser.

**22. AGED MARES:** Broodmares aged 20 years and older that are not in foal are not eligible for entry in the Sale.

**23. PREGNANCY TESTS:** Where applicable, Vendors are reminded to provide a pregnancy certificate displaying the result of a valid pregnancy test taken no earlier than seven days prior to the date of sale. Where a positive test is given prior to the sale the Purchaser may, at his own expense, have the mare manually examined before it leaves the sale area and within 24 hours of the fall of hammer. In the event of the mare being proved not in foal the sale is null and void and the Vendor in this case pays the cost of the re-examination. The horse shall then be delivered to the Vendor's farm at the Vendor's expense.

**24. ENDOSCOPIC EXAMINATION:** i) Horses 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 expense. Such examination shall take place at rest within 24 hours of the fall of the hammer and before the horse is removed from the sale grounds. If the 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) and/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, then the Purchaser may cancel the sale. 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 cancellation of the sale shall be borne by the Purchaser. In the event of dispute between the Vendor and Purchaser 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 hammer.

ii) 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 the Conditions of Sale as printed in the relevant Sale Catalogue. The Vendor acknowledges that the Auctioneer shall not be responsible for or have any liability for damage, injury or illness suffered by the horse during or as a result of such examination. The Veterinary surgeon/s carrying out the examination act as agent for the Purchaser not the Auctioneer.

**25. X-RAY REPOSITORY:** The Auctioneer will provide a Repository in which Vendors at their discretion may place pre-Sale x-rays and other information. Use of the Repository will be voluntary but if used will be subject to the terms, conditions and procedures relating to the Repository as set out by the Auctioneer prior to sale. The maintenance of the Repository shall not change any of the Auctioneer's Conditions of Sale but shall provide an opportunity to facilitate inspection of horses by buyers prior to sale.

**26. FURTHER WARRANTIES:** Should any Vendor make or give any prospective purchaser a representation or warranty which differs from or is over and above those contained in the Auctioneer's Conditions of Sale or its terms and conditions relating to the Repository which results in the cancellation of any sale the Vendor shall be liable for the full commission on the sale price.

**27. VETERINARY EXAMINATIONS:** Prior to the Sale, the Vendor of any of the horses offered for sale may be called upon to submit any of his Lots to a Veterinarian's examination for soundness. 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 this examination will be paid for by the prospective buyer, to whom only the Veterinarian will make his report

**28. PRIVATE SALE:** Should a sale not take place at auction then, while the horse is in its possession, the Auctioneer may canvass prospective purchasers with a view to arranging a sale upon terms satisfactory to the Vendor. Should such a sale be effected, then the terms and conditions of these Conditions of Entry and the Conditions of Sale in the Catalogue (including the Auctioneer's right to commission) shall apply thereto in so far as they are applicable to such private sale.

**29. RIGHT TO SET OFF:**

- (i) The Auctioneer shall be entitled to deduct any monies owing to it by the Vendor (including any monies owing by the Vendor to any subsidiary or related company of the Auctioneer as defined by the Companies Act) from any monies owing by it to the Vendor.
- (ii) The Auctioneer may, in addition to recovering any offering fee, commission or entry fee hereunder or any other monies owing to it 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 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.

**30. HEALTH & SAFETY:** Under the Health and Safety in Employment Act 1992 the Vendor agrees:

- i) To take all practicable steps to ensure the safety of its employees, other persons employed and other persons in the vicinity.
- ii) 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.
- iii) To complete any documents required by the act in respect of notification of accidents and ensure that these are forwarded to Work Safe NZ within the prescribed time periods.
- iv) To any reasonable requirement that may become necessary to ensure compliance with the provisions of the Act.

**31. GOODS AND SERVICES TAX (GST):** A. All Lots offered are subject to GST. Where a Purchaser advises that horse/s are to be exported to him so that the sale is zero-rated for GST purposes:

- i) The Auctioneer as the Vendor's agent will a) Apply to the Inland Revenue Department for an extension of time by which the horse must be exported, if this is necessary b) Arrange the transportation of the horse overseas; and c) Notify the Vendor at the end of the expiry period if the particular horse has not yet been exported by the Auctioneer.
- ii) The Auctioneer does not assume any responsibility for exporting horses which it has not been able to locate or which have not been made available to it for such purposes.
- iii) Where the Auctioneer has not been appointed agent for the Vendor, the Vendor undertakes to do all things necessary to ensure that the zero rating provisions of the GST Act are met. In particular, the Auctioneer does not undertake to perform any of the tasks listed in (i) above.
- iv) The Auctioneer accepts no liability for any GST liability arising as between the Purchaser and the Vendor and between the Vendor and the Inland Revenue Department in respect of bloodstock sold through the Auctioneer either at auction or by private treaty. Without in any way attempting to specify all circumstances when the Vendor may become liable to pay GST on the transaction to Inland Revenue, we understand that if a horse which has been sold for export dies and cannot therefore be exported, the Vendor will become liable to pay GST on the sale of the horse. The Vendor may also be liable for GST should the horse in question not be exported within the time frame set out in (i)(a). The Vendor may seek to recover an equivalent amount from the Purchaser.

B. Vendors who are not GST resident in New Zealand agree that their horse/s will be offered for sale on the basis that such sale will be deemed to be made in New Zealand for GST purposes. Prospective purchasers 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. GST collected by the Auctioneer on behalf of a non-registered Vendor will be paid directly to the Inland Revenue Department

**32. ACKNOWLEDGMENT:** It is hereby acknowledged that these Conditions of Entry and all contracts made hereunder shall be governed by the Law of New Zealand and that any actions or determinations of recourse in a Court of Law that may be necessary in terms of these Conditions of Entry or any contracts made hereunder shall be held at Auckland. Any actions that may be necessary will be brought in a Court held in Auckland or elsewhere at the Auctioneer's sole discretion.

**33. DEFINITIONS:**

'Auctioneer' means New Zealand Bloodstock Limited together with its employees, officers and agents.

'He' or 'his' where that appears shall also mean she, hers, they, theirs, it or its where appropriate.

'Lot' or 'entry' means, as appropriate, a horse, share in a horse, horses in case of mare with foal at foot, or other item sold by the Auctioneer in connection with the Sale.

'NZTR' means New Zealand Thoroughbred Racing Inc.

'Purchaser' means the person, persons or corporation to whom any Lot is sold and where more than one shall mean each severally and two or more jointly.

'Security interest' has the meaning accorded to it in the Personal Property Securities Act 1999 (the PPSA) and includes 'purchase money security interest'.

'Vendor' means the person, persons 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.

PLEASE ENSURE THAT YOU READ AND FAMILIARISE YOURSELF WITH THESE CONDITIONS OF ENTRY AS ALL ENTRIES IN THE SALE SHALL BE DEEMED BOUND BY THEM.



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