

CONDITIONS OF NOMINATION - MAGIC MILLIONS 2016 GOLD COAST MARCH YEARLING SALE

Auctioneer's Licence No.: 2005419

1. "The Sale" refers to any one or more of the following Sales for which a Lot is nominated, accepted and subject to the Vendor's rights of withdrawal, offered for sale by way of auction conducted by principal Selling Agent, Magic Millions Sales Pty Limited (A.B.N 54 078 396 317) ("the Selling Agent").
- 1.1 The Magic Millions 2016 Gold Coast March Yearling Sale will be held at the Gold Coast Sales Complex, Bundall, Queensland from the 21st day to the 22nd day of March, 2016.
2. The Selling Agent is licensed under the Property Agents and Motor Dealers Act 2000 ("PAMD") to conduct auctions of livestock;
3. The Vendor wishes to have a Lot in the Sale. (A reference to "Lot" includes "Lots").

APPOINTMENT OF PROMOTER

4. The Vendor agrees that all advertising, marketing and promotion in respect of the Sale (including his Lots in it) will be carried out by Magic Millions Promotions Pty Limited (ABN 41 088 197 200) ("the Promoter"), a company engaged in the business of promoting and marketing throughout the world, thoroughbred sales, races and related events, as well as performances, exhibitions, social events, conferences and events in the general entertainment industry and the Vendor hereby confirms the Promoter's appointment and role in that behalf by the Selling Agent.

VENDOR'S APPOINTMENT OF THE SELLING AGENT

5. The Vendor (subject to his compliance with these conditions) hereby appoints and authorises the Selling Agent to:
 - 5.1 Act as the sole and exclusive agent of the Vendor to sell the Vendor's Lot at the Sale, or where the Lot is not sold at the Sale, privately and outside of the auction at a price nominated by the Vendor at any time from the close of nominations to a date sixty (60) days after the Sale, and these conditions shall apply insofar as is possible, to such private Sale;
 - 5.2 Collect the full or any part of the purchase price including, if applicable, any GST for any Lot on behalf of the Vendor by means of cash, personal cheque, or otherwise by the Selling Agent at the Selling Agent's discretion;
 - 5.3 Deliver any Lot sold on the Vendor's behalf prior to full payment of the purchase price including, if applicable, any GST on said Lot, such delivery being given by the Selling Agent of the Selling Agent's absolute discretion;
 - 5.4 Determine in its absolute discretion whether any Lot is suitable for the Sale, the manner in which and the time and place at which the Sale is to be conducted, and whether the opinion of a Veterinary Surgeon at the Vendor's cost should be obtained in respect of the condition of any Lot;
 - 5.5 Deduct and retain from the gross purchase price payable for any Lot, any commission, Nomination Fees or expenses owing to the Selling Agent, including any GST applicable thereon. These amounts will include but will not be limited to those referred to in Clauses 9, 10 and 11 of these Conditions;
 - 5.6 Return the Lot to the Vendor if a sale is not effected or any account of the Vendor is not settled within seven (7) days of the Sale Date, or at an extended date by approval of the Vendor;
 - 5.7 Detain a passed-in Lot or a Lot bought back by the Vendor until all sale charges and if applicable GST are paid, the Selling Agent being entitled to exercise a lien in respect of any outstanding fees commissions, GST or charges;
 - 5.8 Disclose the name, description and address of the Vendor to a bidder or Purchaser if it considers it appropriate, or in the case of any dispute touching on any sale of a Lot. In every case it is agreed that the remedy of the Purchaser shall be against the Vendor and not under any circumstances against the Selling Agent;
 - 5.9 Accept the rescission of any sale, allow any purchaser an extension of time for payment, or agree to any variation of the Conditions of Sale in the Sales Catalogue on behalf of the Vendor should the Selling Agent decide in its absolute discretion that any such action is justified;
- 5.10 Bid up to the reserve price as set by the Vendor without incurring any liability to the Vendor in the event of the Lot not selling.
- 5.11 The Vendor agrees that the Selling Agent reserves the right to -
 - 5.11.1 Reject any nomination at any time for such reason as the Selling Agent shall deem appropriate, in its sole discretion, and the Selling Agent shall then return any nomination fee paid only if the rejection is without reasonable cause;
 - 5.11.2 Determine the order of sale of all entries;
 - 5.11.3 Assign stabling facilities in its sole discretion and the Selling Agent shall have no obligation to assign the same or similar stabling facilities which may have been assigned to the Vendor at previous Sales;
 - 5.11.4 Set a minimum bid (upset price) for the horses sold in this Sale, in its sole discretion;
 - 5.11.5 Refuse to sell any horse by auction if the Selling Agent has knowledge that the said horse has been sold privately prior to said auction.
6. The Selling Agent shall pay the proceeds of the Sale including any applicable GST to the person or persons nominated as the person to be paid such proceeds, on the Official Nomination Form, whose receipt shall be a sufficient discharge of the Selling Agent's obligations in respect of such proceeds.
7. All nominations for the Sale must be submitted on the Official Nomination Form, a copy of which is attached to these conditions, duly signed by the Vendor or for and on behalf of the Vendor by the Vendor's Agent. The Official Nomination Form must reach the office of the Selling Agent (PO Box 5246, Gold Coast Mail Centre, Queensland, 9726) by no later than the specified closing date.
8. Subject to the Vendor executing this Nomination Form prior to the offering for sale of a Lot by the Selling Agent, the Selling Agent is exempted from the requirement of Chapter 12 of the PAMD from maintaining a trust account for the deposit of the proceeds of sale of the Vendor's Lot and the Vendor acknowledges the existence of such exemption;

COMMISSIONS DUE TO THE SELLING AGENT

9. The Vendor will pay the following amounts to the Selling Agent:-
 - 9.1 A commission of the rate of 6.6% (inclusive of GST) on any lot **sold or bought back** by the Vendor; or
 - 9.2 Save that in the event a Lot, of a Yearling, is **sold or bought back** for an amount in excess of \$200,000 the rate of commission for the part of the price in excess of \$200,000 is reduced by 2.2% (inclusive of GST) for the Sales referred to in 1.1, or
 - 9.3 In the event that any Lot is not sold or bought back by the Vendor, a commission at the rate of 2.75% (inclusive of GST) on the **Reserve Price** of any passed-in Lot.

FEES AND CHARGES DUE TO THE PROMOTER

10. The Vendor will pay the following fees and charges to the Promoter in respect of its promoting and marketing of the auction sale and the race series:-
 - 10.1 A promotional fee equivalent to an amount being 2.75% (inclusive of GST) of the sale price of any Lot **sold or bought back** by the Vendor, for the Sales referred to in 1.1. and;
 - 10.2 The Nomination Fee (including GST) as specified on the Official Nomination Form and;
 - 10.3 The Nomination Fee (including GST) will be invoiced on Written Acceptance of the Lot into the Sales referred to in 1.1. and;
 - 10.4 The Nomination Fee (including GST) must be paid for in full within fourteen (14) days of invoicing.The Vendor will not be entitled to any refund in respect of any payment pursuant to these Conditions for the Promoter save as is expressly provided by these Conditions.

THOROUGHBRED BREEDERS AUSTRALIA LIMITED (TBA) LEVY

11. The Vendor hereby irrevocably authorises the Selling Agent to deduct a marketing levy on behalf of the Thoroughbred Breeders Australia Ltd (TBA) in the amount of 0.385% (inclusive of GST) of the sale price of any Lot **sold or bought back** by the Vendor. The marketing levy will be forwarded by the Selling Agent to the Thoroughbred Breeders Australia Ltd (TBA) within forty two (42) days of all monies due and owing to the Vendor pursuant to the sale of the Vendor's Lot.

VENDOR'S OBLIGATIONS AND WARRANTIES

12. Any Lot accepted for the Sale shall be submitted to the representatives of the Selling Agent for inspection and all Lots must meet the requirements of the Australian Stud Book of the Vendor's cost and expense.
13. The Vendor shall indemnify and hereby indemnifies the Selling Agent against any claim by a Purchaser or any other person arising out of the Vendor's failure to comply with the Australian Stud Book requirements (including any payment of fees and GST if applicable). The Vendor acknowledges that the Selling Agent is entitled to a reasonable fee for any work done to ensure the Vendor's compliance with the Australian Stud Book requirements.
14. The Vendor shall supply to the Selling Agent all documents required for the transfer of ownership of any Lot sold within seven (7) days of the conclusion of the Sale. Should the Vendor not deliver such documents to the Selling Agent within the said time limit, the Vendor irrevocably authorises the Selling Agent to order a new / replacement set of documents at the Vendor's cost and expense.
15. The Vendor shall be responsible for verifying the accuracy of all information published in the Sale Catalogue and warrants to the Selling Agent and any Purchaser the accuracy of such information except where the Vendor notifies the Selling Agent in writing of any inaccuracy in such information prior to the date of the Sale.
16. The Vendor or his duly authorised representative shall be present at the Sale venue at all times during which the Sale is being conducted and shall immediately correct any incorrect statements or representations made by the Selling Agent regarding any Lot for which the Vendor or his agent is responsible, failing which correction the Vendor shall be deemed to authorise the statement and warrant to the Selling Agent and any Purchaser the truth of any statements or representations made by the Selling Agent.
17. The Vendor will produce for the Sale a Lot without any obvious physical defects. Should the Selling Agent be of the opinion that a Lot is not suitable for sale, it has the right of its absolute discretion, to withdraw the Lot from the Sale, remove it from the grounds, and consign it to the address of the Vendor as it appears on the Official Nomination Form, at the Vendor's risk and expense.
18. The Vendor warrants to the Selling Agent that he is the true owner of the Lot nominated for the Sale or is duly authorised to sell the Lot on the owner's behalf and that it is able to transfer good title to the Lot free from any mortgage, lien, charge, bill of sale (whether registered or not) or security interest as defined in the Personal Property Securities Act 2009 ("the PPSA"), and any other adverse interest except where such interest has been notified in writing to the Selling Agent prior to the Sale and such interest has been acknowledged by the Selling Agent. The Vendor irrevocably authorises the Selling Agent to register its interest in each Lot against such Lot and the Vendor to secure payments owing to the Selling Agent by the Vendor or payments made by the Selling Agent to the Vendor on account of the purchase price where the Purchaser of a Lot has not paid all or part of the purchase price. If the owner of the Lot is a company, the Vendor warrants and represents to the Selling Agent that there are no fixed charges affecting the Lot, that there are no floating charges affecting the Lot or such charges are not in default, and that the Vendor and no officer thereof is aware of any circumstances by which any floating charge in relation to the Vendor may have crystallised. The Vendor warrants and represents that the Lot is being sold in the ordinary course of business.
19. Except as disclosed in writing to the Selling Agent prior to the Sale, the Lot nominated for the Sale shall be free of any symptoms associated with windsucking, wobbling, roaring, impaired vision, botulism, equine morbillivirus (Hendra virus), niph virus or any other virus.
20. Except as disclosed in writing to the Selling Agent prior to the Sale, the Vendor warrants that all male animals have had one or both testes removed, save insofar as such circumstance has been disclosed to the Selling Agent prior to the Sale of such animal.
21. In the event that the Selling Agent cancels the Sale the Vendor has no claim against the Selling Agent for damages or costs or expenses other than the repayment of the Nomination Fees paid by the Vendor or save as is expressly provided for by these conditions.
22. Any Lot nominated for the Sale cannot be withdrawn by the Vendor, after the assigning of the horse's lot number for the Sale Catalogue, without the forfeiture of the Nomination Fee, except in the event of injury, death or illness of the Lot. Apart from that of a Lot (in which case the Nomination Fee shall be refunded in full), in all cases of the Nomination Fee being forfeited by the Vendor at his expense produces a Veterinary Certificate, within thirty (30) days from the completion of the Sale, confirming the existence of the injury or illness alleged, two thirds of the Nomination Fee shall be refunded. Should the Vendor not produce an acceptable Veterinary Certificate, the Vendor shall pay to the Selling Agent 6.6% (inc GST) of the median sale price for the Selling Session in which the withdrawn Lot was listed, as liquidated damages, in addition to the Nomination Fee.

The Vendor acknowledges that by execution of this Nomination Form that the Selling Agent distributes its Sale Catalogue on a worldwide basis to thousands of potential Purchasers who make arrangements to be present at the Sale because of Lots listed in the Sales Catalogue and acknowledges the credibility of the Sale is diminished if catalogued Lots are withdrawn without good and valid excuse.

23. Should the Vendor sell privately any Lot accepted for the Sale during the period from the Closing Date for Nominations until sixty (60) days after the Sale (the Agency Period), the Vendor shall promptly pay to the Promoter and Selling Agent an amount equal to the total charges including GST set out in Clauses 9, 10 and 11 of these Conditions.
24. The Vendor shall comply in all respects with the rules of the Sales Complex displayed within the office block of the Sales Complex.
25. In respect of any description used in, or in connection with the Sale the parties hereto agree that the expression 'colt' includes rig or crypt orchid, namely male animals in which one or both testes have not descended into the scrotum from the abdomen.
26. Any Lot entered by the Vendor (including its storage by the Selling Agent) shall be at the Vendor's sole risk and expense notwithstanding any negligence on the part of the Selling Agent and the Vendor indemnifies the Selling Agent against all claims, actions, loss, damages, costs and expenses incurred including stabling and feed.
27. The Vendor agrees to be bound by the Conditions of Sale as printed in the Sale Catalogue, including any variations made thereto at the absolute discretion of the Selling Agent.
28. The Vendor shall promptly advise the Selling Agent of any credit arrangements made with a Purchaser of a Lot (which shall be of the Selling Agent's discretion) and shall sign an acknowledgment of such arrangements as directed by the Selling Agent.
29. The Vendor acknowledges that the Selling Agent acts merely as agent for the Vendor and gives no warranty that any Purchaser will complete a purchase in accordance with the Conditions of Sale, nor is the Selling Agent under any liability in respect of the Sale should the Purchaser fail to complete their purchase save as is expressly provided in these conditions. Subject to the Conditions of Sale printed in the Sale Catalogue, if the Selling Agent delivers any Lot to the Purchaser of that Lot prior to the Selling Agent having received payment by cash or otherwise for the Lot, the Selling Agent will use its best endeavours to secure the performance by the Purchaser of its obligation to pay the purchase price and any applicable GST except where:
 - 30.1 The Selling Agent has formed the opinion that there is a bona fide dispute between the Vendor and the Purchaser as to the Purchaser's obligation to pay for the Lot;
 - 30.2 The Vendor enters into any credit arrangement or terms with the Purchaser;
 - 30.3 The Sale is terminated or unenforceable for any reason;
 - 30.4 The Vendor agrees to any variation of the normal terms of the contract for the purchase of his Lot (including without limitation terms as to the time for payment) without the prior written consent of the Selling Agent;
- 30.5 The Vendor consents to the delivery of the Lot by the Selling Agent;
- 30.6 The Vendor has not paid any monies due and owing to the Vendor to the Selling Agent on any account whatever.
31. The liability of the Selling Agent pursuant to, or incidental to, its appointment in respect of any Lot shall be limited to the purchase price accepted by the Selling Agent as the price payable less any monies owing to the Selling Agent by the Vendor on any account, including any GST applicable thereon.
32. The Vendor agrees that if the Selling Agent pays to the Vendor any amount in respect of the purchase price and if applicable GST for any Lot prior to the Selling Agent receiving from the Purchaser the full purchase price including any applicable GST of the Lot and/or the honouring of all the bills of exchange tendered in respect hereof, the Vendor shall immediately execute and deliver to the Selling Agent authorities and documents in such form as the Selling Agent in its absolute discretion requires, so as to secure and authorise the Selling Agent to exercise through or on behalf of the Vendor all rights which the Vendor may have in respect of the Lot and/or any bill of exchange or other right held by the Vendor in his own right.
33. The Selling Agent guarantees to the Vendor that payment will be forwarded to the Vendor within forty two (42) days from the end of the Magic Millions 2016 Gold Coast March Yearling Sale, all monies due and owing to the Vendor pursuant to the sale of the Vendor's Lot but subject to the Selling Agent's right to withhold payment of all or part of the proceeds of such sale where the Selling Agent concludes that there is a bona fide dispute between the Vendor and the Purchaser as to the Purchaser's obligation to pay for the Lot.
34. The Vendor acknowledges that if the Vendor suffers a loss as a result of a failure by the Selling Agent to account to the Vendor for all or any part of the sale proceeds of the Vendor's Lot, the Vendor does not have a right of compensation from the Claim Fund under the PAMD.
35. The Vendor agrees that the Selling Agent may assign the benefit of all nominations to the Sale to such third person, as the Selling Agent may determine and the Vendor agrees to be bound by the terms of such assignment.
36. The Vendor agrees to indemnify and hereby indemnifies the Selling Agent against all loss, damage, costs and expenses of whatever nature incurred by the Selling Agent directly or indirectly as the result of the Vendor's non-compliance with any of the Conditions of Nomination or the Conditions of Sale.
37. The Vendor agrees that the Nomination Fee remains a debt due and payable by the Vendor to the Selling Agent from the date of nomination (that is to say, at the date when the Lot is nominated) of any Lot notwithstanding the withdrawal of the Lot from the Sale and the Vendor acknowledges and agrees that the only basis upon which he may claim a repayment of the Nomination Fees from the Selling Agent is:
 - 37.1 If the Selling Agent cancels the Sale in accordance with Clause 21 of these Conditions, or
 - 37.2 If the Lot is rejected in accordance with Clause 17 of these Conditions, or is not included in the Sale Catalogue.
38. The Vendor acknowledges that the duties and rights of the Selling Agent under these Conditions, are severable and independent and any monies paid to either of them are payments to which they are entitled in their own right pursuant to these Conditions.
39. In the event that any provision is unlawful or void, the parties agree that these conditions shall be construed so far as is possible so that the unlawful or void portion is an independent promise and is severable from the other conditions. Where such unlawful or void portion relates to any provision for fees or remuneration including if applicable GST then a term will be implied (so far as the law permits) that reasonable remuneration and expenses including if applicable GST will be payable for any services rendered by or on behalf of the Selling Agent to the Vendor.
40. The Selling Agent does not assume any responsibility for exporting horses.
41. The Vendor accepts, confirms and acknowledges the following:
 - 41.1 The Selling Agent accepts no liability for any GST liability arising as between the Purchaser, the Vendor and the ATO in respect of any Lot sold by way of auction or private treaty;
 - 41.2 That each Lot offered for sale will be invoiced with GST added to the sale price in the event that the Vendor is registered for GST; in the event that the horse is purchased by a non-resident who is not registered for GST and that purchaser executes the required Magic Millions Export Declaration Form, the vendor acknowledges that subject to the export provisions as approved by the ATO this horse may be sold on a zero-rated basis of which time no GST will be charged on the invoice;
 - 41.3 For the purpose of the GST Law the Vendor, not the Selling Agent, is the 'supplier' and is responsible for determining whether the Purchaser is registered or required to be registered for GST purposes and that the Purchaser satisfies the requirements of the ATO as regards the export of a Lot.
42. The Vendor acknowledges that the Selling Agent acts as agent for the Magic Millions Sales Partnership (ABN 99 519 379 694).
43. The Vendor acknowledges that the Selling Agent will make available a Repository at the complex for the purpose of the storing and examination of x-rays, physical or digital, and other records required by the Terms and Conditions of the Repository or the relevant Sale Catalogue. The Vendor further acknowledges the Terms and Conditions of the Repository and agrees to be bound by these Terms and Conditions. The relevant Terms and Conditions will be displayed in the Repository and are available from the Selling Agent on request.
44. The Vendor accepts and acknowledges that prior to executing this Nomination Form, the Selling Agent has advised the Vendor that he should seek independent legal advice before signing this Nomination Form.
45. By executing this Nomination Form, the Vendor hereby appoints the Selling Agent's auctioneer to auction the Lot on behalf of the Vendor. The Vendor acknowledges having received a copy of this Nomination Form and in particular acknowledges his appointment of the auctioneer.
46. In the event that the Selling Agent, for whatever reason, pays to the Vendor, the amount due to the Vendor pursuant to Clauses 5 and 6 of the Conditions of this Nomination Form prior to receiving payment for the Vendor's Lot from the Purchaser, the Vendor assigns to the Selling Agent all the Vendor's interest in the Lot to the Selling Agent or the Selling Agent's nominee.
47. The Vendor acknowledges the existence of the Australian Thoroughbred Sales Code ("the Code"). The Selling Agent recommends that the Vendor acquaint themselves with the Code.
48. Notwithstanding any other term or condition contained in these Conditions of Sale, the Vendor hereby irrevocably authorises and directs the Selling Agent to pay the Selling Agent out of the sale proceeds of any Lot, any amount that may be due and owing to the Selling Agent prior to this Sale. For the sake of certainty, the Vendor assigns to the Selling Agent any irrevocable authority rights in favour of the Vendor where a Lot owned by the Vendor has been submitted for sale by this Sale by a party other than the Vendor. The Vendor appoints the Managing Director of the Selling Agent, from time to time, its attorney to do all things necessary and execute all documents to give effect to these Conditions of Sale.
49. Where the Vendor (in the reasonable opinion of the Selling Agent) is in any way or in any capacity (by virtue of directorship, shareholding, trustee, beneficiary or otherwise) involved with or related to a Purchaser of a Lot offered for sale by the Vendor and the Vendor owes the Selling Agent any monies with respect to that Lot or any other Lot, the Selling Agent, in its absolute discretion, retain all or part of the purchase price paid by the Purchaser and apply the same to the debt owed by the Vendor to the Selling Agent. In such case the Selling Agent may, in its absolute discretion, refuse to pay out the Vendor for the purchase price for the Lot prior to receiving payment in full for the Lot from the Purchaser.
50. The Vendor and the Purchaser indemnify and will keep indemnified the Selling Agent and the Promoter against any claim arising out of any telephone directions or instructions given by the Vendor and/or the Purchaser or their agents, consultants or employees, to the Selling Agent or the Promoter or their agents, consultants or employees, on or before the date of the Sale, or at any time thereafter, for any reason, such telephone instructions are misinterpreted or not acted upon, for whatever reason, by the Selling Agent or the Promoter.
51. Notwithstanding Condition 26, all persons who attend the Sale do so entirely of their own risk and neither Magic Millions Sales Pty Limited (ABN 54 078 396 317) nor Magic Millions Promotions Pty Limited (ABN 41 088 197 200) nor their subsidiaries, officers or agents for themselves and for those whom they act, assume or accept any responsibility or liability of whatever nature for any injury or damage whatsoever which may occur to any person or property.
52. The Vendor accepts and acknowledges and agrees that where a dispute arises between the Vendor and the Purchaser in relation to a Lot, this must be resolved between them only. The Lot cannot be returned to the Selling Agent or its stables.
53. Except as disclosed in writing to the Selling Agent prior to the nomination of the Lot, the Vendor warrants that, in the absence of full and complete disclosure to the selling agent, the Lot has not undergone abdominal surgery of any type (with the exception of the surgical repair of a non-stigmulating umbilical hernia), and has not undergone invasive joint surgery, surgery to repair a fracture, or surgical intervention of the upper respiratory tract. If prior to the Sale the warranty provided in the immediately preceding sentence is inaccurate in whole or in part the Vendor will immediately notify the Selling Agent in writing.
54. The Australian Racing Board has introduced new Rules completely banning the use of anabolic androgenic steroids in thoroughbred horses effective from 1 May 2014. The Australian Rules of Racing can be viewed at the ARB website www.australianracingboard.com.au and are subject to change by the ARB without notice. The Vendor irrevocably authorises the Selling Agent and its veterinary representatives to take a blood sample from any Lot, that is not catalogued in the Sale as breeding stock, following the sale of such Lot, to be analysed for the presence of anabolic androgenic steroids as per Condition 38 in the Conditions of Sale.