

# CONDITIONS OF SALE

## CONDUCT OF SALE

The highest bidder shall be the Purchaser on any Lot once any set reserved price has been attained.

The right is reserved to the Vendor, either personally or by an agent including the Auctioneers, to bid one or more times and to buy in the lot if the highest bidder.

If any dispute arises in the bidding, the lot shall be put up again immediately after the last undisputed bidding and resold or the dispute may be determined by the Auctioneer. The Auctioneer is the sole arbiter as to the existence or otherwise of any dispute.

The Auctioneer therefore may without giving any reason, refuse to accept any bid.

No person shall advance less at a bid than the sum nominated by the Auctioneer.

The Auctioneers reserve the right, without giving any reason therefore, to withdraw any lot or lots before or during the sale.

## GOODS AND SERVICES TAX (GST)

Bidding will be on a plus GST basis.

The vendor will pay GST on all supplies provided by the auctioneer and on all the supplies provided by the auctioneer as agent.

The auctioneer shall not in any circumstances have any liability or obligation to the vendor or any purchaser in relation to GST, and specifically shall not be under any obligation to pay to the vendor any amount in respect of GST on a sale unless and until the auctioneer has been paid the relevant GST by the purchaser.

## ACKNOWLEDGEMENT OF PURCHASE

On the fall of the hammer the Purchaser of each lot shall give the Purchaser's Buyer Registration Number and his or her full name and address to the Auctioneers. The Purchaser shall sign and hand in to the Auctioneers an acknowledgement of the purchase. If the Purchaser fails to comply with this condition, each lot in respect of which such failure is made may, if the Auctioneer thinks fit, be put up again and resold. If upon such a resale a lower price is obtained for any lot than was obtained at the first Sale, the difference in price shall be a debt due by the Purchaser in default at the first bidding to the Vendor and recoverable from the Purchaser as such. The Auctioneers and its clerks are authorized to sign the Sale book on behalf of both Vendors and Purchasers.

- (1) The Purchasers, if more than one, shall be jointly and severally by these terms and conditions shall carry out and perform the same jointly and severally.
- (2) Where a person who makes the highest bid is acting on behalf of a third party or principal, the person actually making the bid is and remains liable for payment in accordance with the conditions of Sale, whether or not the Auctioneers acknowledge the principal and whether or not the Auctioneers subsequently look to the principal for payment.

The person who signs an acknowledgement of purchase for any lot shall thereby be liable to pay the purchase price of the lot irrespective of whether or not that person was the bidder.

## DISPUTES AND WAIVERS

The name, description and address of the Vendor as given by the Vendor are set out in the catalogue. In the case of any dispute the remedy of the Purchaser is against the Vendor only. In no case and under no circumstances is the remedy against the Auctioneers, who are agents of the Vendor.

The rights and remedies of the Auctioneers under these conditions shall not be affected by reason of the selling commission and charges of the Auctioneers having been deducted by the Auctioneers in any payment made by the Auctioneers to the Vendor and as between the Purchaser and the Vendor.

## PAYMENT

Except if prior to the offering of the lot the Purchaser has made credit arrangements with the Auctioneers the purchase price for each lot shall be payable to the Auctioneers in full on the fall of the hammer. The Auctioneers may withhold delivery of a lot to a Purchaser until the purchase price and any additional charges are paid by the Purchaser.

## CREDIT ARRANGEMENTS

An agreement between the Auctioneers and a Purchaser entered into prior to or at the time of delivery of a lot shall not constitute a term or condition of the Sale of the lot between Vendor and Purchaser, but shall constitute a separate agreement between the Auctioneers and the Purchaser, independent of the agreement between the Vendor and the Purchaser.

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## PURCHASERS PLEASE NOTE

Purchasers requiring credit from the Auctioneers shall make application therefore prior to the Sale. Purchasers are cautioned that approval of credit for prior Sales does not establish credit for purchases at this Sale. To avoid misunderstanding, clients must re-establish credit before bidding.

## PROPERTY IN LOTS

- (1) Delivery of any lot to a Purchaser or acceptance by the Auctioneers of a cheque tendered in payment for a lot, whether such tender is made prior to, at the time of, or subsequent to delivery of the lot shall not pass title in the lot to the Purchaser.
- (2) Title to each lot sold shall pass to the Purchaser only on payment to the Auctioneers of the purchase price and any interest payable thereon in cash or upon cleared funds being credited to the Auctioneers' account with its bank on the negotiation of any cheque accepted by the Auctioneers in respect of the purchase price.

## DELIVERY AND INSURANCE

The Auctioneers reserve the right to require a Purchaser, to whom delivery of a lot is made prior to the payment of the purchase price in full, to effect insurance prior to delivery satisfactory to the Auctioneers in respect of damage, injury or death of the lot from any cause whatsoever and to ensure that the policy of insurance bears an endorsement noting the Auctioneer's and Vendor's interest in the lot, such insurance to be maintained until the purchase price is paid in full.

## RISK AND EXPENSE

The Purchaser shall remove each lot purchased from the Auctioneers' premises on the day of the purchase. Any lot remaining on the Auctioneers' premises, (after the day of the purchase) may be moved by the Auctioneers at their convenience and stabled at alternative stables. All transport, stabling and feeding arrangements will be made at the discretion of the Auctioneers and the cost of risk of the Purchaser.

From the fall of the hammer the lot shall be at the risk of the Purchaser in all respects. Without limiting the generality thereof the Purchaser shall be responsible for all expenses of the care of the lot and all losses and expenses occasioned by the death or illness of or accident to the lot shall hold the Vendor and the Auctioneers indemnified against any such expenses and losses. Darwin Turf club has the right to take any necessary action in the event of the Vendor or his representative being unavailable.

## WINDSUCKERS AND WOBBLERS

If a lot is addicted to windsucking or proves to be a wobbler and that fact shall be disclosed by the Vendor to the Auctioneers, that fact shall be announced by the Auctioneers before offering the lot. If a lot proves to be a windsucker or wobbler within seven days of the Sale and the condition has not been disclosed at the time of offering, the Sale of the lot will be cancelled upon the Purchaser producing to the Auctioneers a certificate of a veterinary surgeon nominated by the Auctioneers obtained at the Purchaser's expense and upon return of the lot, in sound condition, all monies paid by the Purchaser shall be refunded by the Vendor without interest. Subject therefore to the Purchaser shall have no claim against the Vendor.

## LOWER RESPIRATORY LARYNGOSCOPE EVALUATIONS

Notwithstanding any other provision of these Conditions of Sale and notwithstanding any prior custom and usage of the trade, horses which are sold as racing prospects in this Sale may be subject to a post Sale upper respiratory laryngoscope evaluation (excluding the trachea) through a veterinary surgeon approved by the Auctioneers obtained at the Purchaser's expense within 48 hours of the Sale and prior to the horse leaving the DTC stables.

If the veterinarian is of the opinion that the horse has;

- (i) Laryngeal hemiplegia (complete immobility of the cartilage)
- (ii) rostral displacement of the palatopharyngeal arch
- (iii) epiglottic entrapment,
- (iv) subepiglottic cyst(s)

and this/these condition(s) have not been announced prior to the Sale, then the Purchaser may give notice in writing to the Auctioneers within 48 hours of the Sale of the veterinarian's certificate.

The Auctioneers shall then notify the Vendor as soon as practicable thereafter, who shall either accept rescission of the Sale or produce a veterinary certificate contrary to the Purchaser's veterinary certificate.

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In such circumstances the Auctioneers shall appoint a third veterinarian whose opinion shall be final, binding and conclusive.

On the cancellation of the Sale, the lot shall be returned to the Auctioneer's premises or the Vendor's property, whichever is the nearer, at the Purchaser's expense and upon return of the lot, in sound condition, all monies paid by the Purchaser shall be refunded by the Vendor without interest. Subject thereto the Purchaser shall have no claim against the Vendor. The Vendor acknowledges that the Auctioneers shall not be responsible for or have any liability for damages, injuries or illness suffered by the horse during or as a result of such examination. The Veterinary Surgeon carrying out the examination acts as agent for the Purchaser not the Auctioneer.

## CONDITIONS AND WARRANTIES

- (1) Subject only to the express provisions of these conditions, each lot is sold with all its faults. No error, omission or misdescription whether as to condition, soundness, fitness, quality pedigree, performance or engagement of any horse mentioned in the pedigree, the relationship of a lot or of a horse mentioned in the pedigree of a lot to any other horse, the number of foals which a mare has had, or as to which foal of a mare a lot is in order of foaling or otherwise or as to any progeny of any mare or horse mentioned in a pedigree is or otherwise in relation to any of the matters aforesaid shall annul or vitiate a Sale or entitle a Purchaser to any allowance, compensation, damages or rebate of any kind whatsoever.
- (2) Save and except only as provided in conditions 19, 20 and 21 of these Conditions of Sale, every condition representation and warranty implied by common law, equity, statute, custom or otherwise mentioned in the pedigree, the relationship of a horse or of a horse mentioned in the pedigree of a lot to any other horse, the number of foals which a mare has had, or as to which foal of a mare a lot is in order of foaling or otherwise or as to any progeny of any mare or horse mentioned in a pedigree is or that any condition or warranty implied by or required to be given by any statute of the Parliament of the Commonwealth of Australia or the Northern Territory shall not be deemed to be excluded by this condition.
- (3) The Auctioneers give no representation or warranty that any lot is eligible for the Australian Stud Book.

## DEFAULT BY PURCHASER

If the Purchaser of any lot shall fail to observe or perform these terms or conditions or any of them in respect of a lot all monies, if any, paid shall be absolutely forfeited to the Vendor who shall be at liberty without prejudice to any other right or remedy the Vendor may have by reason or on account of such default to cancel the Sale or at this Sale if the Auctioneers see fit, or at any future time, to resell such a lot by public auction or private contract without notice to the Purchaser. The deficiency (if any) between the amount of the purchase price at the present Sale plus the interest payable thereon and the cost and expenses of such resale and any expenses for keep, care of, and attention to and removal of the lot and the amount realized at such resale shall immediately be recoverable by the Vendor from the Purchaser as and for liquidated damages. Any increase in price on such resale shall belong to the Vendor.

## TIME LIMITATIONS

No action proceeding or claim whether by way of defence or otherwise other than in respect of conditions 19 through 21 shall be brought or made against the Vendor or the Auctioneers in respect of or in any way arising out of or connected with a lot or the purchase of a lot by the Purchaser unless such action or proceeding is commenced or the claim or defence is raised within 28 days of the date of the Sale.

## PUBLIC LIABILITY

Every person attending the Sale or entering the Auctioneers' premises does so at the persons own risk, and the Auctioneers shall not be in any way liable or responsible for any accident whatsoever to any person, or liable or responsible for any damage caused to any property in the Sale grounds.

## APPLICABLE LAW

These Conditions of Sale are construed and shall take effect in accordance with the law of the Northern Territory, and any lot shall be deemed to have been sold in Darwin, Northern Territory.

## PURCHASERS PLEASE NOTE

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