

AUCTION SALE

AUCTION SALE
("the sale")
of thoroughbred horses by

THE THOROUGHBRED BREEDERS' ASSOCIATION OF SOUTH AFRICA
("the Association")

CONDITIONS OF SALE AND PURCHASE
("the Conditions")

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AUCTION SALE

1. INTRODUCTION

- 1.1 The Conditions shall be binding on every vendor and buyer of horses at the sale ("vendor" and "buyer" respectively).
- 1.2 Any entry made in the sales documents of the Association shall be:
- 1.2.1 *prima facie* proof of the sale and purchase of a horse in terms of the Conditions; and
- 1.2.2 deemed to constitute an acceptance of the Conditions by the vendor and buyer concerned.
- 1.3 For the purposes of this agreement:
- 1.3.1 "sale documents" shall include any of the following documents:
- 1.3.1.1 completed and/or signed by or on behalf of the vendor-
- a nomination form;
 - a reserve/valuation form;
 - any power of attorney or agent authorisation form;
- 1.3.1.2 completed and/or signed by or on behalf of the buyer –
- a credit request;
 - an application for a buyer's card;
 - an entry in the vendor roll;
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- the Association's sales invoice;
 - a promissory note;
 - any power of attorney or agent authorisation form;
- 1.3.2 "auctioneer" shall mean the auctioneer appointed by the Association for the conduct of the sale;
- 1.3.3 "horse" shall mean a thoroughbred horse and "lot" shall have a corresponding meaning;
- 1.3.4 "sales ring" shall mean the ring in and/or from which the horses are paraded and sold;
- 1.3.5 "the debt" shall mean the total amount owing by a buyer to the Association in respect of the purchase of a horse and shall include but not be limited to, the purchase price or unpaid portion thereof, interest which accrues on the purchase price, insurance premiums, the cost of transporting, maintaining and stabling the horse, the amount payable in terms of 9.4 and all other amounts referred to in the Conditions;
- 1.3.6 "the shortfall" shall mean the difference, if any, between the purchase price realised at a sale contemplated in 9.7 and the amount of the debt;
- 1.3.7 "NHRA" shall mean The National Horseracing Authority of Southern Africa;
- 1.3.8 "VAT" shall mean value added tax;
- 1.3.9 "purchase facility" shall mean the maximum amount any buyer will be allowed to buy for at this sale;
- 1.3.10 "credit terms" shall mean the maximum number of days from the date of sale within which a buyer must settle his debt;
- 1.3.11 any reference to "purchase price" shall be deemed, unless the context requires otherwise to include VAT;
- 1.3.12 any reference to "seller" or "consignor" in the Conditions and/or the sale documents shall be deemed, unless the
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context requires otherwise, to be a reference to "vendor";

- 1.3.13 any reference to "purchaser" in the Conditions and/or the sale documents shall be deemed, unless the context requires otherwise, to be a reference to "buyer";
- 1.3.14 any reference to the Association, a vendor, a buyer or the auctioneer shall be deemed, unless the context requires otherwise, to include a reference to the respective agents, representatives and employees of the Association, vendor, buyer or auctioneer.
- 1.4 Headings have been inserted in the Conditions for convenience only and shall not affect the interpretation or meaning thereof.
- 1.5 Words importing one gender shall include the two genders and words importing the singular shall include the plural and *vice versa*.
- 1.6 The Association reserves the right to alter or amend the Conditions as it deems necessary.

2. NO WARRANTIES OR REPRESENTATIONS

- 2.1 Except as specifically provided for in the Conditions, the sale of all horses shall be "voetstoots", on an "as is" basis, with all faults and defects.
 - 2.2 Neither the Association nor the auctioneer makes or gives any representation, warranty or guarantee, express or implied, whatsoever:
 - 2.2.1 in respect of a vendor's title to a horse offered for sale;
 - 2.2.2 in respect of the correctness of any statement or information whatsoever pertaining to a horse including any statement or information contained in any sale documents or advertising/sale catalogues, and neither the Association nor the auctioneer shall be liable for any error in any such statement or information;
 - 2.2.3 as to the merchantability, fitness for any particular purpose, soundness, condition or quality of any horse offered for sale.
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- 2.3 Neither the Association nor the auctioneer accepts any responsibility for:
- 2.3.1 any defects or errors in relation to the pedigree, description, condition or other particulars relating to a horse, including, without limitation, the performance of a horse; or
 - 2.3.2 any loss or damage suffered by any vendor as a result of the accidental omission by the Association of any details of or reference to a horse entered by such vendor.
- 2.4 The vendor, consignor or owner may have made oral or written statements or published brochures or advertisements concerning the soundness, physical conditions or the racing abilities of the horses described in this catalogue or this sale generally. Such statements or advertisements do not constitute warranties and do not form part of the Conditions.
- 2.5 If a vendor, in respect of a particular horse, gives a special warranty which is inaccurate or misleading in any material respect, the buyer's remedy, if any, shall lie against the vendor and not against the Association or the auctioneer.
- 2.6 It is specifically recorded that terms such as "in foal", "believed in foal", "tested in foal", "certified in foal", "believed definitely in foal", "pregnancy certificates available", shall not constitute a warranty by the Association or the auctioneer that any particular mare entered for sale, is in fact in foal at the time of the sale. The Buyer, if he so wishes, shall be entitled to verify the claim of pregnancy.
- 2.7 It is the sole responsibility of an intending buyer to check the inoculation and/or the vaccination status of any horse which he may be interested in buying in advance and to satisfy himself that they meet all the legal and his own requirements.
- 2.8 The buyer acknowledges that he has made the purchase in reliance on his own enquiries and inspection, that he has not relied on any statement or representation made by or on behalf of the vendor, the Association or the auctioneer and that no compensation shall be payable by the Association or the auctioneer for any faults, imperfections, conditions or other defects.
- 2.9 The vendor and the buyer indemnify and hold the Association and the auctioneer harmless against any claims arising from any
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cause whatsoever relating to the sale of any horse to the buyer by the Association on behalf of the vendor.

- 2.10 The Association and the auctioneer shall not be held responsible in the event of the incorrect horse being auctioned at any particular time, it not being the duty of the Association or the auctioneer to verify the identity of the horse being auctioned.
- 2.11 Under no circumstances whatsoever shall the Association or the auctioneer be liable for any consequential losses of either the vendor or the buyer relating to the sale and purchase of horses at a sale.

3. DUTY TO DISCLOSE

- 3.1 The vendor of any horse which is or which shows any signs of being a wind-sucker, a weaver, a wobbler, a bleeder or which suffers from impaired vision or permanent eye injury or eye defect, shall be obliged to disclose such condition(s) in writing to the Association prior to the auction of the horse concerned to enable the auctioneer to announce such conditions at the time of the sale:
- 3.1.1 A wind-sucker is a horse which habitually swallows air whether in association with grasping fixed objects with incisor teeth or not.
- 3.1.2 A weaver is a horse which habitually swings its head and neck to and fro and transfers weight from one forelimb to the other alternately.
- 3.1.3 A wobbler is a horse which suffers from a neurological disease caused by compression of the spinal cord and resulting in lack of balance and co-ordination.
- 3.1.4 A bleeder is a horse which suffers from a lung haemorrhage which is visible by inspection through the nostrils.
- 3.2 A buyer shall be entitled to cancel the sale of a horse found, within 7 days of its sale, to have been suffering, at the time of the sale, from any of the conditions specified in 3.1 above, provided that:
- 3.2.1 the existence of any such condition was not announced at the time of the sale of the horse concerned; and
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- 3.2.2 the buyer produces, at his own expense, a veterinary certificate certifying the existence, at the time of the sale, of any such condition; and
 - 3.2.3 the buyer satisfies the Association or its authorised nominee/s that the vendor of such a horse knew or ought to have known of the existence of any such condition; and
 - 3.2.4 the buyer has given written notice of his intention to cancel the sale to the Association within 8 days of the date of the sale of the horse concerned;
 - 3.2.5 the buyer shall be obliged, at his own expense, to return the horse to the vendor. The buyer shall be entitled to recover, directly from the vendor, the expense he incurred in returning the horse.
- 3.3 If the vendor or owner of a horse disagrees with the veterinary certificate supplied by the buyer in terms of 3.2.2, the Association may appoint an independent veterinary surgeon at the expense of the vendor or owner, whose certificate shall be binding upon all parties concerned.
- 3.4 The vendor of any horse which is one of twins, shall be obliged to disclose such fact in writing to the Association prior to the sale of the horse concerned to enable the auctioneer to announce such fact at the time of the sale.
- 3.5 If it is not disclosed prior to its sale that the horse is one of twins the buyer shall be entitled to cancel the sale; provided that the buyer complies with the provisions of 3.2.4 and 3.2.5 above.
- 3.6 The buyer of a horse may, after the sale but before the horse leaves the Association's sales premises and at his own cost, request that the horse:
- 3.6.1 be subjected to an upper respiratory endoscopic examination (excluding the trachea); and/or
 - 3.6.2 be examined for the presence of any drug, chemical, compound, stimulant or substance which may have influenced the performance of the horse at the sale.

The examination must be carried out on the Association's sales complex by a veterinary surgeon appointed by the buyer and must be concluded within 48 hours from the fall of the hammer.

The buyer and the vendor, or their authorised representatives shall be entitled to be present during the examination. The provisions of 3.3 shall apply *mutatis mutandis* if the vendor or owner disagrees with the veterinary certificate supplied to the buyer.

Should the horse be found to have one of the following conditions and this condition will materially influence the horse's further racing or breeding career, the buyer shall be entitled to cancel the sale, provided that the buyer complies with the provisions of 3.2.4 and 3.2.5 above; split palate, laryngeal hemiplegia, laryngeal hemiparesis with incomplete abductor function, epiglottal entrapment, persistent dorsal displacement of the soft palate, arytenoid chondritis, subepiglottal cyst, soft palate cyst, rostral displacement of the palatopharyngeal arch, nasopharyngeal cicatrix, space occupying lesions or malformation which comprise the diameter of the upper respiratory tract.

The same entitlement to cancel the sale shall apply if anything mentioned in 3.6.2 is found.

- 3.7 The Association reserves the right within 30 days from date of sale to cancel any sale if in its sole discretion it is of the view that exceptional circumstances warrants such action.
- 3.8 Notwithstanding the cancellation of a sale in terms of 3.2, 3.5, 3.6 and 3.7:
- 3.8.1 the vendor of such a horse shall nevertheless remain liable for the auctioneer's levy, as provided for in 11 below, as if the sale had not been cancelled; and
- 3.8.2 neither the Association nor the auctioneer shall be liable for any failure to disclose any of the conditions specified in 3.1, 3.4 and 3.6 above, or for any damages suffered by a vendor or a buyer pursuant to any cancellation arising from such failure to disclose.
- 3.9 Except as provided for in 3.1, 3.4 and 3.6 or other express provisions of these Conditions, no other condition, fact or defect, whether patent or latent shall constitute grounds for the cancellation of the sale or for a claim for damages. A horse shall not be returnable for any other physical or performance related reason.
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- 3.10 Any disputes, of whatsoever nature which arise between the vendor and the buyer in relation to a horse, shall be resolved between them only. No horse shall be returned to the Association or its sales grounds or stables without the Association's prior written consent.

4. BIDDING

- 4.1 The parties acknowledge that announcements are made from the auctioneer's rostrum before the commencement of the sale and from time to time during and after the sale. The Association disclaims all responsibility for any claims or damages suffered by any person on account of not having heard such announcements.
- 4.2 Subject to the provisions of 4.4 below, the highest bidder whose bid is accepted by the auctioneer, shall be the buyer of the horse; provided that, if a dispute arises between two or more bidders in respect of the sale of a horse, the auctioneer may, prior to the conclusion of the sale, and in his sole and absolute discretion:
- 4.2.1 re-auction the horse in question; or
- 4.2.2 declare who the buyer of the horse is.
- 4.3 The decision of the auctioneer shall, in the circumstances specified in 4.2 above, be absolute, final and binding on all parties.
- 4.4 A vendor may impose a reserve price on a horse by giving written instructions in this regard to the auctioneer specifying the reserve price, prior to commencement of the sale. The auctioneer shall have the right to bid as agent on behalf of the vendor to such reserve price. In the absence of such instructions, the auctioneer will sell to the highest bidder.
- 4.5 No direct telephone bidding will be allowed or accepted.
- 4.6 The auctioneer shall determine and regulate the advance of the bidding and shall be entitled, in his sole discretion, to ignore or reject any bid, without giving any reasons for such action. The amount of the bid shall not include any VAT.
- 4.7 If, after the fall of the hammer, it transpires that the person to whom a horse was sold was not, at the time of such sale, in
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possession of a valid buyer's card, that sale shall be null and void and the horse shall immediately be re-auctioned.

4.8 When the horse is sold the buyer shall sign the vendor roll forthwith as acknowledgement of purchase.

4.9 The auctioneer may withdraw any horse from the sale without giving reasons for doing so.

5. EXPORT AND IMPORT REQUIREMENTS

5.1 Any buyer who is not a South African citizen shall lodge an acceptable letter of credit-standing from his bankers with the Association prior to the sale.

5.2 The buyer of any horse requiring to be exported or imported shall be responsible for ensuring that all requirements necessary for the export or import of such horse are met. The buyer shall not be absolved from complying with his obligations, in particular his payment obligation, in terms of the Conditions by virtue of an allegation of impossibility of performance or *force majeure* in regard to compliance with the necessary requirements.

6. DOMICILIUM

The physical address provided by a buyer in his application for a buyer's card shall be deemed, for the purposes of the Conditions, to be his chosen *domicilium citandi et executandi*.

7. RISK, OWNERSHIP AND MAINTENANCE COSTS

7.1 The Association accepts a horse for sale from a vendor on condition that:

7.1.1 prior to the sale, a prospective vendor lodges with the Association an up to date passport, as provided for in the rules of the NHRA; and

7.1.2 the Association is specifically authorised to complete and sign, on behalf of the vendor, a change of ownership document, as provided for in the rules of the NHRA.

7.2 All risk in respect of a horse sold at the sale shall pass to the buyer "on the fall of the hammer", at which time the buyer shall forthwith be responsible for the care, keep, custody, control,

insurance and security for the horse and for all expenses relating thereto and bear the risk of injury to, sickness or death of the horse. The buyer agrees to release, defend, indemnify and hold the Association, its officers, employees, agents and representatives and the owners or operators of facilities in use by the Association, harmless from all losses, damages, liabilities, expenses, claims, causes of action or legal fees arising out of or related to the possession, care, keep, custody, control or maintenance of any horse on which he is the successful bidder, including any claims arising out of injuries, sickness, death or damage caused by the horse after the fall of the hammer.

- 7.3 The buyer shall not allow or cause any horse bought in terms of the Conditions to become subject to any lien, hypothec or other form of security until such time as the debt has been settled in full. In the event of such lien, hypothec or other form of security arising, the Association shall be entitled to act in accordance with 9.4.
- 7.4 The buyer shall insure the respective interests of the Association and himself in all horses bought for a period of 90 days from date of the sale and shall ensure that the Association's interest is endorsed on the policy provided that:
- 7.4.1 if the purchase price of any horse remains unpaid after a period of 90 days, for any reason whatsoever, the Association shall be entitled, at the cost of the buyer, to extend such period of insurance until such time as the purchase price is actually paid by the buyer;
- 7.4.2 where the purchase price is paid before a period of 90 days has elapsed, the buyer shall be entitled to cancel the policy of insurance with effect from such date.
- 7.5 Save as provided in these Conditions or unless other prior arrangements in writing have been made with the Association, a buyer shall remove the horse purchased promptly from the Association's sales premises after the sale. Should a buyer fail to remove the horse promptly, the Association may remove the horse from the sales premises at the buyer's risk and expense or, alternatively, charge the buyer for stable space and keep, which charge the buyer agrees to pay to the Association on demand.
- 7.6 Ownership in a horse shall only pass to the buyer upon payment of the debt notwithstanding that the buyer may have taken possession of the horse. Until the debt has been paid in full, the
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buyer shall not be entitled to have the horse registered in his name or that of his nominee.

- 7.7 The buyer shall, until such time as the debt has been paid in full, keep the Association advised of the physical address at which the horse purchased is being kept and the Association shall have the right to inspect the horse at any stage prior to payment of the debt.

8. PARTICIPATION REQUIREMENTS AND PAYMENT

- 8.1 No prospective buyer shall be authorised to bid at a sale unless and until he is in possession of a valid and current buyer's card issued by the Association in respect of the sale in question.
- 8.2 Only the person to whom the buyer's card is issued and whose signature appears on the card, shall be allowed to sign for the purchase on the vendor roll. Where the signature on the vendor roll is that of another person, the Association shall be entitled to regard the sale as null and void in which event the horse shall be re-entered into the sales ring for re-auction.
- 8.3 The Association shall only issue a prospective buyer with a buyer's card on the following conditions:
- 8.3.1 the Association will approve a purchase facility, the amount of which will be endorsed and authorised on the application for a buyer's card. In the absence of endorsement or authorisation the maximum purchase facility shall be deemed to be R10,000.00;
- 8.3.2 the prospective buyer shall not be entitled to exceed the purchase facility, in respect of purchases at the sale. Once that limit has been reached, the buyer's card shall be withdrawn unless and until the Association approves, in writing, an increased purchase facility and causes the increased purchase facility to be endorsed on the application for a buyer's card;
- 8.3.3 should a buyer exceed the purchase facility, the Association shall be entitled, in its sole discretion, to declare the sale/s null and void whereupon the horse/s shall be re-auctioned;
- 8.3.4 before the Association will issue a buyer's card, the prospective buyer may be obliged to lodge with the
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Association a deposit for an amount determined by the Association ("the deposit"). The deposit shall be paid in cash, electronic funds transfer, bank-guaranteed cheque or by commercial letter of credit. In the event of a non-guaranteed cheque being tendered, acceptance thereof shall not constitute payment of the deposit until honoured by the bank on which the cheque is drawn. The minimum deposit shall be 75% of the approved purchase facility;

8.3.5 the provisions of 8.3.2, 8.3.3 and 8.3.4 shall *mutatis mutandis* apply to any agreed increased purchase facility;

8.3.6 notwithstanding the provisions of 8.3.4, the Association shall, in its sole and unfettered discretion, be entitled:

8.3.6.1 to require any prospective buyer to lodge with the Association a sum of money or bank-guaranteed cheque sufficient to cover the agreed purchase facility, and/or any agreed increased purchase facility; or

8.3.6.2 in exceptional or deserving cases, to waive, in writing, compliance with some or all of the provisions of 8.3.4 on such terms and conditions and for such period as the Association may determine.

8.4 Any prospective buyer who requires credit terms from the Association for the purpose of payment of horses bought at this sale must apply for such credit terms in writing at least 14 days prior to the advertised date of the sale. In its sole discretion the Association shall have the right to approve or reject all such credit applications and to determine the conditions and period of payment subject to a maximum period of 21 days from the date of sale. Credit terms, if any, shall be endorsed, authorised, accepted and signed for by the buyer and the Association on the application for a buyer's card. In the absence of such endorsement, authorisation, acceptance and signature, the sale shall be deemed to have been for cash.

8.5 A bidder or buyer who has been extended credit by the Association at a prior sale will not automatically have credit at this sale or any future sales. The Association reserves the right to revoke any credit previously established and to refuse to accept the bid(s) of such buyers.

- 8.6 Unless credit terms have been arranged and approved in terms of clause 8.4, all horses bought at this sale must be paid for in full by the buyer prior to obtaining the required release permit. Purchases shall be paid in cash or bank-guaranteed cheque or by an irrevocable commercial letter of credit. In its sole discretion, the Association may accept a non-guaranteed cheque but acceptance thereof shall not constitute payment until honoured by the bank on which the cheque is drawn.
- 8.7 In the event of any buyer, who does not have prior approval of credit, failing to pay cash or by other prior agreed mode of payment, then such a buyer shall be deemed a defaulter and the horse shall re-enter the auction ring when and if practicable, with the prior attempted sale being void. If it is impracticable or impossible to re-sell the horse at the same sale, it shall be returned to the vendor or owner to be resold at a future sale. Any shortfall on resale, and all costs, interest, insurance, damages, legal and other fees and disbursements associated with the prior attempted sale and the re-sale of the horse, including care, keep and transport of the horse, shall be for the defaulter's account and shall be paid by him on demand from the Association.
- 8.8 The Association reserves the right not to release a horse to a buyer, and to keep it stabled at its sales premises at the cost of the buyer, until payment by cheque from the buyer has been honoured and cleared by the bank.
- 8.9 Where a deposit is lodged with the Association, the Association shall deal with the deposit in the following manner:
- 8.9.1 should the prospective buyer not have purchased any horse the deposit shall be refunded to the prospective buyer as soon as possible after he has surrendered and handed back his buyer's card;
 - 8.9.2 should the purchase price/s in respect of the buyer's total accepted bids be less than the amount of the deposit, the amount owing in respect of the purchases will immediately be deducted from the deposit and the balance refunded to the buyer as soon as possible but not later than 14 days after the date of the sale;
 - 8.9.3 should the purchase price/s in respect of the buyer's total accepted bids exceed the amount of the deposit, then
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the deposit will be offset pro rata against the purchase price/s of the horse/s bought;

- 8.9.4 The balance of the purchase price ("the balance") after the deposit has been offset as envisaged in 8.9.3, shall be paid for as set out in 8.6.
- 8.10 Any amounts due to the Association in respect of purchases and not paid in full within the agreed terms shall attract interest at the maximum rate allowed by law, from the date of sale to date of actual payment. If the debt is not paid in full within the agreed terms, the Association shall be entitled to take action in terms of 9 hereof.
- 8.11 The Association shall be entitled to require the buyer of a horse to complete a promissory note, in a form supplied by the Association, alternatively, in a form acceptable to the Association, for the debt and any other charges for which the buyer may be liable to the Association. Where a purchase facility has been approved, the Association shall be entitled to require the person to whom such facility is granted to complete a promissory note, in a form supplied by the Association, alternatively, in a form acceptable to the Association, for the full extent of the purchase facility provided.
- 8.12 Where a horse is purchased by any person who is not a South African citizen or permanently resident in South Africa, the purchase price shall be secured by an irrevocable commercial letter of credit in a form acceptable to the Association.
- 8.13 No horse may be removed from the sales complex before a release permit in respect of that horse has been issued by the Association. The Association will only issue the release permit if the horse is paid in full or if prior credit terms have been arranged and approved in terms of 8.4.
- 8.14 The buyer of a horse shall be obliged to pay any VAT payable in respect of such horse.
- 8.15 Payment can be made by telegraphic transfer (foreign) or direct bank deposit (local) to:

BLOODSTOCK SA

Nedbank

Business East Rand

Account No : 1288 059744

Branch No : 128842

Details are to be faxed to the Association immediately after payment.

9. LEGAL REMEDIES, REPOSSESSION AND COSTS

9.1 The buyer agrees and acknowledges that in the event of:

- 9.1.1 the buyer materially breaching any condition contained in the Conditions;
- 9.1.2 the buyer failing to pay the debt in full within the agreed terms for payment;
- 9.1.3 the buyer dying;
- 9.1.4 the buyer's estate being placed under any order of provisional or final sequestration, provisional or final winding-up or provisional or final judicial management, as the case may be;

then and in that event the Association shall, without notice and without detracting from any other remedies which may be available to it :

- be entitled to summarily cancel the sale of any horse to the buyer (in respect of which monies are owing by the buyer) and to repossess such horse from anyone in possession of it ("the repossessed horse"); or
- to claim specific performance of all the buyer's obligations whether or not such obligations would otherwise then have fallen due for performance;

in either event without prejudice to the Association's right to claim and recover damages for breach of contract.

9.2 In the event of repossession, the Association may take all necessary steps, either by themselves or through servants or agents and enter upon any land or premises, to recover possession of the horse. The buyer agrees to voluntarily hand over the horse to the Association or its agents or to instruct his employees, servants, trainer(s) or whoever is in possession of the horse to do so. All costs and expenses occasioned by such

repossession shall be recoverable by the Association from the buyer.

- 9.3 The buyer acknowledges and agrees that if for whatever reason he refuses to voluntarily hand over the horse, the Association shall be entitled to immediately apply for and obtain a repossession order from a court of competent jurisdiction and that opposition to such application shall not be justified and shall attract an adverse costs order.
- 9.4 Where any person claims to have a lien over any horse in respect of which the purchase price has not been paid, the Association has the right to settle such lien as it deems fit to recover possession of the horse. Any monies paid in discharge of any lien shall form part of the debt which the Association shall be entitled to recover from the buyer in addition to any other amounts which may be payable.
- 9.5 If after repossession the vendor elects to keep the horse or elects to buy it in at a subsequent sale, or resells it privately at any stage, he absolves the Association of all further responsibility and claims in respect of such horse and its sale. The vendor will remain liable to pay the Association its levies as if the sale had never been cancelled.
- 9.6 Notwithstanding the cancellation of the sale by the Association, the Association shall be entitled to retain:
- 9.6.1 any sums paid by the buyer in respect of the debt; and/or
- 9.6.2 the deposit or any portion thereof which was offset against the purchase price;
- in reduction of damages, if any, which may be suffered by the Association and/or the original vendor by reason of the breach by the buyer and the resultant cancellation of the agreement of sale.
- 9.7 Should the Association elect to cancel the sale and repossess the horse sold, the Association shall be entitled, but not obliged, to attempt to re-sell the repossessed horse at any future sale. If the repossessed horse is sold, then the purchase price, if and when paid in full, shall be used in reduction of the shortfall, if any, which may have resulted by reason of the breach by the buyer and the resultant cancellation of the agreement of sale. The Association shall also be entitled to resell *in absentia* any horse in
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respect of which removal or repossession has been omitted or refused.

- 9.8 If a sale is cancelled, whether the horse is resold or not, the defaulting buyer agrees to pay, but not limited to, transport and keep costs, veterinary fees, insurance, loss of interest and loss of income (e.g. sales levy), on the purchase price in respect of such horse.
- 9.9 Any shortfall remaining after the resale shall be made good by the defaulting buyer on demand from the Association. Under no circumstances shall the Association ever be liable to the vendor for the shortfall.
- 9.10 If a sale is cancelled and a horse repossessed and sold at a future sale of the Association, the levies in respect of the original sale will be cancelled and claimed from the defaulting buyer. New levies will be raised on the future sale.
- 9.11 Neither the Association, nor the auctioneer, shall have any vicarious liability to either the vendor or the buyer in consequence of any breach or default on the part of either or both of them.
- 9.12 The buyer renounces the benefits of the legal exceptions *non numeratae pecuniae*, *non causa debiti*, *errore calculi* and revision of accounts. The buyer acknowledges that he is acquainted with the full meaning and effect of these exceptions.
- 9.13 In the event of the Association instructing attorneys, for whatever reason, to (including but not limited to): collect any amount owing to the Association, obtain a repossession order and/or draft any agreement to secure the Association's rights, the buyer agrees to pay all the costs of the Association on the scale as between attorney and own client, whether or not summons is actually issued.
- 9.14 The buyer and the vendor consent to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) having jurisdiction under Section 28 of the said Act, notwithstanding that the claim by the Association exceeds the normal jurisdiction of the Magistrate's Court as to amount. The Association shall, in its discretion, be entitled to proceed against the buyer and the vendor in any other court of competent jurisdiction notwithstanding the foregoing.
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- 9.15 No relaxation or indulgence granted to the buyer or the vendor by the Association at any time shall be deemed to be a waiver of any of the Association's rights in terms hereof, and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein or create any estoppel against the Association.
- 9.16 Should a dispute arise regarding the purchase of a horse, the buyer shall be obliged, if required to do so by the Association, to return the horse at his own expense to a party nominated by the Association. The nominated party shall maintain the horse until the dispute has been resolved on condition that the buyer shall be liable for the costs of stabling and maintaining the horse, which amounts he shall pay to the nominated party on demand.
- 9.17 No right of set-off between a buyer and a vendor shall be valid or recognised by the Association. The Association shall be entitled to set-off against any money due by the Association to any buyer or vendor, any amount due to the Association or payable to the Association by such vendor or buyer, irrespective of whether or not the amount be disputed by the buyer or the vendor.
- 9.18 The Association shall be entitled to appropriate and deduct from any monies held or received by it from any source on behalf of the vendor, such amounts as may be necessary to cover any levies, fees, costs, repayment in terms of 13 or other monies owing to it by the vendor.
- 9.19 No buyer who has materially breached any condition contained in these Conditions of Sale shall be entitled to a Buyer's Card at future sales of the Association or be entitled to rely upon the provisions of 3.
- 9.20 A certificate under the hand of the Association or the Chief Executive Officer ("C.E.O") of the Association (whose appointment need not be proved) as to any amounts due and owing by the buyer or the vendor in terms of these Conditions shall constitute prima facie proof of the matters therein stated for all purposes including, without limitation, summary judgement and provisional sentence proceedings.

10. AGENTS

- 10.1 Any person acting as an agent on behalf of a principal:
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- 10.1.1 may be required, prior to his participation in the sale, to establish to the satisfaction of the Association, his authority to so act and, if required, to furnish the Association with the necessary documentation in substantiation thereof;
 - 10.1.2 shall, if he is the buyer, disclose the name and address of his principal at "the fall of the hammer";
 - 10.1.3 shall, if he is the vendor, disclose the name and address of his principal when entering horses for the sale;
 - 10.1.4 shall be jointly and severally liable for the timeous fulfilment of all the obligations of his principal in terms of the Conditions, renouncing the benefits of division and excussion.
- 10.2 No person acting as an agent and buying in his own name on behalf of a principal will be released from his responsibility to pay the debt owing to the Association on account of his inability to secure payment from his principal or his principal defaulting in making payment.
- 10.3 When an agent discloses his principal after purchasing a horse, there shall be no obligation whatsoever on the Association to invoice his principal and collect the debt from such principal. If the invoice is sent to the principal, who defaults in paying the debt, the responsibility for payment remains with the agent who has purchased the horse in the sales ring, whose buyer's card was used and who signed for the purchase on the vendor roll.
- 10.4 No person, with a valid buyer's card, who allows another person without a buyer's card, to use his card to purchase horses and sign for the horses, will be released from his responsibility to pay the debt owing to the Association on account of his inability to secure payment from such buyer.
- 10.5 Notwithstanding anything to the contrary contained in the Conditions, any person acting on behalf of another, shall be deemed to have full legal capacity to do so.
- 10.6 By entering a horse for sale, a vendor shall be deemed to have irrevocably authorised the Association to dispose of the horse concerned on behalf of the vendor or owner in terms of the Conditions.
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11. LEVY

- 11.1 Subject to the remaining provisions of 11, the vendor, if he is a member of the Association, shall be liable to pay the Association a levy of 7% plus VAT of the price realised in respect of a horse accepted by the Association for the sale. The levy for non-members of the Association is 10% plus VAT.
- 11.2 Acceptance of a horse for sale shall, notwithstanding the provisions of 2.3 above, be deemed to have occurred upon the acceptance by the Association of details relating to such horse for its sale catalogue.
- 11.3 A levy of 7% plus VAT or 10% plus VAT (as the case might be as per 11.1) shall be payable on the price realised if the horse is sold by auction or private treaty by the Association, the vendor, his agent or representative at any time during the period commencing upon acceptance of the horse and concluding 60 days after the sale has been held or the date upon which the sale has been advertised to be held.
- 11.4 If any horse is entered for the sale and accepted by the Association and such horse is then subsequently sold by the vendor by private treaty or any other arrangement at any time before the sale, the vendor, his agent or representative must immediately inform the Association of this fact and must, at the same time, withdraw the horse from the sale. Such horse may not, under any circumstance, be allowed to go through the Association's sales ring.
- 11.5 No minimum levy is payable on this sale.
- 11.6 If a vendor places a reserve price on any particular horse and the horse is not sold in the sales ring, the vendor nonetheless agrees to pay the Association a levy based on 7% plus VAT of such reserve price if he is a member of the Association or 10% plus VAT if he is a non-member.
- 11.7 Any vendor, wishing to put a reserve price on a horse, must complete, in writing, the Association's official Reserve Price Form before the horse enters into the sales ring. No verbal instructions to the auctioneer or any rostrum team member regarding the reserve price will be accepted or permitted. In the absence of an official reserve price, the particular lot will be considered on the market and will be sold to the highest bidder. The auctioneer and/or the rostrum team will not accept any form
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of selling price instructions from a vendor regarding horses with no official reserve prices nor will it be permitted.

- 11.8 If such horse is sold privately after the sale, the levy of 7% plus VAT or 10% plus VAT (as the case might be as per 11.1) will be payable on the reserve price or the actual selling price, whichever is the highest.
- 11.9 If a horse is withdrawn from the sale, for any reason whatsoever, except if a veterinary certificate certifying that the horse is unfit for sale due to injury or illness is produced, the vendor undertakes to pay the Association a levy equal to 7% plus VAT or 10% plus VAT (as the case might be as per 11.1) of the average price realised in the particular category for which the horse was entered. Such veterinary certificates must be lodged with the auctioneer or the Association prior to commencement of the sale. A certificate lodged after the close of the sale, will not be considered and all levies will be due and payable.
- 11.10 The minimum price that will be accepted for any horse at the sale shall be R50 000 (excluding VAT).

12. RIGHTS AND OBLIGATIONS OF A VENDOR

- 12.1 The vendor of a horse shall be entitled to receive from the Association, on the 35th day after the last day of the sale, payment of the purchase price realised, less levies and other charges deductible in terms of the Conditions; provided that the Association shall be entitled, in its sole discretion, to withhold payment:
- 12.1.1 in the event of the vendor being in breach of the Conditions;
- 12.1.2 in the event of the vendor, acting as an agent, having failed to comply with 10.1.3; or
- 12.1.3 until the Association has received payment from the buyer; or
- 12.1.4 until, where applicable, the payment has been cleared by the relevant bank or other financial institution.
- 12.2 The Association shall be entitled to deduct, in addition to the amounts referred to in 12.1, from the proceeds of the sale of any of the vendor's horses which have been entered, whether the
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vendor is acting as a principal, as an agent, or as a partner any amounts which may be due to the Association by the vendor, any of his principals, or any of his partners.

- 12.3 The Association will pay out the proceeds from the sale only to the vendor or his duly authorised representative who has entered the horse on the sale, unless such vendor or his duly authorised representative gives the Association written instructions to do otherwise. The Association will not accept instructions from anybody else in this regard.
- 12.4 The Association shall be entitled to pay any amount which is due to the vendor directly into the bank account nominated by the vendor on the prescribed form.
- 12.5 If a vendor permits the removal of the horse after its sale, the Association shall not be obliged to collect the purchase price in respect of the horse; provided that the vendor shall nevertheless, remain liable for the payment, on demand, of all levies and other amounts provided for in the Conditions.
- 12.6 Notwithstanding anything contained herein, it is the intention of the Association and the vendor that the Association shall, immediately following upon the sale until such time as payment of the debt has been made by the buyer, be entitled to exercise in its own name all the rights of ownership in respect of the horse sold. For the purposes of the foregoing the vendor, as owner or duly authorised agent of the owner:
- 12.6.1 hereby irrevocably authorises the Association to exercise all status, rights and powers that the owner may exercise, including, but not limited to the protection and enforcement of ownership, the right to complete and sign any change of ownership form and the right to institute any legal proceedings regarding repossession and/or payment of the horse;
- 12.6.2 cede to the Association all rights, title and interest in and to all remedies that the vendor may have in law against the buyer in respect of the sale of the horse in question.
- 12.7 No horse entered for sale shall be sold privately prior to the auction without the Association's prior written consent. In the event of any prior sale, the Association shall be entitled to its full levy and fees as if the lot was sold under the hammer, and the
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vendor shall provide the Association with full details of any such sale.

- 12.8 The vendor warrants that he has the necessary title to sell the horse.
- 12.9 Under no circumstances shall any part or all of the selling price of a horse be paid directly to a vendor by the buyer, unless otherwise agreed to, in writing, by the Association.
- 12.10 It is the Association's intention to collect the entire debt from the buyer. If, however, it is unable to do so within 6 months from the date of sale, having implemented all reasonable collection steps available to it, the Association shall be absolved in all respects by the vendor to collect the debt still outstanding at the time. The Association will then, insofar as may be necessary, cede its rights associated with the debt to the vendor. The Association will not be liable for any losses or costs incurred by the vendor on account of the Association having been unable to collect the debt in full or in part.
- 12.11 If the vendor agrees to extend any credit terms to the buyer beyond the period already extended by the Association, if any, then the Association shall be under no obligation whatsoever to the vendor as to the collection and payment of the purchase price. In any such case the vendor shall remain fully responsible for the due payment of all levies, fees and monies owing to the Association in connection with the auction and sale of the horse, whether or not the buyer has paid either the Association or the vendor directly.
- 12.12 The NHRA registration and cost of registration of all foals is always the sole responsibility of the breeder of such foals.
- 12.13 Where covering fees of mares and/or the NHRA registration fees of foals sold at foot and weanlings are outstanding in respect of such animals having been sold by the Association, the Association will only pay out the proceeds of such sales to the vendor once the outstanding matters have been resolved.
- 12.13.1 All in-foal mares not subject to a live foal guarantee must be accompanied by the relevant covering certificate to the sale venue. The vendor is to deliver such certificates to the Association on arrival at the sales venue.
- 12.13.2 The Association reserves the right to withhold payment from the proceeds of the vendor of live foal fees due
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until such time as the relevant covering certificates are submitted to the Association.

12.13.3 Live foal fees, stallion covering fees and/or any other relevant fees/charges remain the responsibility of the vendor and may not be transferred to the buyer.

12.14 The vendor acknowledges that the Association shall not be liable for any loss incurred by the vendor as a result of a breach by the buyer of the Conditions. In addition, the Association shall not be liable for any loss or damages sustained by the vendor as a direct or indirect result of the Association's omission or refusal, for whatever reason, to enforce any of its or the vendor's rights in terms of the Conditions, or as a result of granting the buyer credit facilities.

12.15 A vendor shall be entitled to bid for and to buy-in his own horse at the Sale. No buyer shall be entitled to cancel any Sale in the event that the vendor exercises his entitlement to bid as provided for in this clause.

13. REPAYMENT BY THE VENDOR

Notwithstanding anything contained in the Conditions, the vendor undertakes to repay to the Association upon demand, any amounts paid by the Association to the vendor if the Association is unable, for any reason, to recover the debt or any portion thereof payable by the buyer, within a period of 6 months of the date of sale.

14. THE ASSOCIATION TO ACT AS AGENT

14.1 The buyer and the vendor acknowledge and agree that, save as is otherwise provided for in the Conditions, the Association acted at all times as an agent only. Accordingly, any remedy which the buyer may have in law shall lie against the vendor and any remedy which the vendor may have in law shall lie against the buyer; provided that nothing contained in this clause shall affect any of the Association's rights in terms of the Conditions.

14.2 Each of the vendor and the buyer, for the purpose of enabling and permitting the Association to give full force and effect to these terms of the Conditions, hereby irrevocably appoint the Association to be their attorney, with full power to the Association to execute on their behalf any necessary documents, to give all necessary instructions, and to do all such other acts and things as may be necessary.

15. THE ASSOCIATION NOT LIABLE FOR ANY LOSS OR DAMAGE

- 15.1 No person who attends a sale or who is present on any property under the control of the Association, shall have any claim of any nature whatsoever and however arising, now or in the future, (including, but not limited to the foregoing, any claims for damage to or loss or destruction of any horse or other property or death or injury to such person) against the Association or the auctioneer arising out of any cause whatsoever.
- 15.2 Neither the Association nor the auctioneer shall be responsible for any damage, loss or injury caused by or to any horse entered for the sale, while such horse is under the control or supervision of the Association or the auctioneer.

16. RIGHT OF ADMISSION

- 16.1 The Association retains the right to prohibit the entry to the premises at which the sale is conducted of any horse which is suspected to be suffering from an infectious or contagious disease and/or does not have the necessary veterinary proof of inoculation/vaccination that may be required at any time by law, the Association and/or the NHRA.
- 16.2 The Association reserves the right to refuse entry to the premises at which the sale is conducted of any horse not registered or for which an up to date passport, as provided for in the rules of the NHRA, has not been lodged with the Association prior to or on arrival of the horse.
- 16.3 The Association reserves the right, but is not obligated, to examine any or all horses entering or stabled within the Association's sales premises and to withdraw any horse before or during any sale without giving any reason therefore.
- 16.4 The Association shall be entitled, in its absolute discretion and at the expense of the vendor or the buyer (as the case may be) to engage a veterinary surgeon to inspect and/or treat any horse whilst such horse is on or at any sales premises used by the Association during a sale and if deemed necessary, to have such horse removed off/from such sales premises.
- 16.5 The Association reserves the right to refuse entry into the sales ring of any horse for which the entry fee has not been paid on time as prescribed by the Association on its official entry form for each sale.
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- 16.6 The Association reserves the right of admission and shall be entitled at any stage to require any person to vacate with immediate effect any premises under its control.

17. NO VARIATION OR ALTERATION EXCEPT IN WRITING

- 17.1 The Conditions, as amended by the Association from time to time, shall apply to all sales conducted by the Association and the auctioneer. No variation, alteration or cancellation, not contained in the sales catalogue, shall be of any force and effect unless reduced to writing and signed by the C.E.O of the Association.
- 17.2 If one or more of the provisions or part of a provision in these Conditions is or becomes unenforceable or invalid, the remaining provisions or part thereof shall not be affected, but shall remain in full force and effect to the fullest extent permitted by law.

18. COPYRIGHT AND CATALOGUE

- 18.1 The copyright to all information pertaining to pedigrees and performance of horses contained in this sales catalogue, rests solely in the Association. No part of the work covered by this copyright may be reproduced in any form or by any means whatsoever without the written permission of the Association.
- 18.2 The accuracy of all information in the catalogue is the sole responsibility of the vendor, who shall have the duty to examine the catalogue in respect of horses consigned by him prior to sale and to report any corrections and inaccuracies to the auctioneer to enable the auctioneer to make an appropriate announcement at time of sale.
- 18.3 All information so listed is as represented by the vendor to whom only the buyer shall look for redress in case of errors or omissions. Any such errors or omissions must be reported to the vendor by the buyer, in writing within 14 (fourteen) days from date of the sale to be of any force and/or effect.

19. REPOSITORY FOR RADIOGRAPIC IMAGES

- 19.1 In this clause 19, the Repository Terms, Conditions and Procedures shall be those terms, conditions and procedures published and issued by the Association from time to time and available from the offices of the Association, relating to information lodged and viewed in the Repository.
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- 19.2 The Repository may only be used by Vendors, Buyers and their authorized agents in accordance with the Repository Terms, Conditions and Procedures. Vendors, Buyers and their authorized agents hereby agree to be bound by the same in all respects.
- 19.3 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 Association that the material and information is in all respects valid, 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 is lodged.

Further, if the Association determines, in its sole discretion, that a vendor has deliberately and knowingly either placed incorrect information in, or omitted material information from, the Repository which is deemed to be materially misleading regarding the condition of the horse, the Association may elect, in its sole discretion, to impose sanctions against such vendor which may include, without limitation, prohibiting such vendor from selling horses at future sales conducted by the Association.

- 19.4 BUYERS who, through their authorised agents, fail to inspect for any reason material or information placed in the Repository in respect of any Lot, do so at their own risk.
- 19.5 The Repository exists for the purpose of facilitating inspection by Buyers of bloodstock for sale which they may be interested in buying. Subject to clause 19.3, 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 and does not create any additional express or implied warranties or assurances. In the event of any inconsistency between the Repository Terms, Conditions and Procedures and these Conditions of Sale, these Conditions of Sale shall prevail.
- 19.6 The Association does not review the material or information in the Repository and gives no warranty, guarantee or assurance of any kind in respect of the validity, completeness, accuracy or authenticity of the material or information all of which is the sole responsibility of the Vendor. Knowledge of the Repository information therefore shall not be imputed to the Association and/or the auctioneers.
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- 19.7 If the Buyer alleges breach of clause 19.3, then the Vendor and the Buyer must resolve their respective rights and liabilities amongst themselves and the Association shall have no responsibility in relation thereto and will not become involved.
- 19.8 Each buyer, as per the Conditions of Sale and elsewhere, accepts that any horse is purchased with all faults and defects, irrespective of whether patent or latent, except those covered by the limited warranties expressed in the Association's Conditions of Sale.
- 19.9 All items and information placed by the vendor, or his agent, in the Repository is the sole property of the vendor and the vendor shall have the right to receive all such material back after the end of the sale.
- However, the Association reserves the right and may elect to hold such items back in the event a dispute arises and will only return the items to the vendor upon the resolution of the dispute.
- Further, the Association may permit the buyer to receive such items only if the vendor has agreed so in writing.
- 19.10 In the event of the vendor failing to pick up the items contained in the Repository within 30 days after the end of the sale, the Association is entitled to destroy or dispose of the items at its sole discretion and the Association shall be held harmless by the vendor for any losses, expenses or liabilities incurred by the vendor and/or his principals as a result of the disposition of the said items.
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