



# MAGIC MILLIONS SEPTEMBER MONTHLY SALE

## SALE DATE: FRIDAY 12TH SEPTEMBER 2008

Nominations Close: Monday 8 September 2008 @ 12noon | Nomination Fee: \$165.00 (Inclusive of GST)

**IMPORTANT.** If withdrawn after lotting has taken place, Nomination Fee is \$275.00 (Inclusive of GST).

Please answer ALL questions pertaining to each Entry and sign below to acknowledge that you have read and agree to be bound by the **CONDITIONS OF NOMINATION**.

Signed: ..... Date: .....

**NO ENTRY WILL BE ACCEPTED IF NOT SIGNED AND ALL GST QUESTIONS ANSWERED**

**MAGIC MILLIONS SALES PTY LIMITED (ABN 54 078 396 317)**

28 Ascot Court, Bundall, Qld, 4217, PO Box 5246, GCMC, Qld, 9726

Telephone: (07) 5538 8933 - Facsimile: (07) 5531 7082, Barry Bowditch: 0402 280 538, Chris Russell: 0412 644 452, James Dawson: 0423 341 429

1	<b>NAME OF ENTRY (Inc Suffix)</b>		<b>SIRE (Inc Suffix)</b>		<b>DAM (Inc Suffix)</b>	
	<b>FOALING DATE</b>		<b>COLOUR</b>	<b>SEX</b>	<b>DAM SIRE (Inc Suffix)</b>	
	/ /					
	<b>COMMENTS</b> (In Work, Spelling, QRIS, etc)		<b>EXTRA DETAILS FOR BROODMARES ONLY</b>			
			<b>SERVED BY (Inc Suffix)</b>		<b>LAST SERVICE</b>	2007 was mare's first season at stud <b>Y / N</b>
<b>FOAL AT FOOT</b>		<b>COLOUR</b>	<b>SEX</b>	<b>D.O.B.</b>	<b>SIRE</b>	
				/ /		
HORSE LOCATED AT: .....					<p style="text-align: center;"><b>DECLARATION BY NON-GST VENDOR</b></p> <p><i>Please tick one box:</i></p> <p><input type="checkbox"/> <b>Section (A)</b> The supply is made to you in my capacity as an individual, and the supply is made in the course of an activity that is a <b>private recreational pursuit or hobby</b>, or is wholly of a <b>private or domestic nature</b> for me.</p> <p><input type="checkbox"/> <b>Section (B)</b> The supply is made by us as an entity (other than an individual) and we are not carrying on an enterprise in Australia.</p> <p><input type="checkbox"/> <b>Section (C)</b> I (or the supplier that I represent) am/is a <b>non-resident who is not carrying on an enterprise in Australia</b>.</p> <p>SIGNED .....</p> <p>NAME ..... / /08 DATE</p>	
PROCEEDS PAYABLE TO: .....						
<i>(Cheque issued to only one payee as listed above)</i>						
ADDRESS: .....						
SUBURB: .....		POSTCODE: .....				
PHONE: .....		FAX: .....				
AUSTRALIAN BUSINESS NUMBER: .....						
<i>If no ABN, please complete Declaration by Vendor</i>						
HOW MANY OWNERS ARE IN THE HORSE? : .....						
WHAT IS THE PERCENTAGE (%) OF GST OWNERSHIP? : .....						
<b>OFFICE USE ONLY</b>						

2	<b>NAME OF ENTRY (Inc Suffix)</b>		<b>SIRE (Inc Suffix)</b>		<b>DAM (Inc Suffix)</b>	
	<b>FOALING DATE</b>		<b>COLOUR</b>	<b>SEX</b>	<b>DAM SIRE (Inc Suffix)</b>	
	/ /					
	<b>COMMENTS</b> (In Work, Spelling, QRIS, etc)		<b>EXTRA DETAILS FOR BROODMARES ONLY</b>			
			<b>SERVED BY (Inc Suffix)</b>		<b>LAST SERVICE</b>	2007 was mare's first season at stud <b>Y / N</b>
<b>FOAL AT FOOT</b>		<b>COLOUR</b>	<b>SEX</b>	<b>D.O.B.</b>	<b>SIRE</b>	
				/ /		
HORSE LOCATED AT: .....					<p style="text-align: center;"><b>DECLARATION BY NON-GST VENDOR</b></p> <p><i>Please tick one box:</i></p> <p><input type="checkbox"/> <b>Section (A)</b> The supply is made to you in my capacity as an individual, and the supply is made in the course of an activity that is a <b>private recreational pursuit or hobby</b>, or is wholly of a <b>private or domestic nature</b> for me.</p> <p><input type="checkbox"/> <b>Section (B)</b> The supply is made by us as an entity (other than an individual) and we are not carrying on an enterprise in Australia.</p> <p><input type="checkbox"/> <b>Section (C)</b> I (or the supplier that I represent) am/is a <b>non-resident who is not carrying on an enterprise in Australia</b>.</p> <p>SIGNED .....</p> <p>NAME ..... / /08 DATE</p>	
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<b>OFFICE USE ONLY</b>						

## CONDITIONS OF NOMINATION MAGIC MILLIONS MONTHLY SALE

Auctioneer's Licence No.: 2005419

- The Magic Millions Racehorse Sale (the Sale) will be held at the Gold Coast Sales Complex on the 12th day of September 2008 and conducted by the principal Selling Agent, Magic Millions Sales Pty Limited (A.B.N. 54 078 396 317) (the Selling Agent).
- The Selling Agent is licensed under the *Property Agents and Motor Dealers Act 2000* ("PAMD") to conduct auctions of livestock:
- The Vendor wishes to have a Lot in the Sale. (A reference to 'Lot' includes 'Lots').

### APPOINTMENT OF PROMOTER

- 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 race horse 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

- The Vendor (subject to his compliance with these conditions) hereby appoints and authorises the Selling Agent to:
  - 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 thirty (30) days after the Sale, and these conditions shall apply in so far as is possible, to such private Sale;
  - 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;
  - 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 at the Selling Agent's absolute discretion;
  - in consultation with the Promoter, 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;
  - pay to the Vendor only the money actually paid to the Selling Agent for the sale of a Lot less the Selling Agent's commission, Nomination Fees, Promotion Fees and expenses owing to the Promoter as well as any GST payable thereon;
  - 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 any extended date by approval of the Vendor;
  - 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 his own right and on behalf of the Promoter in respect of any outstanding fees commissions, GST or charges;
  - 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;
  - 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;
  - 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.
- 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.
- 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 be accompanied by the Nomination Fees, as specified on the Official Nomination Form, and reach the office of the Promoter (PO Box 5246, Gold Coast Mail Centre, Queensland, 9726) by no later than the specified closing date.
- 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.

### FEES AND COMMISSIONS DUE TO THE SELLING AGENT

- The Vendor will pay the following amounts to the Selling Agent:-
  - A commission at the rate of 6.6% (inclusive of GST) on any Lot sold or bought back by the Vendor.

### FEES AND CHARGES DUE TO THE PROMOTER

- The Vendor will pay the following fees and charges to the Promoter in respect of his promotion and marketing of the race series and the auction sale:-
  - the Nomination Fees as specified on the Official Nomination Form and;
  - the amount referred to in the condition 21 if applicable.The Vendor will not be entitled to any refund in respect of any payment made pursuant to these conditions to the Promoter save as is expressly provided by these conditions.

### THOROUGHBRED BREEDERS AUSTRALIA LIMITED (TBA) LEVY

- 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.

### RACE SERIES

- It is agreed that any Yearling Lot of the Vendor, offered at the Sale, is eligible for the promotional Race Series conducted by the Promoter scheduled to be run in conjunction with the Sales. The Promoter reserves the right to amend the Race Series as it sees fit, in its absolute discretion, without notifying or consulting with, the Vendor. The Vendor acknowledges that the Race Series is promoted solely by and is the responsibility of the Promoter. Any Yearling, offered at the Sale, will be eligible for the Race Series upon payment of relevant Nomination Fees and Entry Fees and subject to the terms and conditions of the Sale Race Series Conditions of Entry, a copy of which shall appear in the Sale Catalogue.

### VENDOR'S OBLIGATIONS AND WARRANTIES

- Any Lot accepted for the Sale shall be submitted to the representatives of the Australian Stud Book for inspection and all Lots must meet the requirements of the Australian Stud Book at the Vendor's cost and expense.
- The Vendor shall indemnify and hereby indemnifies the Selling Agent and the Promoter 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.
- The Vendor shall be responsible for verifying the accuracy of all information published in the Sale Catalogue and warrants to the Selling Agent, the Promoter 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;
- 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.
- The Vendor will produce for the Sale a Lot without any obvious physical defects. Should the Promoter be of the opinion that a Lot is not suitable for sale, it has the right at 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 of the Official Nomination Form, at the Vendor's risk and expense.
- 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, or other adverse interests except where it has notified any adverse interest in writing to the Selling Agent prior to the Sale.
- 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), nipah or any other virus.
- Except as disclosed in writing to the Selling Agent prior to the Sale, the Vendor warrants that all male animals have not had one or both testes removed, save in so far as such circumstance has been disclosed to the Selling Agent prior to the Sale of such animal.
- In the event that the Selling Agent cancels the Sale the Vendor has no claim against the Promoter or 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.
- Any Lot accepted for the Sale cannot be withdrawn by the Vendor without forfeiture of the Nomination Fee. In the event of the death of a Lot, the Nomination Fee shall be refunded in full. If the Vendor withdraws a Lot (other than in the case of death) and does not produce a veterinary certificate referred to herein, the Vendor will pay an additional \$110.00 (inclusive of GST) to the Promoter to cover the Promoter's costs and expenses and the Promoter hereby irrevocably authorises the Promoter to deduct such amount from the Nomination Fee paid to the Promoter.
- Should the Vendor sell privately any Lot accepted for the Sale during the period from the Closing Date for Nominations until thirty (30) days after the Sale (the Agency Period), the Vendor shall promptly pay to the Promoter and the Selling Agent an amount

equal to the total charges including GST set out in Clauses 9, 10 and 11 of these Conditions.

- The Vendor shall comply in all respects with the rules of the Sales Complex displayed within the office block at the Gold Coast Sales Complex.
- In respect of any description used in, or in connection with the Sale the parties hereto agree that the expression 'coll' includes rig or crypt orchid, namely male animals in which one or both testes have not descended into the scrotum from the abdomen.
- Any Lot entered by the Vendor (including its storage by the Selling Agent and/or the Promoter) shall be at the Vendor's sole risk and expense notwithstanding any negligence on the part of the Selling Agent or the Promoter, and the Vendor indemnifies the Selling Agent and the Promoter against all claims, actions, loss, damages, costs and expenses incurred including stabling and feed.
- 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.
- The Vendor shall promptly advise the Selling Agent of any credit arrangements made with a Purchaser of a Lot (which shall be at the Selling Agent's discretion) and shall sign an acknowledgment of such arrangements as directed by the Selling Agent.
- 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 guarantees to the Vendor the performance by the Purchaser of its obligation to pay the purchase price and any applicable GST except 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;
  - the Vendor enters into any credit arrangement or terms with the Purchaser;
  - the Sale is terminated or unenforceable for any reason;
  - 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;
  - the Vendor consents to the delivery of the Lot by the Selling Agent;
  - the Vendor has not paid any monies due and owing by the Vendor to the Selling Agent or the Promoter on any account whatever.
- 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.
- 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 thereto, 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.
- The Selling Agent guarantees to the Vendor that payment will be forwarded to the Vendor within forty two (42) days of 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.
- 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.
- The Vendor agrees that the Promoter and Selling Agent may assign the benefit of all nominations to the Sale to such third person, as the Promoter and the Selling Agent may determine and the Vendor agrees to be bound by the terms of such assignment.
- The Vendor agrees to indemnify and hereby indemnifies the Selling Agent and the Promoter against all loss, damage, costs and expenses of whatever nature incurred by the Selling Agent or Promoter directly or indirectly as the result of the Vendor's non-compliance with any of the Conditions of Nomination or the Conditions of Sale.
- The Vendor agrees that the Nomination Fee remains a debt due and payable by the Vendor to the Promoter from the date of acceptance (that is to say, at the date when the Lot is accepted) 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 Promoter is:
  - if the Promoter cancels the Sale in accordance with Clause 21 of these Conditions, or
  - if the Lot is rejected in accordance with Clause 17 of these Conditions, or is not included in the Sale Catalogue.
- The Vendor acknowledges that the duties and rights of the Selling Agent and the Promoter 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.
- 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 Promoter or Selling Agent to the Vendor.
- The Selling Agent does not assume any responsibility for exporting horses.
- The Vendor accepts, confirms and acknowledges the following:
  - 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;
  - 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;
  - 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.
- The Vendor acknowledges that each of the Selling Agent and the Promoter act as agent for the Magic Millions Sales Partnership (ABN 99 519 379 694).
- The Vendor accepts and acknowledges that prior to executing this Nomination Form, the Selling Agent advise the Vendor that he should seek independent legal advice before signing this Nomination Form.
- 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 as referred to in the previous sentence.