# Conditions Of Sale

**IMPORTANT: PLEASE READ**

All bids and offers to purchase shall be treated as offers made upon the following Conditions of Sale and all persons attending the Sale or bidding at the Sale shall be deemed to have notice of these Conditions of Sale.

ONLY THESE CONDITIONS OF SALE APPLY TO THE SALE WHICH IS A PHYSICAL SALE WITH AN AUCTIONEER AT THE COMPLEX, NOTWITHSTANDING THE FACT THAT PROSPECTIVE PURCHASERS FOR THE LOTS MAY NOT BE IN ATTENDANCE AT THE COMPLEX AND IT IS NOT AN ONLINE AUCTION SALE.

## 1. DEFINITIONS AND INTERPRETATION RELATIVE TO CONDITIONS OF SALE

1.1 The definitions and interpretation relative to these Conditions are set out in Condition 43 of these Conditions of Sale.

## 2. CONDUCT OF SALE

2.1 The Vendor shall have the right to bid personally or through an agent.

2.2 All prospective Purchasers must have registered their names and addresses with the Auctioneer prior to the commencement of the Sale. A prospective Purchaser may bid online at www.magicmillions.com.au and these Conditions of Sale only will apply to such prospective Purchasers. A prospective Purchaser must be a minimum age of 18 to register and bid on any Lot. Each prospective Purchaser warrants that he / she has the capacity to enter into a legally binding contract to purchase a Lot and will if requested by the Auctioneer or the Promoter provide identification evidence of the potential Purchaser's age.

2.3 The highest prospective Purchaser shall be the Purchaser, subject to any reserve price. Should any dispute arise concerning bidding, the Lot shall be immediately put up for resale at the last undisputed bid or the dispute may be determined by the Auctioneer, whose decision shall be final and binding.

2.4 The Auctioneer shall have the right, in its absolute discretion to:

2.4.1 Determine who is the Purchaser;

2.4.2 Settle any dispute in such manner as it thinks fit;

2.4.3 Withdraw any Lot before or during the Sale without giving a reason therefore;

2.4.4 Advance the bidding as it thinks fit;

2.4.5 Exclude any person from the Sale venue;

2.4.6 Refuse to acknowledge any bid without giving any reason therefore, and the Auctioneer's decision shall be final and binding upon all persons;

2.4.7 Determine an upset price on each Lot entering the ring. If an opening bid of the appropriate figure is not forthcoming to the Auctioneer's call within thirty (30) seconds, a Lot may be passed out of the ring. The Vendor shall be entitled to instruct the Auctioneer to re-offer that Lot on or before the completion of the Sale and the Lot shall be re-offered without reserve; or

2.4.8 Bid as an agent on behalf of a principal.

2.5 Subject to any reserve price, all Lots are sold at the final bid accepted by the Auctioneer in Australian currency dollars. Any other bids or currencies displayed on the indicator board at the Complex are displayed as a guide only.

2.6 As soon as practical after the fall of the hammer the Purchaser will sign an agreement (if any), for the sale/acknowledgement of purchase form in a form requested by the Auctioneer.

2.7 Any Auctioneer's announcements on the day of the Sale which are announcements from the Auctioneer's stand will take precedence over:

2.7.1 These Conditions of Sale;

2.7.2 Any statements in the Sale Catalogue; or

2.7.3 Any other written or oral statement, particular or representation previously published or made.

2.8 Any further or different conditions relating to any Sale or any Lot or any Purchaser must be recorded in writing and signed prior to the Sale by or on behalf of the Vendor, the Purchaser and the Auctioneer, and, if not so recorded, shall be of no effect.

## 3. RESERVED SALE

3.1 Where the Sale is conducted as a reserved sale, the following provisions will apply.

3.2 The Vendor must advise the Auctioneer in writing of the reserve price for each Lot before the Lot is offered for sale. Where no reserve card is provided the Vendor or his representative must attend in the Auctioneer's rostrum to advise the Auctioneer and will be required to sign a reserve card before leaving the rostrum if the Lot is passed in. Should there be no reserve card, no Vendor or Vendor's representative in the Auctioneer's rostrum at the time that the Lot is offered for sale, then the Lot shall be sold to the highest prospective Purchaser and the Vendor shall pay the full commission and any other amounts payable.

3.3 The last prospective Purchaser shall have the option to purchase at the reserve price of a passed in Lot. This option must be exercised prior to the Lot leaving the Sale ring. The Auctioneer shall be entitled to commission on any Lot so sold, as if it were sold under the hammer.

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**4. RISK AND EXPENSE**

4.1 Upon the fall of the hammer, or the satisfaction of the last of any Conditions of Sale, whichever should be the later, each Lot shall be at the risk and expense in all respects of the Purchaser and the Purchaser shall indemnify the Auctioneer in respect of and pay to the Auctioneer on demand all loss, damage, costs and expenses incurred or suffered by the Auctioneer in respect of the Lot while the Lot is at the Purchaser's risk and expense. In particular, the Purchaser will be liable for livery, agistment and transport charges for Lots not removed on the day of the Sale and they may be moved to alternate stables or agistment at the Auctioneer's discretion. Payment for Lots shall not be regarded as made until such charges have been paid. The Purchaser will comply strictly with Conditions 6.9, 9.4 and 12 of these Conditions of Sale with respect to insurance for each Lot purchased.

4.2 Prior to the fall of the hammer, or the satisfaction of the last of any Conditions of Sale, whichever should be the later, each Lot shall be at the risk and expense in all respects of the Vendor, and the Vendor will effect and maintain insurance with respect to the Lot for its full replaceable value at its cost until that time, and, the Vendor shall indemnify the Auctioneer on demand against all loss, damage, costs and expenses incurred or suffered by the Auctioneer in respect of the Lot while the Lot is at the Vendor's risk and expense.

4.3 Notwithstanding any other provisions hereof, the Auctioneer shall not be liable for any damage, loss or injury occurring to any Lot or to any person or property caused by any Lot, whether caused by disease, accident, the negligence of the Auctioneer or otherwise and whether the Lot shall be in the custody, control or possession of the Auctioneer or otherwise.

4.4 The Auctioneer may upon receipt of written instructions so to do or where the Auctioneer in its absolute discretion considers it desirable to do so, make arrangements on the Purchaser's or Vendor's behalf for the stabling, feeding, transportation or general attendance to Lots while at the Sale venue provided that the Auctioneer accepts no responsibility for any act or omission whether negligent or otherwise in respect of the stabling, feeding, transportation or general attendance of any Lot.

4.5 Any Lot not sold or in respect of which any sale is subsequently terminated shall remain at or revert to the risk and expense in all respects of the Vendor who shall arrange for the removal of the Lot immediately following the sale of the Lot.

**5. INSPECTION AND EXAMINATION**

5.1 All Lots may be inspected at reasonable times prior to the Sale. Prior to the Sale, a prospective Purchaser may arrange for a veterinary examination of a Lot with the Vendor. Such examination shall be carried out in the privacy of a stable and may not be carried out in the Sale ring or within the public view. The cost of this examination shall be paid for by the prospective Purchaser, solely to whom (subject to the prospective Purchaser's instructions to the contrary) the independent veterinarian should make his report. The Auctioneer or Vendor may refuse examination.

5.1.1 Prior to the Sale, the inspection and examination may also include accessing and inspecting material, if any, that the Vendor has submitted to the repository.

5.2 The Purchaser assumes all consequences and risk arising from failure to carry out an inspection or to seek an inspection or to seek a veterinary examination of a Lot.

**6. PURCHASE AND PAYMENT**

6.1 On the fall of the hammer the Purchaser shall give his name and address and the name and address of the principal for whom he bids (if applicable) to the Auctioneer and shall immediately complete, sign and hand to the Auctioneer an acknowledgement of his purchase in such form as shall be required by the Auctioneer and provide to the Auctioneer any such other information in respect of the purchase as the Auctioneer may reasonably require. The Purchaser shall furnish accurate and complete identification information upon request by the Auctioneer, both at the time of purchase of a Lot and on an ongoing basis thereafter as deemed necessary by the Auctioneer. Furthermore, the Purchaser expressly consents to the Auctioneer's use, processing, and disclosure of such information to authorised third-party service providers and appropriate governmental and statutory authorities including authenticating the identification provided and to ensure compliance with all governmental and statutory requirements to authenticate and verify the Purchaser's identity.

6.2 If the Purchaser fails to comply with the requirements of Condition 6.1 of these Conditions of Sale, then the Auctioneer may elect to declare the Purchaser in default and cancel the sale and resell the Lot. If, on resale of the Lot, a lower price is obtained, then the difference in price plus any expenses of the resale shall be a debt owing by the Purchaser to the Vendor payable on demand, with interest at the rate of 1.25% per month from the date of resale until payment.

6.3 Each Lot is sold with all engagements, if any.

6.4 Subject to Condition 9 of these Conditions of Sale, the full purchase price shall be due and payable to the Auctioneer in Australian currency within one hour of purchase or within such other period of time as the Auctioneer or Vendor may permit pursuant to Condition 9 of these Conditions of Sale, time being of the essence, notwithstanding that delivery may not have been made.

6.5 The Auctioneer may in its absolute discretion reject payment otherwise than in cash or an unendorsed bank cheque.

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6.6 The Purchaser shall pay the Auctioneer on demand all collection costs and expenses (including legal costs on a Solicitor & own client basis) incurred in recovering any payment from the Purchaser.

6.7 The Purchaser authorises the Auctioneer to disclose information relating to the Purchaser's creditworthiness or default in payment to a credit reporting agency if the Purchaser is in arrears in making payments relating to credit provided (1) sixty (60) days have elapsed since the day on which payment was due and payable by the Purchaser, and, (2) the Auctioneer has sent written notice to the last known address of the Purchaser advising the Purchaser of the overdue payment and requesting payment of the amount outstanding.

6.8 Any dispute arising between the Vendor and the Purchaser in relation to a Lot must be resolved between the Vendor and the Purchaser and neither the Vendor nor the Purchaser may return to the Auctioneer or the Auctioneer's stables any Lot the subject of a dispute or otherwise.

6.9 So long as any part of the purchase price, any interest payable thereon or any other charges are payable pursuant to these Conditions of Sale and for so long as the Lot is the subject of any credit or terms agreement with the Auctioneer, the Vendor or any other party, the Purchaser must insure the Lot at the Purchaser's cost and expense (in an amount not less than the purchase price of the Lot) against all risks including mortality with the interests of the Vendor and the Auctioneer noted thereon, keep the Lot in a safe and secure place and in good health and condition, and, at all times advise the Vendor and the Auctioneer of the location of the Lot (and allow them or their agents access or arrange for them access without notice and take possession of the Lot), and, not perform (or allow any other person to perform) surgery on the Lot (without the prior written approval of the Vendor and the Auctioneer in the absence of an emergency as determined by a qualified licenced veterinary surgeon where oral approval will only be required), and not remove the Lot outside Australia, and, not grant, or purport to grant, or take, or purport to take, any Security Interest envisaged by Condition 32 of these Conditions of Sale or otherwise over the Lot that would be adverse to the interests of the Vendor and / or the Auctioneer.

6.10 The Purchaser shall not, until the full purchase price is paid and all other obligations to the Vendor and the Auctioneer are fulfilled, register or attempt to register any Security Interest in the Lot.

6.11 If the person signing the Purchaser's acknowledgement of purchase or bidding on behalf of the Purchaser is not the purchaser of a Lot (whether the person is a director, agent, attorney or otherwise), such person guarantees to the Vendor and to the Auctioneer the performance of the Purchaser under these Conditions of Sale, and indemnifies the Vendor and the Auctioneer for any loss and damage arising from any default or breach by the Purchaser. This guarantee and indemnity may only be waived in writing by a director of the Auctioneer or by the acceptance by the Auctioneer of a duly completed appointment of agent form.

6.12 The Vendor acknowledges and accepts that the Auctioneer will only be required to issue one cheque for the purchase price to the Vendor of a Lot where the Vendor comprises a syndicate of members. The Vendor accepts and acknowledges that the person nominating the Lot for sale on behalf of the Vendor is the person to whom the payment of the purchase price is to be made. In the event that there is a dispute among syndicate members as to payment or otherwise or a syndicate member requires a separate cheque, the Auctioneer has a right to hold the payment in trust pending a decision by the syndicate members in accordance with their syndicate agreement / partnership agreement as to whom the cheque in payment will be made. The Vendor indemnifies the Auctioneer against all claims made by syndicate members.

6.13 The Purchaser will, if a corporation or a trustee of a trust, provide guarantees from each director and shareholder of the corporation or trustee or beneficiary of the trust, as the case may be, for the performance of its obligations pursuant to these Conditions of Sale and procure the guarantors of such performance to execute a deed of guarantee in a form required by the Auctioneer on or before registration of the Purchaser for the Sale.

6.14 The Vendor irrevocably authorises and directs the Auctioneer to deduct from the purchase price for any Lot sold on behalf of the Vendor any moneys due and owing to the Auctioneer or the Promoter, past, present or future, prior to accounting to the Vendor for the balance of the purchase price (if any).

6.15 The Vendor assigns fully to the Auctioneer all its interest, beneficial and legal, in any authority that the Vendor may have signed in favour of any party with respect to the allocation of the purchase price for any Lot sold on behalf of the Vendor by the Auctioneer and irrevocably appoints the Auctioneer his attorney to do all things necessary and execute all documents to give effect to this Condition of Sale and to amend or withdraw any such authority in its absolute discretion.

6.16 If the Purchaser has not paid the full Purchase Price for a Lot to the Auctioneer strictly in accordance with these Conditions of Sale, or, there is a dispute between the Vendor and the Purchaser with respect to the Lot and the sale and purchase of the Lot, or, the Auctioneer has reasonable cause to believe that the Vendor and the Purchaser have entered into some form of arrangement which would result in the Purchaser not paying for the Lot, or, the Auctioneer has reasonable cause to believe that the Purchaser does not have the ability to pay for the Lot, THE AUCTIONEER IS RELEASED FROM ANY OBLIGATION IT HAS PURSUANT TO THESE CONDITIONS OF SALE TO PAY THE PURCHASE PRICE OR ANY PART THEREOF TO THE VENDOR UNTIL PAYMENT OF THE FULL PURCHASE PRICE HAS BEEN MADE BY THE PURCHASER, AND, THE VENDOR AND THE PURCHASER MUST RESOLVE THE DISPUTE BETWEEN THEMSELVES.

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**7. GST**

7.1 All lots are offered on a GST exclusive basis.

7.2 GST is payable on the purchase price of thoroughbreds where the Vendor is registered for GST.

7.3 The GST registration status of each Vendor is noted on the catalogue page for each lot offered.

7.4 Where a Vendor is fully registered for GST, GST of 10% (or such payment as is at that time required to be paid by the GST Act) will be added to the final bid price.

7.5 Where a Vendor is not registered for GST, no GST is added to the final bid price.

7.6 The Vendor and the Purchaser undertake to do all things necessary to ensure that the provisions of the GST Act are met in relation to sales that do not, or claim not to attract GST.

7.7 Neither the Auctioneer, nor the Promoter, or any of their associated entities accept (and this is agreed by the Vendor and Purchaser) liability for any GST liability arising as between the Purchaser and the Vendor and the ATO in respect of bloodstock sold by the Auctioneer either at auction or by private sale.

7.8 A Vendor who is not a resident of Australia agrees that he will offer his Lot/s for sale on the basis that the sale/s will be made in Australia.

7.9 GST is payable on all services provided by or through the Auctioneer and the Promoter and any of their associated entities.

**8. GST & EXPORT**

8.1 In accordance with the GST Act the Auctioneer is required to charge GST on all Lots sold (subject to Conditions 7.4 and 7.5 of these Conditions of Sale).

8.2 The Purchaser must pay to the Auctioneer all GST invoiced.

8.3 The Vendor and the Purchaser acknowledge that it is their responsibility to acquaint themselves with and comply with the requirements of the GST Act at their cost.

8.4 The Vendor acknowledges that the Auctioneer has no responsibility to pay the GST to the Vendor until such time as it is paid by the Purchaser.

8.5 If a Lot is purchased for the purpose of export the following shall apply:

8.5.1 If a Purchaser, who is not registered or required to be registered for GST desires to export a Lot and signs and gives to the Auctioneer a properly completed and signed Magic Millions Export Declaration Form, then the Auctioneer will not add GST to the price of the Lot sold, except in the circumstances set forth in the Magic Millions Export Declaration Form where the Purchaser of the Lot acknowledges and accepts that GST is payable in respect of the Lot:

8.5.1.1 If a purchaser is registered or required to be registered for GST, then GST is payable regardless of export status (subject to Conditions 7.4 and 7.5 of these Conditions of Sale).

8.5.2 It is the responsibility of the Purchaser to ensure that the Lot is exported within sixty (60) days of the sale of each Lot:

8.5.2.1 If export is expected to take longer than 60 days, the purchaser must contact the Auctioneer to apply for an extension to export, for up to 12 months, with the ATO.

8.5.3 The Auctioneer will give the Vendor of a Lot referred to in Condition 8.5.1 of these Conditions of Sale, a copy of the relevant Magic Millions Export Declaration Form within 7 days after it is requested by the Vendor.

8.5.4 The Purchaser will comply with all obligations imposed upon the Purchaser in the Magic Millions Export Declaration Form.

8.5.5 The Purchaser of a Lot referred to in Condition 8.5.1 of these Conditions of Sale must notify the Auctioneer and the Vendor in writing:

8.5.5.1 Within 14 days after the Lot has been exported from Australia that the export has taken place;

8.5.5.2 At least 4 weeks prior to the expiration of the period of time permitted or approved by the ATO for the export of the Lot from Australia as to whether or not the Lot has been exported and what is intended in relation to is exportation.

8.5.6 The Purchaser acknowledges that it is liable for GST of 10% (or such payment as is at that time required to be paid by the GST Act) of the purchase price of the Lot if it is not exported within the period allowed by the ATO to export the Lot. If GST is payable in respect of that Lot and is not paid within 30 days of the Purchaser receiving notification that payment is due, the Purchaser agrees that the amount of the GST is a liquidated debt and will consent to entry of judgement against it for the amount of the GST and it agrees that an affidavit sworn by the Vendor or his solicitor shall be prima facie evidence of the amount of GST payable by the Purchaser.

8.5.7 The Purchaser acknowledges that it is liable for GST on the Lot if it is used in anyway considered by the ATO to be commercial in nature or unnecessary to prepare them for export. This includes (but is not limited to) racing for prizemoney, using for commercial breeding or reselling prior to export. Breaking in, training & barrier-trials are acceptable and will not deny GST Free status.

**9. CREDIT ARRANGEMENTS**

9.1 Any Purchaser requiring credit from the Auctioneer or Vendor must enter into a satisfactory credit or terms agreement with the Auctioneer or Vendor in writing prior to the Sale. All such agreements entered into at any time prior to delivery of the Lot shall be made by the Auctioneer as principal and not as agent of the Vendor and such agreements shall not form part of any sale and purchase whether made by auction or private sale.

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9.2 Purchasers are cautioned that approval of credit for a prior Sale does not establish credit for Purchasers at the Sale the subject of these Conditions of Sale. To avoid any misunderstanding, a prospective purchaser must re-establish credit before bidding.

9.3 The Auctioneer shall not be obliged to acknowledge or accept any credit or terms agreement entered into between the Purchaser and the Vendor until the Auctioneer has received satisfactory written evidence of such credit or terms agreement signed by the Vendor. If the Vendor enters into any credit or terms agreement with the Purchaser, the Auctioneer will not be obliged to pay to the Vendor the purchase price, and, the Auctioneer will not be obliged to collect any part of the purchase price from the Purchaser but the Vendor will still be obliged to pay all moneys due and owing to the Auctioneer, to the Auctioneer, with respect to the sale (immediately when such moneys are due to be paid) irrespective of whether the Vendor has been paid by the Purchaser, and, the Auctioneer will be entitled to register a Security Interest over the Lot (and the assets of the Vendor) to secure the payments due and owing to the Auctioneer by the Vendor.

9.4 With regard to the insurance of any Lot purchased by any Purchaser, such Purchaser will strictly comply with his obligations to insure the Lot as is set out in Condition 12.1.2 of these Conditions of Sale.

9.5 If a Purchaser requires credit from the Auctioneer or a Vendor, the Purchaser consents to the party asked to provide credit seeking and receiving information from a credit reporting agency with respect to the Purchaser, seeking information from any party to enable the party providing credit to assess the creditworthiness of the Purchaser and allowing the party providing credit to disclose the information obtained as to the Purchaser's creditworthiness to trade insurers and credit reporting agencies. The Purchaser agrees to a credit reporting agencies and trade insurers providing to, and collecting from, the party asked to provide credit, information about the Purchaser's creditworthiness.

**10. INTEREST**

10.1 Without prejudice to the Purchaser's payment obligations pursuant to Condition 6 of these Conditions of Sale, the Purchaser shall pay to the Auctioneer on demand interest at the rate of 1.25% per month, on;

10.1.1 The purchase price of any Lot or part thereof which remains unpaid as at the date of the sale of the Lot, from the date of the sale of the Lot to the date of payment;

10.1.2 All other monies payable by the Purchaser to the Auctioneer pursuant to these Conditions of Sale, from the date which the same become payable to the Auctioneer to the date of payment; and

10.1.3 all collection costs and expenses (including legal costs on a Solicitor & own client basis) incurred in recovering payment of any monies from the Purchaser from the date that the same are incurred to the date of payment by the Purchaser, such interest to be calculated monthly on daily rests and be capitalised monthly.

**11. DELIVERY**

11.1 The Auctioneer shall not be obliged to deliver any Lot to the Purchaser until:

11.1.1 The Auctioneer shall have received from the Purchaser full payment of all monies payable by the Purchaser to the Auctioneer pursuant to these Conditions of Sale (including the purchase price for the Lot, unless the Auctioneer is satisfied, in its absolute discretion, that a prior credit or terms agreement in writing has been made with the Auctioneer or Vendor) or any other agreement, oral or written, entered into between the Auctioneer or Vendor and the Purchaser, and until all bills of exchange tendered in payment have been honoured;

11.1.2 The Purchaser shall have completed, signed and delivered to the Auctioneer a delivery slip in such form as shall be required by the Auctioneer;

11.1.3 The Purchaser shall have complied to the satisfaction of the Auctioneer, with all his other obligations under these Conditions of Sale, including without limitation, his obligations in respect of insurance of the Lot pursuant to Condition 12 of these Conditions of Sale; and

11.1.4 Where the Purchaser requires the Lot to be delivered to his agent, the Auctioneer has received a written direction from the Purchaser directing the Auctioneer to deliver the Lot to such agent providing that nothing in this Condition of Sale shall oblige the Auctioneer to obtain such written authority from an agent prior to delivering any Lot to such agent.

11.2 The Purchaser shall remove his Lot from the Sale venue within twenty-four (24) hours of the sale of the Lot. The Purchaser shall ensure that the Auctioneer has firstly checked and confirmed the identity of the Lot prior to its removal.

**12. INSURANCE**

12.1 Where the Auctioneer or the Vendor agrees to deliver any Lot to the Purchaser (subject at all times to Conditions 9 and 11 above of these Conditions of Sale):

12.1.1 Prior to the Auctioneer receiving from the Purchaser full purchase price for the Lot; or

12.1.2 Further to Condition 9.4 of these Conditions of Sale, where a finance agreement is made between the Auctioneer and the Purchaser or the Vendor and the Purchaser whether before or after the Sale, the Purchaser will effect and maintain at the Purchaser's cost and expense, against all risks including mortality, insurance (in an amount not less than the purchase price of the Lot) with Howden Equine

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or any other insurer or insurance broker who specialises in such insurance as selected by the Purchaser for a period until such time as the Auctioneer and/ or the Vendor shall have received all monies payable in respect of the Lot or repayable by the Purchaser pursuant to any credit agreement entered into in respect of the purchase of the Lot and the Purchaser shall ensure that the policy of insurance bears an endorsement noting the Auctioneer's and the Vendor's (as the case may be) interest in the Lot and the Purchaser shall execute such documents as may in the opinion of the Auctioneer be necessary to transfer to the Auctioneer and/or the Vendor all the Purchaser's interest under such insurance absolutely.

12.2 The Purchaser will immediately deliver to the Auctioneer or the Vendor (as the case may be) a certificate of currency confirming that the Purchaser has complied with his obligations to insure as set out in Condition 12.1.2 of these Conditions of Sale. If the Purchaser fails to provide a certificate of currency to the satisfaction of the Auctioneer or the Vendor (as the case may be) then the Auctioneer or the Vendor may arrange such insurance and the Purchaser shall pay the Auctioneer or the Vendor the cost and expense of such insurance on demand.

12.3 The Auctioneer and the Promoter recommend that the Vendor, the Purchaser or any person handling the Lot (as the case may be) immediately effects and maintains for the life of the Lot insurance for any damage, injury or death caused by the Lot in an amount sufficient to protect each of them for each claim as advised by the Purchaser's insurance adviser.

## 13. PURCHASER OF MORE THAN ONE LOT

13.1 Where a Purchaser purchases more than one Lot at the Sale, the Auctioneer may, in the absence of written directions from the Purchaser to the effect that a payment of the purchase price is to be a payment of the purchase price for a specific Lot, appropriate such payment as it elects to do so and may allocate the payment in relation to any particular Lot or Lots that it determines in its absolute discretion.

13.2 Where a Purchaser does not nominate payment for a specific Lot and the Auctioneer splits a payment made by a Purchaser across a number of Lots, such that each Lot is partly paid, the Purchaser accepts, acknowledges and agrees that title to any of those Lots will not pass to the Purchaser until such time as the full purchase price for all the Lots has been paid by the Purchaser.

13.3 In the circumstances envisaged by Condition 13.2 above of these Conditions of Sale, the Purchaser accepts, acknowledges and agrees that the Auctioneer is entitled to retain the identification papers for all Lots until payment for all the Lots purchased at the Sale have been paid for.

## 14. TITLE TO LOTS

14.1 Notwithstanding any express or implied provisions herein to the contrary and notwithstanding that delivery of any Lot may have been made or possession obtained, title in a Lot shall not pass to the Purchaser until all monies payable by the Purchaser to the Auctioneer and or the Vendor pursuant to these Conditions of Sale in respect of the Lot shall have been received by the Auctioneer and or the Vendor, and all bills of exchange tendered in payment of such monies have been honoured.

14.1.1 Where delivery of any Lot is made to the Purchaser prior to title in the Lot passing to the Purchaser pursuant to these Conditions of Sale, the Purchaser shall hold the Lot as bailee only and shall not deal with the Lot in any manner inconsistent with the reasonable directions which may be given from time to time by the Vendor and/or the Auctioneer.

14.2 Until title to the Lot has passed to the Purchaser, the Purchaser shall not exercise or purport to exercise any rights of ownership or possession including, without limitation, registering or racing the Lot.

## 15. DEFAULT BY PURCHASER

15.1 In the event that the Purchaser breaches any of these Conditions of Sale and fails to remedy such breach within reasonable time after receiving written notice from the Vendor or Auctioneer requiring such breach to be remedied, or all monies payable by the Purchaser to the Auctioneer pursuant to these Conditions of Sale shall not have been paid and liquidated by the due date for payment thereof, or where the Auctioneer has, in its discretion, agreed to an extension of the date for payment (in which event time shall be of the essence in respect of such extended date) and the same shall not have been paid and liquidated by such extended date, the Auctioneer or the Vendor may at any time without prejudice to any other rights or remedies which the Auctioneer or Vendor may have at law or in equity and without notice to the Purchaser:

15.1.1 Terminate the sale of the Lot; and/or

15.1.2 Immediately retake possession of the Lot and for that purpose the Purchaser hereby irrevocably grants to the Auctioneer and/or Vendor full leave and license to enter into or upon any premises controlled by the Purchaser upon which the Lot may be or may reasonably be believed to be situated and to use any reasonable force as may be necessary for the purpose of repossessing the Lot, or as agent of the Purchaser to enter upon any other premises upon which the Lot may be or may reasonably be believed to be situated upon which the Purchaser may enter for the purpose of repossessing the Lot, without notice to the Purchaser and without liability to the Purchaser or any person claiming under the Purchaser; and/ or

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15.1.3 Resell the Lot by auction or private sale at the risk and expense of the Purchaser and

15.1.4 If upon resale the net proceeds of sale exceed that for which the Purchaser had agreed to purchase the Lot (and any other fees and charges payable by the Purchaser in respect of the Lot), the Auctioneer or Vendor is entitled to keep that excess and the Purchaser shall make no claim to that excess; or

15.1.4.1 if upon such resale a lower price is obtained than that for which the Purchaser had agreed to purchase the Lot, the Auctioneer or Vendor may recover the difference from the Purchaser as a debt due on demand together with interest from the date of sale to the date of payment; and/or

15.1.5 Exercise such other rights and remedies as the Vendor or Auctioneer may have against the Purchaser in respect of the Purchaser's default including, without limitation, recovering from the Purchaser all costs and expenses incurred in repossessing or attempting to repossess the Lot together with interest thereon and recovering from the Purchaser any expense of sale, resale, livery and agistment and Auctioneer commission so incurred; and/or

15.1.6 Retain any deposit or part payment to the extent of twenty-five percent (25%) of the purchase price for the benefit of the Vendor;

15.1.7 Sue the Purchaser for any damages or loss;

15.1.8 In addition to its rights pursuant to Conditions 6.7 and 9.5 of these Conditions of Sale, in its absolute discretion and with the irrevocable consent of the Purchaser, refer the default and all details with respect thereto to, and request any credit information of, or/and details with respect to, the Purchaser, to any credit or commercial recovery agent of its choice, and, disseminate, disclose and use the information so obtained in its absolute discretion;

15.1.9 The Purchaser acknowledges that the Auctioneer has a right to repossess and resell any Lot not paid for in full by a Purchaser. The Purchaser hereby irrevocably authorises the Auctioneer and the Vendor to disclose the details of the Purchaser and the purchase price of any Lot by the Purchaser to any person or party in the event of default by the Purchaser in the completion of the purchase of a Lot and thereafter the resale by the Auctioneer (or the Vendor, as the case may be) of the Lot. The Purchaser consents to any such disclosure (including but not limited to the name of the defaulting Purchaser and the reason for the resale) for the purposes of the Act.

15.1.10 Further to Condition 15.1.8 of these Conditions of Sale, the Purchaser, following the Auctioneer exercising a right to repossess and resell any Lot not paid for in full by the Purchaser, irrevocably appoints the Auctioneer his attorney to do all of the following:

15.1.10.1 To sign all transfer papers on behalf of the Purchaser or any other party or person whom the Purchaser has, with or without its consent, been registered as the owner of the Lot and to do all things necessary and execute all necessary documents requested by all relevant authorities to have the repossessed Lot transferred to the ultimate Purchaser of the Lot following repossession and resale of the Lot; and

15.1.10.2 To apply the purchase price as provided in these Conditions of Sale;

15.1.10.3 The Purchaser undertakes that it will not, of its own accord, or with the assistance of any other party, apply for a foal identification card with respect to any Lot purchased by it, or, attempt to effect registration of ownership of any Lot purchased by it (without the prior written consent of the Auctioneer) until the purchase price for each Lot purchased by the Purchaser has been paid in full in accordance with these Conditions of Sale.

## 16. RIGHTS AND LIABILITIES OF AUCTIONEER

16.1 The Auctioneer in selling any Lot at the Sale acts as agent for the Vendor whose name and address is disclosed in the Sale Catalogue in respect of each Lot. Further particulars of the Vendor of any Lot shall be furnished by the Auctioneer immediately upon request. Except as otherwise expressly provided to the contrary, the Auctioneer has no liability or rights as principal in the capacity of vendor of each Lot.

16.2 In the event of any dispute including without limitation, as to defects in title, misdescription, pedigree, condition or otherwise, the Purchaser and the Vendor shall settle the matter between themselves and the Purchaser shall have no rights against nor return any Lot to the Auctioneer which acts in respect of the Sale merely as agent for the disclosed Vendor. The Auctioneer draws to the attention of the Vendor and the Purchaser Condition 6.16 of these Conditions of Sale.

16.3 Notwithstanding any representation or action by the Auctioneer which may indicate the contrary, the Auctioneer shall be under no liability to the Vendor in respect of the Purchaser's failure to complete his purchase in accordance with these Conditions of Sale. The Auctioneer draws to the attention of the Vendor and the Purchaser Condition 6.16 of these Conditions of Sale.

16.4 If the Auctioneer accounts to the Vendor for the purchase price or the balance of the purchase price, then in addition to the other rights conferred on the Auctioneer by these Conditions of Sale, the Auctioneer is entitled to exercise in its own name or the name of the Vendor any of the Vendor's rights including the right to be paid the purchase price and to repossess the Lot or exercise any Security Interest of the Vendor, registered or otherwise.

16.4.1 The description of all Lots has been provided by the Vendor and the Auctioneer shall not be liable or responsible for any error whatsoever in the description of any Lot including, without limitation, any error in relation to the eligibility of the Lot for inclusion in the ASB, or the Lot's compliance with the requirements for inclusion, or continued inclusion.

# Conditions Of Sale

16.4.2 The rights and remedies of the Auctioneer under these Conditions of Sale shall not be affected by reason of the selling commission and charges of the Auctioneer having been deducted by the Auctioneer from any payment made by the Auctioneer to the Vendor. As between the Purchaser and the Auctioneer, the Purchaser waives all rights of set off, if any, the Purchaser may otherwise have had against the Vendor.

16.5 The Auctioneer or its servants may sign the Sale book or any memorandum of sale on behalf of either the Vendor or the Purchaser or both.

16.6 The Auctioneer reserves all rights to use or publish details of bidding, the identity of the Vendor and the Purchaser and all matters related to the sale of any Lot as it thinks fit.

16.7 If any sale is cancelled for any reason, the Auctioneer shall remain entitled to receive its commission on the sale, and to be paid or reimbursed for all money owing to it by either the Vendor or the Purchaser, for any charges, dues (including stabling and yard dues, fees and the like), interest and any other money owing to the Auctioneer.

16.8 The Auctioneer gives no representations, undertakings or warranties in relation to Lots sold or nominated for and sold at the Sale, but not limited to, representations, undertakings or warranties given or provided by the Vendor or any third party that relate to:

16.8.1 ownership of any Lot;

16.8.2 fitness for any purpose of any Lot including the lodgment and correctness of a Breeding Certificate or Pregnancy Certificate;

16.8.3 defects or imperfections of any Lot;

16.8.4 the accuracy or truth of descriptions and parentage;

16.8.5 that any Lot, will meet a Purchaser's requirements or expectations;

16.8.6 the ability of a Purchaser and a Vendor to complete a transaction;

16.8.7 the accuracy of any advertisements;

16.8.8 the ability of the Vendor to sell any Lot;

16.8.9 the ability of the Purchaser to buy any Lot;

16.8.10 whether any transaction will actually be completed; and

16.8.11 information provided by a Vendor or any third party with respect to any Lot offered or catalogued for sale.

## 17. CONDITIONS AND WARRANTIES

17.1 Other than any express conditions, warranties or representations included herein, or as may be implied by federal or state legislation all conditions, warranties and representations in respect of a Lot or a sale are hereby excluded. The Vendor, to the best of his belief and knowledge warrants that the Lot does not have any of the following conditions at the time of the Sale: a Ban, Impaired Vision, undergone Invasive Surgery, Roarer, Windsucker, Wobbler, EI, Rig, which is a weanling, yearling or two (2) year old that has been treated with bisphosphonates or has had any of the Treatments or has been administered the Hendra Virus vaccination;

17.2 Subject to Condition 17.1, the Purchaser acknowledges that, in making any purchase, he is relying solely on his own enquiries and inspection, and that he has not relied or been induced by any statement or representation made by the Vendor or the Auctioneer or the Promoter or by any person purporting to act on their behalf and, subject to these Conditions of Sale, the Purchaser shall take the Lot in its present condition and subject to all defects, faults, imperfections and the like, if any, whether latent or patent.

17.3 If a dispute arises between the Vendor and the Purchaser in relation to a Lot, this must be resolved between them only. The Lot cannot be returned to the Auctioneer or its stables. The Auctioneer draws to the attention of the Vendor and the Purchaser Condition 6.16 of these Conditions of Sale.

17.4 If a company, the Vendor warrants and represents to the Auctioneer and the Purchaser that there is no Security Interest, or, there is no default by the Vendor pursuant to the Security Interest affecting the Lot, and that the Vendor and no officer thereof is aware of any circumstances by which any rights or obligations in relation to the Vendor pursuant to the Security Interest, may have crystallised. The Vendor warrants and represents that the Lot is being sold in the ordinary course of business.

## 18. WINDSUCKERS, WOBBLERS, IMPAIRED VISION

18.1 In the event that:

18.1.1 Any Lot proves within seven (7) days after the sale of the Lot to be a Windsucker or Wobbler or to have been sold with Impaired Vision;

18.1.2 The Purchaser produces to the Auctioneer or Vendor prior written certification obtained at the cost of the Purchaser that the Lot is a Windsucker or Wobbler or has Impaired Vision, as the case may be, signed by an independent veterinarian nominated by the Auctioneer; and

18.1.3 The Auctioneer or Vendor did not disclose at the Sale that the Lot was or showed symptoms of being a Windsucker or Wobbler or has Impaired Vision, as the case may be, the Purchaser may terminate his purchase of the Lot by giving the Auctioneer written notice of termination within seven (7) days after the date of sale of the Lot provided that the Purchaser shall upon termination at his own cost and expense return the Lot to the address of the Vendor specified in the Sale Catalogue. The decision of the independent veterinarian nominated by the Auctioneer as to whether any Lot is a Windsucker or Wobbler or has Impaired Vision, shall be final and binding on all parties.

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18.2 Where the Purchaser terminates his purchase and returns the Lot to the Vendor pursuant to Condition 18.1 of these Conditions of Sale, or cancels the sale pursuant to Condition 19 below of these Conditions of Sale, he shall be entitled to a refund from the Vendor of all purchase monies paid in respect of the Lot and upon receiving the same shall have no further claim against the Auctioneer or Vendor.

**19. UPPER RESPIRATORY LARYNGOSCOPIC EVALUATION (RACING PROSPECTS ONLY)**

19.1 Notwithstanding any other provision of the Conditions of Sale and notwithstanding any prior custom and usage of the trade, Lots which are sold in this Sale may be subject to a post-sale upper respiratory laryngoscopic evaluation (excluding the trachea) by a qualified licenced veterinary surgeon approved by the Auctioneer obtained at the Purchaser's request and expense within twenty-four (24) hours of the fall of the hammer. If the qualified licenced veterinary surgeon appointed by the Purchaser is unable to conduct the upper respiratory laryngoscopic evaluation due to the refusal of the Lot to be evaluated and/or the qualified licenced veterinary surgeon deems it unsafe to either the Lot and/or scoping staff to conduct the evaluation, the time in which the evaluation is to be conducted will be extended for a further forty- eight (48) hours. If the Lot is still unable to be evaluated within this period the Purchaser may in its absolute discretion cancel the sale by notice in writing, supported by a copy of written evidence from the qualified licenced veterinary surgeon confirming the inability to carry out the scoping, to the Auctioneer prior to the expiration of the extended forty-eight (48) hour period, PROVIDED HOWEVER, in the event that a Lot cannot be scoped by virtue of injury or other force majeure following the sale and prior to the expiration of the extended forty-eight (48) hour period, the Purchaser will have no right to terminate the purchase by virtue of the Lot being unable to be scoped. Further, in addition with the notice in writing to be given to the Auctioneer as referred to above, the Purchaser must immediately produce to the Auctioneer for release to the Vendor a copy of such written evidence and a copy of the Scoping Report (if a scoping has been carried out).

19.2 If a qualified licenced veterinary surgeon, so approved, is of the opinion that the Lot has any of the following physical conditions:

19.2.1 Laryngeal neuropathy (grossly deficient abductor function of one or both arytenoid cartilages) using the Havemeyer grading system (Dixon et al. Havemeyer Proceedings, 2003, p96) where Grades III.2, III.3 and IV fail. This procedure is conducted at rest;

19.2.2 Rostral displacement of the palatopharyngeal arch;

19.2.3 Epiglottic entrapment;

19.2.4 Persistent dorsal displacement of the soft palate;

19.2.5 Arytenoid chondritis or chondroma;

19.2.6 Sub epiglottic cyst(s);

19.2.7 Cleft palate; or

19.2.8 Any airway condition or lesion causing significant airway obstruction resulting in exercise intolerance and this/these physical condition(s) has/have not been announced prior to the horse being offered for sale then, subject to Condition 19.4 of these Conditions of Sale, the Purchaser may cancel the sale (subject to Condition 19.1 of these Conditions of Sale) by notice in writing to the Auctioneer within twenty-four (24) hours of the fall of the hammer.

19.3 Any Purchaser who wishes to have a post-sale upper respiratory laryngoscopic evaluation, as above, is advised that this examination must be conducted by the qualified licenced veterinary surgeon, so approved, prior to the Lot being removed from the Complex.

19.4 The Auctioneer reserves the right to obtain a confirmatory opinion (but is not obliged to do so unless requested by the Vendor to do so), and/or if requested by the Vendor to do so, from up to three (3) qualified licenced veterinary surgeons appointed by the Auctioneer before a notice of cancellation of sale is accepted by it. For the sake of certainty, the process to be followed where the Auctioneer requests one or more qualified licenced veterinary surgeons to provide a confirmatory opinion pursuant to this Condition 19.4 of these Conditions of Sale will be as follows:

19.4.1 If the qualified licenced veterinary surgeon appointed pursuant to Condition 19.1 of these Conditions of Sale is of the opinion that the Lot has evidence of a physical condition set out in Condition 19.2 of these Conditions of Sale, the first qualified licenced veterinary surgeon appointed by the Auctioneer pursuant to this Condition 19.4 of these Conditions of Sale will review the video recording, and, if the first qualified licenced veterinary surgeon disagrees with that opinion, that opinion will be overturned and the Purchaser will not be entitled to cancel the sale;

19.4.2 If the first qualified licenced veterinary surgeon appointed by the Auctioneer pursuant to this Condition 19.4 of these Conditions of Sale is unable or unwilling to give an opinion, the Auctioneer may appoint a second qualified licenced veterinary surgeon to do that which was to be done by the first qualified licenced veterinary surgeon pursuant to Condition 19.4.1 of these Conditions of Sale, and, if the second qualified licenced veterinary surgeon disagrees with the opinion of the qualified licenced veterinary surgeon appointed pursuant to Condition 19.1 of these Conditions of Sale, that opinion will be overturned and the Purchaser will not be entitled to cancel the sale;

19.4.3 If the second qualified licenced veterinary surgeon appointed by the Auctioneer pursuant to this

# Conditions Of Sale

Condition 19.4 of these Conditions of Sale is unable or unwilling to give an opinion, the Auctioneer may appoint a third qualified licenced veterinary surgeon to do that which was to be done by the first and second qualified licenced veterinary surgeons pursuant to Conditions 19.4.1 and 19.4.2, of these Conditions of Sale and, if the third qualified licenced veterinary surgeon disagrees with the opinion of the qualified licenced veterinary surgeon appointed pursuant to Condition 19.1 of these Conditions of Sale, that opinion will be overturned and the Purchaser will not be entitled to cancel the sale;

19.4.4 In the event that all three qualified licenced veterinary surgeons appointed by the Auctioneer pursuant to this Condition 19.4 of these Conditions of Sale are unable or unwilling to form an opinion then the decision of the qualified licenced veterinary surgeon appointed pursuant to Condition 19.1 of these Conditions of Sale will stand. If, however, any one of the three (3) qualified licenced veterinary surgeons agrees with the said opinion, the Purchaser will be entitled to cancel the sale by notice in writing to the Auctioneer within twenty-four (24) hours (from the time of such agreement being notified).

19.4.5 And for the purposes of Condition 19.4, the Auctioneer draws the definition of "Treatments" in Condition 43 of these Conditions of Sale to the attention of the Vendor and the Purchaser.

19.4.6 The Vendor and the Purchaser accept and acknowledge that it is possible that the same qualified licenced veterinary surgeon who may carry out a post-sale upper respiratory laryngoscopic evaluation of the Lot may also have carried out the pre-sale evaluation. It is important that the Purchaser prior to engaging a qualified licenced veterinary surgeon to carry out a post-sale upper respiratory laryngoscopic evaluation makes its own enquiries and satisfies itself that the qualified licenced veterinary surgeon is not conflicted in carrying out both the post-sale evaluation after having carried out the pre-sale evaluation.

## 20. ATTORNEY

20.1 The Vendor and the Purchaser for the purpose of enabling the Auctioneer to give full force and effect to these Conditions of Sale, each irrevocably appoint the Auctioneer his true and lawful attorney, with full power in his name or in the name of the Auctioneer to do all such things, to take all such action, to sign and execute all such documents and to give such instructions for the purposes of these Conditions of Sale as may be necessary or in the Auctioneer's opinion desirable and hereby agrees to ratify and affirm anything done by the Auctioneer as such attorney.

20.2 Without limiting Condition 20.1 of these Conditions of Sale, the Auctioneer may exercise the power of attorney so granted for the purpose of removing, waiving, or otherwise discharging any Security Interest purportedly granted by the Purchaser and in particular (to the extent the Purchaser is capable of doing so) removing the registration of such an interest.

## 21. GOVERNING LAW AND PRIVATE SALES

21.1 Neither the Vendor nor the Purchaser may institute court proceedings (including without limitation proceedings for interlocutory relief) in relation to any dispute arising out of or relating to this agreement in any court other than a court in the State of Queensland. The Vendor and the Purchaser unequivocally submit to the jurisdiction of the courts of the State of Queensland.

21.2 These Conditions of Sale shall, in so far as possible, apply to the private sale by the Auctioneer of any Lot entered for the Sale.

21.3 If any provision of these Conditions of Sale is or becomes unenforceable or invalid, the remaining provisions shall not be affected by but shall remain in full force and effect to the fullest extent permitted by law.

## 22. X-RAYS AND REPOSITORY

22.1 Vendor's Acknowledgments, Obligations and Warranties

22.1.1 The Vendor acknowledges that he has been encouraged by the Auctioneer/Promoter to provide X rays with respect to each Lot offered for sale by the Vendor;

22.1.2 The Vendor may elect to lodge X-Rays and/or reports regarding Treatments to the Auctioneer/Promoter at the Repository no later than 4.00pm four (4) days prior to the first day of the Sale. No X-Rays will be accepted by the Auctioneer/Promoter subsequent to the stated dates and times;

22.1.3 The Vendor warrants that the X-Rays provided to the Auctioneer/Promoter will be certified as originals by a qualified licenced veterinary surgeon and will meet all the requirements set out in the Repository Conditions;

22.1.4 The Vendor warrants that he has the right to use the X-Rays and irrevocably authorises the Auctioneer/Promoter to release the X-Rays for inspection by a prospective Purchaser's qualified licenced veterinary surgeon experts prior to and during the Sale as provided in the Repository Conditions;

22.1.5 Subject to the Auctioneer's/Promoter's/Vendor's right to refuse any person, including a prospective Purchaser from inspecting the X-Rays and/or reports regarding Treatments, the X-Rays and/or reports regarding Treatments provided by a Vendor will be available for inspection by a Purchaser's qualified licenced veterinary expert (in the absence of written instructions from the Vendor to the contrary) at the Repository subject to the Repository Conditions;

# Conditions Of Sale

22.1.6 The Vendor releases the Auctioneer/Promoter from any liability in the event of damage, loss or theft of the X-Rays and/or reports regarding Treatments while in the possession of the Auctioneer/Promoter;

22.1.7 The Vendor warrants the quality, accuracy, validity, authenticity and completeness of the X-Rays and that they comply strictly with the minimum requirements set out in the Repository Conditions;

22.1.8 The Vendor acknowledges that the Auctioneer/Promoter do not warrant the accuracy of the data contained in the X-Rays and/or reports regarding Treatments and that the Auctioneer/Promoter do not review or evaluate the X-Rays and/or reports regarding Treatments, and the Vendor releases them from all claims, damages, liability, actions, damages and losses whatsoever arising from the inspection of the X-Rays and/or reports regarding Treatments, any defect or inaccuracy in the X-Rays, and, the purchase of any Lot where a purchase followed an inspection of the X-Rays and/or reports regarding Treatments;

22.1.9 The Vendor acknowledges that, once the X-Rays and/or reports regarding Treatments are deposited at the Repository, the Vendor must not remove the X-Rays and/or reports regarding Treatments from the Repository.

22.2 Purchaser's Acknowledgements, Obligations and Warranties

22.2.1 The Purchaser acknowledges that his qualified licenced veterinary surgeon (and any other person authorised in writing by the Vendor) must register at the Repository and otherwise strictly comply with the Repository Conditions prior to and during inspection of the X-Rays and/or reports regarding Treatments;

22.2.2 The Purchaser acknowledges that it is his sole responsibility to determine the quality, accuracy and completeness of the X-Rays and/or reports regarding Treatments and to obtain independent advice with respect thereto from a qualified licenced veterinary surgeon;

22.2.3 The Purchaser acknowledges that X-Rays and/or reports regarding Treatments may not be removed from the Repository or copied or reproduced in any form without the prior written consent of the owner thereof;

22.2.4 The Purchaser acknowledges that any Vendor may, in his absolute discretion, determine not to provide X-Rays and/or reports regarding Treatments for a Lot, and, accordingly the Purchaser will purchase such Lot with all defects, latent and patent, and otherwise subject to these Conditions of Sale;

22.2.5 The Purchaser acknowledges and accepts the acknowledgments, obligations and warranties referred to in Condition 22.1 above of these Conditions of Sale and if the Purchaser alleges a breach of the Vendor's warranties, then the Purchaser and the Vendor must resolve their respective rights and liabilities and the provisions of Condition 17.3 of these Conditions of Sale will apply;

22.2.6 The Purchaser acknowledges that he should fully inspect each Lot and the X-Rays and/or reports regarding Treatments, subject to these Conditions of Sale and the Repository Conditions, along with his qualified licenced veterinary surgeon, prior to purchasing or attempting to purchase a Lot, and, failure to inspect or seek the said advice will be at the Purchaser's sole risk;

22.2.7 The Purchaser acknowledges that once the Lot has been sold, there will be no further access to the X-Rays and/or reports regarding Treatments for any purpose whatsoever;

22.2.8 The Purchaser warrants that in inspecting the X-Rays and/or reports regarding Treatments that he will at all times act in a bona fide manner.

22.3 Vendor's/Purchaser's Acknowledgments and Indemnities

22.3.1 The Vendor and the Purchaser acknowledge and accept that neither the Auctioneer nor the Promoter will review the X-Rays and/or reports regarding Treatments and therefore makes no warranty or assurance of any kind concerning the authenticity, quality, accuracy or completeness of the X-Rays and/or reports regarding Treatments, the responsibility for which lies with the Vendor;

22.3.2 The Vendor and the Purchaser acknowledge and accept that the deposit and inspection of the X-Rays and/or reports regarding Treatments, and, the use of the Repository, will not vary or amend the terms of these Conditions of Sale which shall continue to be binding upon the Vendor and the Purchaser, nor does such deposit, inspection or use create any additional express or implied warranties upon which either the Vendor or the Purchaser can rely, other than those allowed by statute or law;

22.3.3 The Vendor and the Purchaser acknowledge and accept that neither the Auctioneer nor the Promoter will be liable for any claim, damages, liability, actions, demands or losses whatsoever in the event that the X-Rays and/or reports regarding Treatments are of poor quality, inaccurate, invalid or incomplete;

22.3.4 The Vendor and the Purchaser acknowledge and accept that the sale and purchase of a Lot is effected on the fall of the hammer pursuant to Condition 2 of these Conditions of Sale and, subject to these Conditions of Sale, the Purchaser purchases each Lot with all faults and defects, latent and patent. The Vendor acknowledges and accepts that the Auctioneer will be entitled to its commission immediately upon the effecting of the sale (subject to these Conditions of Sale) and the Vendor's obligation to pay the commission will stand notwithstanding any subsequent dispute between the Vendor and the Purchaser;

22.3.5 The Vendor and the Purchaser acknowledge that the Vendor has instructed the Auctioneer/Promoter to restrict access to the X-Rays and/or reports regarding Treatments, in the absence of written instructions to the contrary, to qualified licenced veterinary surgeons;

# Conditions Of Sale

22.3.6 The Vendor and the Purchaser acknowledge that the X-Rays and/or reports regarding Treatments remain the legal property of the qualified licenced veterinary surgeon who took them. Subject to Condition 22.4.3 of these Conditions of Sale, permission must be obtained by the said qualified licenced veterinary surgeon prior to removing the X-Rays and/or reports regarding Treatments from the Repository.

22.4 Auctioneer's/Promoter's Acknowledgment And Obligations

22.4.1 The Auctioneer/Promoter will, at their cost, provide and make available the Repository for use by the Vendor, the Purchaser and the Purchaser's qualified licenced veterinary surgeon in accordance with these Conditions of Sale and the Repository Conditions;

22.4.2 The Auctioneer/Promoter will make the Repository available to receive the X-Rays and/or reports regarding Treatments from the Vendor, and, make available the X-Rays and/or reports regarding Treatments for inspection, in the absence of written instructions from the Vendor to the contrary, by the Purchaser's qualified licenced veterinary surgeon subject to these Repository Conditions and these Conditions of Sale;

22.4.3 Subject to the Auctioneer's/Promoter's right to retain possession of the X-Rays and/or reports regarding Treatments for whatever reason and for so long as the Auctioneer/Promoter chooses, the Auctioneer/Promoter will allow the Vendor or his nominated agent in writing, to collect the X-Rays and/or reports regarding Treatments from the Repository after the expiration of forty-two (42) days from the last day of the Sale;

22.4.4 The Auctioneer/Promoter has requested each Vendor of a Lot to provide X-Rays and/or reports regarding Treatments of each Lot in accordance with the Repository Conditions but will not be liable for any claim, damages, liability, actions, demands or losses whatsoever, from the Vendor, Purchaser or any person or party by virtue of the fact that a Vendor elects not to provide X-Rays and/or reports regarding Treatments with respect to any Lot;

22.4.5 The Vendor will, in accordance with the Repository Conditions, be entitled to inspect (or have an agent authorised in writing to inspect) a register, kept for that purpose, of any party who has inspected the X-Rays and/or reports regarding Treatments of a Lot submitted by that Vendor.

**23. NO REPRESENTATION AS TO SUITABILITY FOR TRAINING OR RACING OF A LOT**

The Purchaser acknowledges that the Vendor/Auctioneer/Promoter do not warrant or represent the physical condition of any Lot (except in the case of the Vendor regarding the physical condition as set out in these Conditions of Sale), or, that any Lot is suitable for being trained as a race horse, or, capable of being trained as a race horse, or, suitable or capable of competing in races or any other activities involving thoroughbred race horses, or for any purpose whatsoever.

**24. AGENCY**

The Auctioneer/Promoter act as agents for the Partnership.

**25. CONDITIONS OF NOMINATION AND REPOSITORY CONDITIONS**

The Vendor acknowledges having read the conditions of nomination and the Repository Conditions and accepts them. The Purchaser acknowledges having read the Repository Conditions and accepts them. Further, the Vendor and the Purchaser will abide and be bound by all reasonable practices and business methods employed by the Auctioneer/Promoter in the conduct of their business and the Sale, and, acknowledge that these Conditions of Sale may be changed or amended from time to time in the absolute discretion of the Auctioneer/Promoter. Any changes or amendments to these Conditions of Sale after publication of the Sale Catalogue will be announced by the Auctioneer prior to the Sale and displayed at the Complex before and during the Sale. The Purchaser acknowledges that the Vendor has instructed the Auctioneer/Promoter, in the absence of written instructions to the contrary, to restrict access to the X-Rays and/or reports regarding Treatments to qualified licenced veterinary surgeons, and, further acknowledge that it is the responsibility of the Purchaser to obtain written authority from the Vendor if the Purchaser requires a person other than a qualified licenced veterinary surgeon to examine the X-Rays and/or reports regarding Treatments.

**26. OCCUPATIONAL HEALTH AND SAFETY**

26.1 To the extent that a Vendor or Purchaser or their employees or agents may conduct any activities on the Complex then the Vendor or Purchaser shall be responsible, to the exclusion of the Auctioneer/Promoter, for establishing and observing appropriate occupational health and safety procedures, and for complying with any relevant legislation provisions, in relation to those activities.

26.2 The Vendor or Purchaser accepts, acknowledges and agrees, and will procure that each of its agents, contractors and employees accepts, acknowledges and agrees, to comply in all respects with the Magic Millions Sales Complex Entry Conditions, and, to this end, the Vendor or Purchaser indemnifies and releases the Auctioneer against any damage to person, or, property or any claims of whatever nature suffered by the Auctioneer in the event of the Vendor or Purchaser or any agent, contractor or employee of the Vendor or Purchaser breaching any of the Magic Millions Sales Complex Entry Conditions.

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**27. VENDOR'S ADDITIONAL WARRANTIES: LOT DESCRIPTION, TITLE AND POSSESSION**

The Vendor warrants that:

27.1 The description, pedigree and other information in respect of the Lot is as specified in the Sale Catalogue; and

27.2 The Vendor has the right to sell the Lot and can give good title to the Lot; and

27.3 The Purchaser will obtain quiet possession of the Lot on completion of all the Purchaser's obligations under these Conditions of Sale.

**28. PRIVACY AND CREDIT INFORMATION: ACT, NDB AND GDPR: AUTHORISATIONS AND AGREEMENTS**

28.1 The Auctioneer, the Vendor and the Purchaser acknowledge the existence of the Act, the NDB and the GDPR to protect the privacy of parties.

28.2 The Purchaser irrevocably authorises the Auctioneer to approach a credit provider arranging finance to assist the Purchaser to purchase any Lot and irrevocably authorises that credit provider to provide to the Auctioneer personal information about the Purchaser and the Purchaser's application for finance.

28.3 Further to Condition 28.2 of these Conditions of Sale, the Purchaser acknowledges that, pursuant to section 18E(1) of the Act, the information that the credit provider may provide to the Auctioneer includes:

28.3.1 Particulars about the Purchaser which allows the Purchaser to be identified;

28.3.2 The fact that the Purchaser has applied for finance and the amount applied for;

28.3.3 The fact that the approached credit provider is a current provider to the Purchaser;

28.3.4 Details of payments which have become overdue for more than sixty (60) days and for which collection action has commenced;

28.3.5 Advice that payments are no longer overdue;

28.3.6 Details of cheques drawn by the Purchaser which have been dishonoured more than once;

28.3.7 Details where the credit provider believes the Purchaser has committed a serious credit infringement;

28.3.8 Details of the finance that has been provided to the Purchaser by the approached credit provider that has been paid or otherwise discharged.

28.4 Further to the above, the Purchaser irrevocably authorises the Auctioneer to obtain a report about the Purchaser's consumer or credit worthiness from any credit reporting agency or commercial credit reporting business, or from a credit provider to whom the Purchaser has applied for finance or a credit provider referred to in the aforementioned reports.

28.5 The Auctioneer reserves the right to contact third parties and the Purchaser irrevocably authorises those third parties to provide all information of the type referred to above as requested by the Auctioneer.

28.6 The purpose of the NDB was to set up a scheme whereby the Auctioneer and the Promoter, and their associated entities, must take certain measures where there is unauthorised access to, unauthorised disclosure of or loss of, personal information of the Vendor and / or the Purchaser. The intention of the NDB is to ensure that parties holding personal data take all reasonably necessary internal security measures to ensure that the access, disclosure or loss does not result in serious harm to any of the individuals to whom the information relates.

28.7 The purpose of the GDPR was to protect the data privacy for all EU citizens. If a party processes data about individuals in the context of selling goods or services to EU citizens, the GDPR must be complied with.

28.8 The Auctioneer and the Promoter will do all things reasonably necessary to implement processes to protect unauthorised access to, unauthorised disclosure of, or loss of, personal information relating to the Vendor and the Purchaser.

28.9 The Auctioneer and the Promoter will, and will procure their associated entities to do likewise, comply with the provisions of the NDB and notify as required by the NDB.

28.10 The Vendor and the Purchaser accept, acknowledge and agree that the Auctioneer and the Promoter collect information that is personal to the Vendor and the Purchaser which must be provided to the relevant authorities, such as RA and its members, and, in some cases, legal enforcement and government bodies and agencies and third parties that might have an interest, direct or otherwise, in the Lot. The Vendor and the Purchaser (without releasing the Auctioneer and the Promoter, and their associated entities, from their obligations under the NDB and the GDPR) irrevocably authorise the Auctioneer and the Promoter, and their associated entities, to release personal information relating to the Vendor and the Purchaser as anticipated by this Condition 28 of these Conditions of Sale.

28.11 By attending the Sale and selling or purchasing a Lot pursuant to these Conditions of Sale, the Vendor and the Purchaser elect to "opt in", consent or subscribe to, the right of the Auctioneer and Promoter to hold and use personal sensitive information as regards the Vendor and the Purchaser. The Vendor and the Purchaser may, at any time, by notice in writing to the Auctioneer and / or the Promoter, elect to "opt out", withdraw consent or unsubscribe. The Auctioneer and the Promoter have updated their privacy and cookies policy because of the NDB and the GDPR. The Vendor and the Purchaser are strongly advised to read the full privacy policy on the Auctioneer's and the Promotor's website home page.

# Conditions Of Sale

**29. EI**

29.1 The Vendor undertakes to the Auctioneer that it will not bring or attempt to bring to the Sale, or the Complex, any Lot which it knows to have been diagnosed with EI, or reasonably suspects of having been diagnosed with EI, or, knows or reasonably suspects has showed or is showing signs of EI.

29.2 The Vendor will not offer or attempt to offer for sale through the Auctioneer a Lot which it knows to have been diagnosed (and not cured) as having EI or which the Vendor knows or reasonably suspects as having shown signs of EI.

29.3 Notwithstanding any other Condition of Sale contained herein, the Vendor will, at all times, prior to the delivery of the Vendor's Lot to the Sale, or the Complex, and while the Vendor's Lot is at the Sale, or the Complex, comply with all directions, protocols and regulations made or declared by DPIF, the ASB and all other competent authorities having lawful jurisdiction with respect to the diagnosis and treatment of EI.

29.4 Notwithstanding any other Condition of Sale contained herein, the Auctioneer will have the absolute discretion to refuse to accept delivery of the Vendor's Lot at the Sale, or the Complex, or offer the Vendor's Lot for sale at the Sale, or the Complex, after delivery, if the Auctioneer has cause to believe that the Vendor's Lot, despite the declarations and undertakings given by the Vendor or the certificates provided by the Vendor, believes the Vendor's Lot has been diagnosed and not cured of EI or is showing symptoms of EI.

**30. CODE**

The Vendor and the Purchaser acknowledge the existence of the Code. The Auctioneer recommends that the Vendor and the Purchaser acquaint themselves with the Code.

**31. USE OF INFORMATION FOR PUBLICITY AND DISCLOSURE OF INFORMATION**

31.1 The Vendor and the Purchaser accept, acknowledge and agree that the Auctioneer and the Promoter may use the face or visage of any Vendor or any Purchaser to promote the interests of the Auctioneer and the Promoter (and their associated entities) for nil consideration.

31.2 The Vendor and Purchaser accept, acknowledge and agree that the Auctioneer and the Promoter collect information that is personal to the Vendor and the Purchaser which must be provided to the relevant authorities, such as RA and its members, and, in some cases, legal enforcement and government bodies and agencies and third parties that might have an interest, direct or otherwise, in the Lot. The Vendor and the Purchaser (without releasing the Auctioneer and the Promoter, and their associated entities, from their other obligations of confidence and privacy), irrevocably authorise the Auctioneer and the Promoter and their associated entities to release personal information relating to the Vendor and the Purchaser as anticipated by this Condition 31.2 of these Conditions of Sale.

**32. PPSA AND PPSR**

32.1 The Purchaser accepts, acknowledges and agrees that the Auctioneer has a right, pursuant to the PPSA, to register a Security Interest on the PPSR with regard to any monies due and owing by the Purchaser with respect to any Lot purchased by the Purchaser or any monies paid by the Auctioneer to the Vendor with respect to any Lot purchased by the Purchaser (or any other of these Conditions of Sale with respect to which monies are due and owing by the Purchaser to the Auctioneer), or, any credit or financing arrangement for value granted by the Auctioneer to the Purchaser with respect to any Lot and, which may be outstanding from time to time.

32.2 The Vendor and the Purchaser irrevocably authorise the Auctioneer to register its Security Interest in each Lot to secure payments made by the Auctioneer to any Vendor and / or to secure payment of the purchase price by the Purchaser pursuant to these Conditions of Sale on the PPSR pursuant to the provisions of the PPSA.

32.3 Registration by the Auctioneer of its Security Interest on the PPSR will be at the cost of the Auctioneer.

32.4 The Auctioneer will deregister, at its cost, and in its absolute discretion, its Security Interest in any Lot from the PPSR as soon as practically possible following the payment of all moneys due and owing by the Purchaser with respect to any Lot or any other Lot sold or purchased through the Auctioneer and with respect to which moneys are due and owing to the Auctioneer from time to time.

32.5 The Purchaser undertakes not to obtain and / or apply for finance or register any security or other interest in a Lot purchased by the Purchaser on the PPSR prior to the payment in full of the purchase price and all other charges arising from the purchase of a Lot.

32.6 The Purchaser accepts, acknowledges and agrees that it will not compete or contest with the Auctioneer (in its own right or as agent for the Vendor, or, in any other capacity) with respect to any Security Interest available for registration to the Auctioneer or registered by the Auctioneer with respect to any Lot or any interest claimed by the Auctioneer.

32.7 To secure the interests of the Auctioneer, the Vendor and the Purchaser grant to the Auctioneer, a Security Interest in the Lot and any proceeds of sale of the Lot including, but not limited to, any foals of the Lot or any proceeds of payment of the full amount of the purchase price, the other assets of the Vendor and the Purchaser and all other commissions, fees, charges payable by the Vendor or the Purchaser with respect to the purchase of the Lot or any other lot with respect to which monies are owed by the Vendor or the Purchaser to the Auctioneer as referred to in these Conditions of Sale.

# Conditions Of Sale

32.8 The Purchaser irrevocably appoints the chief executive officer and the chief financial officer, for the time being, of the Auctioneer to execute all documents and do all things necessary to enable the Auctioneer to secure its interest as hereinbefore and hereinafter referred to and to ensure that the Purchaser obtains and maintains perfected its Security Interest under the PPSA and, as registered on the PPSR, which will have priority over all other Security Interests or encumbrances over or affecting the Lot.

32.9 The Purchaser will not except and until the Purchaser has paid all monies due and owing with respect to each Lot (and as required pursuant to these Conditions of Sale) attempt to register or assist any third party to attempt to register, or register, any interest on the PPSR that could compete or conflict with the Security Interest of the Auctioneer without the prior written consent of the Auctioneer, such consent to be given or refused by the Auctioneer in its absolute discretion.

32.10 The Purchaser agrees that, if, the Purchaser breaches, or attempts to breach, or is a party to any breach or attempted breach of this Condition 32 of these Conditions of Sale, the Auctioneer may terminate any credit or finance arrangement with the Purchaser or any related body corporate or associated entity with respect to any Lot purchased by the Purchaser (or any other Lot with respect to which a credit or finance agreement exists between the Auctioneer and the Purchaser) by giving the Purchaser seven (7) days to remedy such breach, failing which the Auctioneer may cancel such credit or finance arrangement and all monies due and owing by the Purchaser or any related body corporate or associated entity will immediately become payable within fourteen (14) days of the giving of such notice.

32.11 The Vendor and the Purchaser accept, acknowledge and agree that in the event that the Auctioneer is of the opinion that the Purchaser is in breach of this Condition 32 of these Conditions of Sale, the Auctioneer may determine, in its absolute discretion, that a dispute exists between the Vendor and the Purchaser and the Auctioneer may refuse to release any monies due or payable to the Vendor or pay to the Vendor any monies due and owing that the Auctioneer may have otherwise agreed to pay pursuant to these Conditions of Sale.

32.12 To the extent permitted by the PPSA, the Purchaser agrees that Sections 142 and 143 of the PPSA will not apply to these Conditions of Sale and agrees to waive all rights to any of the following provided for in the PPSA, including, but not limited to, the following:

32.12.1 Receive notice of any intention to seize collateral;

32.12.2 Receive notice of disposal of collateral;

32.12.3 Receive information under a statement of account;

32.12.4 Receive a statement of account if there is no disposal;

32.12.5 Receive a notice of retention of collateral;

32.12.6 Receive a notice of verification statement; and / or

32.12.7 Receive notice of intention to claim a Security Interest in the Lot, seize the Lot and sell the Lot to recover any monies due and owing to the Vendor and the Auctioneer pursuant to these Conditions of Sale.

32.13 Notwithstanding any other term or condition contained in these Conditions of Sale, the Auctioneer will not be obliged to pay the Vendor any part of the purchase price if the Vendor has failed to provide the Auctioneer with evidence of the discharge of any Security Interest registered on the PPSR by the Vendor or any other party, or, any other encumbrance affecting the Lot.

**33. INSOLVENCY OF PURCHASER**

If the Purchaser, being a corporation, is placed in administration, receivership or liquidation, or the Purchaser, being an individual, is declared bankrupt or has entered into a scheme with his creditors, the Vendor and the Auctioneer may, in their absolute discretion, where any part of the purchase price remains outstanding, declare the sale of the Lot to the Purchaser invalid and of no force or effect by notice in writing to the Purchaser, whereupon the Purchaser irrevocably appoints the Vendor and the chief executive officer of the Auctioneer (or his nominee from time to time) its or his attorney to enter upon all places and premises to repossess the Lot and exercise its rights as contained in Condition 15.1.2 of these Conditions of Sale and thereafter resell the Lot in accordance with Condition 15.1.3 of these Conditions of Sale and thereafter exercise the rights and remedies granted to the Vendor and the Auctioneer pursuant to Conditions 15.1.4 – 15.1.6 inclusive of these Conditions of Sale.

**34. IRREVOCABLE AUTHORITY**

Notwithstanding any other term or condition contained in these Conditions of Sale, the Vendor hereby irrevocably authorises and directs the Auctioneer to pay to the Auctioneer out of the purchase price of any Lot, any amount that may be due and owing to the Auctioneer from the previous sale of a Lot at the Sale or for sale of any lot at any sale conducted by the Auctioneer prior to the Sale. For the sake of certainty, the Vendor assigns to the Auctioneer any irrevocable authority rights in favour of the Vendor where a Lot owned by the Vendor has been submitted for sale at the Sale by a party other than the Vendor. The Vendor appoints the Auctioneer, from time to time, its attorney to do all things necessary and execute all documents to give effect to this Condition 34 of these Conditions of Sale.

# Conditions Of Sale

**35. VENDOR / PURCHASER RELATED ENTITIES**

Where the Vendor (in the reasonable opinion of the Auctioneer) is in any way or in any capacity (by virtue of directorship, shareholding, trustee, beneficiary or otherwise) involved with or related to a Purchaser of a Lot offered for sale by the Vendor and the Vendor owes the Auctioneer any monies with respect to that Lot or any other lot, the Auctioneer may, in its absolute discretion, retain all or part of the purchase price paid by the Purchaser and apply the same to the debt owed by the Vendor to the Auctioneer. In such a case the Auctioneer may, in its absolute discretion, refuse to pay out the Vendor for the purchase price for the Lot prior to receiving payment in full for the Lot from the Purchaser.

**36. APPOINTMENT OF AGENT BY PURCHASER: INDEMNITY WITH RESPECT TO DIRECTIONS AND INSTRUCTIONS ON OR BEFORE DAY OF SALE**

36.1 The Vendor accepts and acknowledges that the Purchaser may appoint the Auctioneer or another third party agent to bid on the Vendor's Lot on behalf of the Purchaser. Such appointment may be made by the Purchaser executing the Auctioneer's formal written appointment of agent form, or, informally by way of email, telephone contact or text message. The Vendor does not object to the Auctioneer or another third party agent acting as the agent for the Purchaser.

36.2 The Vendor and the Purchaser indemnify and will keep indemnified the Auctioneer and the Promoter against any claim arising out of any directions or instructions given by the Purchaser or its agents, consultants or employees, to the Auctioneer or their agents, consultants or employees pursuant to Condition 36.1 of these Conditions of Sale, on or before the sale of any Lot where, for any reason, such directions and / or instructions are misinterpreted or not acted upon by the Auctioneer.

**37. IMPORTANT DISCLAIMERS**

37.1 For the information of each Purchaser, the Auctioneer and the Promoter have provided certain information on each Lot catalogued for the Sale. Any information is obviously subject to constant change and revision and the Auctioneer and the Promoter, their subsidiaries, officers and agents for themselves and for those for whom they act, provide all such information without responsibility and give no guarantee nor make any representations whatsoever as to its accuracy.

37.2 Notwithstanding Condition 26 of these Conditions of Sale, all persons who attend the Sale do so entirely at their own risk and neither the Auctioneer nor the Promoter nor their subsidiaries, officers and agents for themselves and for those whom they act, assume or accept any responsibility or liability of whatever nature for any injury or damage whatsoever which may occur to any person or property.

**38. ANABOLIC ANDROGENIC STEROIDS**

38.1 In accordance with the ARR, the use of anabolic androgenic steroids in thoroughbred horses is banned effective from 1 May 2014. The ARR can be viewed at the RA website http://racingaustralia.horse and are subject to change by RA without notice.

38.2 The Vendor irrevocably authorises the Auctioneer and its qualified licenced veterinary surgeon to take a blood sample from any Lot, that is not catalogued in the Sale as breeding stock (excluding weanlings and foals at foot), following the sale of such Lot.

38.3 The Auctioneer will, if requested by the Purchaser ticking the appropriate box on the acknowledgement of purchase, take or have its qualified licenced veterinary surgeon take a blood sample from any Lot that is not catalogued in the Sale as breeding stock (excluding weanlings and foals at foot), at the cost of the Purchaser, and the Auctioneer will forward the blood sample to an official racing laboratory (as defined in the ARR) selected by the Auctioneer.

38.4 A positive blood sample means a sample having detected in it an anabolic androgenic steroid, as defined as prohibited in the ARR (noting the relevant exceptions as listed in ARR AR178C(2)).

38.5 Should the blood sample prove positive the sale and purchase will automatically be cancelled and neither the Vendor nor the Purchaser will have a claim against the other nor the Auctioneer nor the Promoter.

38.6 The Purchaser agrees to pay to the Auctioneer five hundred dollars ($500.00) plus GST to recover direct costs and administration fees in regard to the taking and testing of the blood sample.

38.7 If the result is positive, the Vendor will pay on demand all costs incurred by the Auctioneer in returning the Lot the subject of the blood sample / testing to the Vendor and all other reasonable costs and disbursements incurred by the Auctioneer including, but not limited to, the commission that would otherwise be payable by the Vendor to the Auctioneer and the Promoter had the sale and purchase proceeded.

38.8 Should the blood sample prove positive to an anabolic androgenic steroid that Lot, and any person who is a party to the administration, will be under the jurisdiction of the ARR AR15D and AR178H. The Auctioneer is obliged to disclose all information about the positive blood sample to the relevant PRA.

38.9 Should the blood sample prove negative, the Purchaser will have no claim against the Auctioneer or the Promoter, and is not to be considered a guarantee of a negative result from the sampling of the Lot for anabolic androgenic steroids at any time subsequent to the Sale or the sale of the Lot.

# Conditions Of Sale

**39. INVASIVE SURGERY**

Except as disclosed in writing to the Auctioneer prior to the nomination of the Lot, the Vendor warrants that, in the absence of full and complete disclosure to the Auctioneer, the Lot has not undergone Invasive Surgery between the time of nomination of the Lot and the time the Lot is offered for sale at the Sale. If prior to the sale of the Lot the warranties provided above is, or are, inaccurate, in whole, or in part, the Vendor must immediately notify the Auctioneer in writing. If any of the above warranties are veterinary and legally found to be incorrect within thirty (30) days of the sale of the Lot, and, the Purchaser notifies the Vendor and the Auctioneer in writing thereof, within the said thirty (30) day period, the Purchaser will be entitled to cancel the sale / purchase by notice in writing within that thirty (30) day period, and, reserve its rights without the Auctioneer being liable (in any way) to either the Vendor or the Purchaser.

**40. BISPHOSPHONATES**

40.1 In accordance with welfare and integrity measures, the off-label administration of bisphosphonates to any Lot catalogued for Sale is not permitted.

40.2 The Vendor warrants that the Lot, which is a yearling, weanling or two-Year-old, has not been administered bisphosphonates. If prior to the Sale the warranty provided in the immediately preceding sentence is inaccurate, in whole, or, in part, the Vendor will immediately notify the Auctioneer in writing and the Auctioneer shall have the right to withdraw such Lot before or during the Sale.

40.3 The Vendor irrevocably authorises the Auctioneer and its qualified licenced veterinary surgeon to take a blood sample from any Lot, that is not catalogued in the Sale as breeding stock (excluding weanlings and foals at foot), following the sale of such Lot.

40.4 The Auctioneer will, if requested by the Purchaser via an elective testing for bisphosphonates request form received within twenty-four (24) hours after the date of sale of the Lot, take or have its qualified licenced veterinary surgeon take a blood sample from any Lot that is not catalogued in the Sale as breeding stock (excluding weanlings and foals at foot), at the cost of the Purchaser, and the Auctioneer will forward the blood sample to an official racing laboratory (as defined in the ARR) selected by the Auctioneer.

40.5 If the Auctioneer receives the request for elective testing for bisphosphonates after the Lot has departed the Complex, the Purchaser shall not have the right to have the elective testing for bisphosphonates conducted.

40.6 A positive blood sample means a sample having detected in it the presence of bisphosphonates.

40.7 Should the blood sample prove positive the Purchaser shall be entitled to cancel the sale by notice in writing to the Auctioneer within twenty-four (24) hours (from the time of such positive result being notified) and neither the Vendor nor the Purchaser will have a claim against the other nor the Auctioneer nor the Promoter.

40.8 The Purchaser agrees to pay to the Auctioneer five hundred dollars ($500.00) plus GST to recover direct costs and administration fees in regard to the taking and testing of the blood sample for bisphosphonates.

40.9 If the result is positive and sale cancelled by the Purchaser, the Vendor will pay on demand all costs incurred by the Auctioneer in returning the Lot the subject of the blood sample / testing to the Vendor and all other reasonable costs and disbursements incurred by the Auctioneer including, but not limited to, the commission that would otherwise be payable by the Vendor to the Auctioneer and the Promoter had the sale and purchase proceeded.

40.10 Should the blood sample prove negative, the Purchaser will have no claim against the Auctioneer or the Promoter, and is not to be considered a guarantee of a negative result from the sampling of the Lot for bisphosphonates at any time subsequent to the Sale or the sale of the Lot.

40.11 If any Lot is sold by the Auctioneer after the Lot's departure from the Complex, the Purchaser shall not have the right to request elective testing for bisphosphonates.

**41. SUSPENDED SALE**

41.1 The Vendor and the Purchaser accept, acknowledge and agree that if following a sale and purchase of a Lot;

41.1.1 within 7 days of the last day of the Sale the Lot exhibits to the Purchaser a condition that gives the Purchaser reasonable cause to believe that the breeding and racing career of the Lot could be materially adversely impacted upon;

41.1.2 such condition was not disclosed by the Vendor to the Purchaser before the sale or before possession of the Lot is taken by or on behalf of the Purchaser; and,

41.1.3 the Purchaser, strictly within 7 days of the last day of the Sale, advises the Vendor and Auctioneer of such condition in writing supported by a written report from a qualified licensed veterinary surgeon (at the cost of the Purchaser);

then the Vendor and the Purchaser may agree, in writing, to a Suspended Sale for the Suspended Sale Period on the Suspended Sale Agreed Terms.

41.2 If the dispute is not resolved within the Suspended Sale Period, the Auctioneer may appoint (but is not obligated to do so) an independent qualified licensed veterinary surgeon to inspect the Lot, at

the cost of the Purchaser, and if that independent qualified licensed veterinary surgeon determines that the condition still exists or cannot be successfully treated so that the breeding and racing career of the Lot is not materially adversely impacted upon, that independent qualified licensed veterinary surgeon's decision will be final and binding on the Vendor and the Purchaser and the purchase will be deemed to be cancelled immediately upon receipt of the written confirmation from the independent qualified licensed veterinary surgeon whose decision must be made within 35 days of last day of the Sale. Risk in the Lot will remain with the Purchaser unless the sale is cancelled pursuant to this Condition 41 whereupon the risk in the Lot will immediately revert to the Vendor upon redelivery of the Lot to the Vendor as the Vendor directs in writing, such redelivery to be at the cost of the Purchaser.

41.3 The Vendor accepts, acknowledges and agrees that the Purchaser is relieved from paying the Purchase Price until the expiration of the Suspended Sale Period, and, following the expiration of the Suspended Sale Period, if the dispute has been resolved to the satisfaction of both the Vendor and the Purchaser, the Vendor and the Purchaser must complete the sale and purchase in accordance with these Conditions and pay the Purchase Price in accordance with these Conditions but subject to any written agreement between the Vendor and the Purchaser to vary the Purchase Price or to vary the obligations between the Vendor and the Purchase pursuant to these Conditions, but in no way can any such agreement take away any rights of the Auctioneer without the prior written consent of the Auctioneer.

## 42. HENDRA VIRUS VACCINATION

The Auctioneer warns the Vendor that some countries to which a Purchaser proposes or wishes to export a Lot that the Purchaser has purchased at a Sale, prohibit absolutely the importation of Lots that have been given Hendra Virus vaccinations. If the Vendor sells a Lot to a Purchaser that has been given a Hendra Virus vaccination and has failed to disclose this fact to the Auctioneer and/or prospective purchasers and the Purchaser, and the Purchaser following the Sale, becomes aware that the Lot has been given a Hendra Virus vaccination when the Purchaser has disclosed to the Auctioneer or the Vendor that the Lot was purchased for export to a country that bans the importation of Lots that have been given Hendra Virus vaccinations, the Purchaser may cancel and terminate the purchase within 14 days of becoming aware of the fact, by giving written notice of such cancellation or termination to the Vendor, such cancellation or termination to take immediate effect from the date the Vendor receives such written notice. Risk in the Lot will remain with the Vendor if the Purchaser cancels or terminates the purchase strictly in accordance with this Condition 42, but risk in the Lot will immediately pass to the Purchaser if the Purchaser does not validly cancel or terminate the purchase as provided for in this Condition 42.

## 43. DEFINITIONS AND INTERPRETATION

43.1 In these Conditions of Sale:

"Act" means the Privacy Act 1998 (Cth) as amended from time to time;

"ARR" means the Australian Rules of Racing as adopted, administered and amended by RA from time to time;

"ASB" means the Australian Stud Book which is the official record and publication of thoroughbred bloodlines for horses in Australia;

"ATO" means the Australian Taxation Office;

"Auction Close" means the time and date at which an Online Auction Sale shall close for bidding as displayed on www.magicmillions.online;

"Auction Open" means the time and date upon which an Online Auction Sale will open for bidding as displayed on www.magicmillions.online;

means Magic Millions Sales Pty Limited (ABN 54 078 396 317) and having PAMD auctioneer's and agent's licence number 2005419 and includes its officers and agents;

"Ban" means the barring, disallowing, placing an embargo on, forbidding, prohibiting, restricting or stopping (or attempting thereto) a Lot for barrier behaviour or misbehaviour, bleeding or other injury, rogue or vice like behaviour or any other reason imposed by a PRA or any domestic or international legally appointed and existing thoroughbred horse racing authority, other than as disclosed by the Vendor to the Auctioneer as required by these Conditions of Sale and because thereof, the racing or breeding prospects of a Lot is adversely affected. A Ban on a Lot does not include a ban on a filly or mare that has been entered for the Sale only as a broodmare and not a racing or breeding prospect. For the purposes of these Conditions of Sale, "Ban" will include all bans, current (or subject to a current or potential hearing enquiry), expired, overturned, suspended or under appeal;

"Breeding Certificate" means a certificate for breeding signed by a qualified licenced veterinary surgeon addressed and delivered to the Auctioneer and dated not more than fourteen (14) Days prior to the Sale and certifying that a palpation per rectum of the ovaries, uterus and cervix, and speculum examination of the cervix and vagina has been carried out and such palpation and examination confirm that the Lot being a filly or mare represents a normal risk for reproduction. The Vendor irrevocably authorises the Auctioneer and the Promoter to release a copy of the certificate for breeding to any prospective Purchaser;

# Conditions Of Sale

"Code" means the Australian Thoroughbred Sales Code of Conduct as amended from time to time;
"Complex" means the location at which the Sale is to be conducted;
"DPIF" means the national Department of Primary Industries and Fisheries;
"EI" means equine influenza and any mutations, strains or variations thereof from time to time;
"EU" means European;
"GDPR" means the EU General Data Protection Regulation which came into effect on 25 May 2018;
"GST" has the meaning given to it in the GST Act;
"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time;
"GST Free" has the meaning given to it in the GST Act;
"Hendra Virus" means the potentially deadly zoonotic disease which is notifiable in Australia. A Lot is considered to have received the Hendra Virus vaccination if the initial dose or any subsequent booster dose of a registered vaccine has been administered.
"Howden Equine" means Howden Equine Pty Ltd (ABN 46 091 731 225 | AFSL 235666);
"Impaired Vision" means a Lot which has impaired sight in one or both eyes, and which, is sold exclusively as a thoroughbred racehorse or a thoroughbred racehorse prospect but does not include, specifically, any other type of Lot including, but not limited to, a broodmare;
"Invasive Surgery" means invasive joint surgery, surgery to repair a fracture, surgical intervention of the upper respiratory tract, abdominal surgery of any type (with the exception of the surgical repair of a non-strangulating umbilical hernia), if a male, the removal of one or both testes, or any other surgical procedure that may affect the suitability for racing or racing future of the Lot; the case of broodmares or breeding prospects includes surgery to any reproduction organ or other surgical procedure which could adversely affect the reproductive capabilities of the Lot (with the exception of Caslick's Procedure);
"Lot" means (where the context allows) any horse (includes gelding, colt, filly and mare and the expression "colt" includes Rig, share in a horse or horse syndicate, nomination for a stallion service, and in case of a mare with foal at foot, or, a mare in foal, both the mare and the foal or other Lot nominated for sale at the Sale;
"Magic Millions Export Declaration Form" means the export declaration form prescribed by and available upon request from the Auctioneer and as required by the GST Act;
"NDB" means the Privacy Amendment (Notifiable Data Breaches) Act 2017 which came into effect on 22 February 2018;
"Online Auction Sale" means a sale where Lots are listed for sale, online, on www.magicmillions.online and sold to the highest prospective Purchaser for the period commencing at the Auction Open and ending with the Auction Close and these Conditions of Sale do not apply to an Online Auction Sale;
"PAMD" means the Property Agents and Motor Dealers Act 2000 and as amended from time to time;
"Partnership" means Magic Millions Sales Partnership (ABN 99 519 379 694);
"PPSA" means the Personal Property Securities Act 2009 which took effect on 30 January 2012 and any amendments thereto from time to time;
"PPSR" means the personal property securities register established pursuant to the PPSA;
"PRA" means the Principal Racing Authority in each state and territory in Australia which control, regulate and supervise racing in each state and territory in Australia with approval of but subject to RA;
"Pregnancy Certificate" means a certificate signed by a qualified licenced veterinary surgeon addressed and delivered to the Auctioneer and dated no more than fourteen (14) days prior to the Auction and certifying a rectal and / or ultrasonographic examination has been carried out and such examination confirms that the Lot being a broodmare is pregnant. The Vendor irrevocably authorises the Auctioneer and the Promoter to release a copy of the Pregnancy Certificate to any prospective Purchaser;
"Promoter" means Magic Millions Promotions Pty Limited (ABN 41 088 197 200) or any other party, identified in the Sale Catalogue or other documentation issued in respect of the Sale as the promoter or sponsor of the Sale or a Race Series in association with which the Sale is conducted;
"Purchaser" means the person or corporation to whom any Lot is sold as referred to in Condition 2 of these Conditions of Sale;
"RA" means Racing Australia which is the peak national administration body for thoroughbred racing in Australia, responsible for the governance of the ARR and the RASB in an effort to ensure worldwide best practice standards of integrity and animal welfare. Each PRA is a member of RA
"Race Series" means the closed race series or incentive race series (if any) identified in the Sale Catalogue or other documentation issued in respect of the Sale;
"RASB" means the rules of the ASB as administered by the ASB from time to time;
"Repository" means the repository to be established by the Auctioneer / Promoter at the Complex at least four (4) days prior to the commencement of the Sale, the conditions of entry into which and use of the services of which are set out in the Repository Conditions displayed at the Repository, the terms of which the Purchaser acknowledges having read and understood prior to the purchase of a Lot;

# Conditions Of Sale

"Repository Conditions" means the conditions of entry into the Repository for the purpose of inspecting the X-Rays and other terms and conditions relating to the terms and conditions of access and inspection as displayed at the Repository;
"Rig" means a male animal in which one or both testes have not descended into the scrotum from the abdomen and is also known as a cryptorchid.
"Roarer" means a condition known as laryngeal hemiplegia, a condition caused by damage or degeneration of the laryngeal nerve and the Lot is known as a "Roarer" because of the sound they make and includes "Roarers";
"Sale" means the sale for which a Lot is nominated, accepted and offered for sale by the Auctioneer at the Complex;
"Sale Catalogue" means the catalogue to which the Sale relates and which includes the Lot;
"Sales Complex Entry Conditions" means the conditions relating to entering the Complex at which the Sale is to be conducted, as varied from time to time by the Auctioneer or Promoter.
"Security Interest" has the meaning attributed to it in the PPSA;
"Suspended Sale" means a sale where following the Purchaser being the highest bidder for the Lot and therefore the Purchaser of the Lot, an issue arises between the Vendor and the Purchaser with respect to the Lot and the Vendor and the Purchaser agree in writing to suspend the sale and purchase of the Lot for the Suspended Sale Period on the Suspended Sale Agreed Terms.
"Suspended Sale Period" means the period of time that the Suspended Sale will be, including the commencement date and the termination date, during which the Suspended Sale Agreed Terms will apply.
"Suspended Sale Agreed Terms" means those terms to be agreed by the Vendor and the Purchaser, in writing, that will apply to the Suspended Sale during the Suspended Sale Period.
"Symptoms" means any symptoms associated with Roarers, Windsuckers, Wobblers, Impaired Vision, Invasive Surgery, botulism, EI, equine morbillivirus (Hendra virus), nipah virus or any other virus, or any significant condition or symptoms indicating the need for or requiring Treatments;
"Treatments" means applications, medications, masking acts or masking attempts designed to or resulting in non-disclosure of a fault, defect or vice, or treatments for any Symptoms, that may affect the suitability for the racing or breeding future of the Lot, or treatments involving the use of anabolic androgenic steroids or which is a weanling, yearling or two (2) year old that has been treated with bisphosphonates or treatments otherwise identified and prohibited by the ARR from time to time, or any significant condition requiring antimicrobial therapy or anti-inflammatory treatment, and, has and will comply with all directions, protocols and regulations made or declared by DPIF, the ASB and all other competent authorities having lawful jurisdiction with respect to the diagnosis and treatment of EI;
"Vendor" means the person or corporation on whose behalf any Lot is sold by the Auctioneer and where more than one shall mean each severally and any two or more jointly;
"Windsucker" means a Lot which suffers from the vice of noisily drawing in and swallowing air through its mouth;
"Wobbler" means a Lot which stands or moves unsteadily or with uncertain direction;
"X-Rays" means the set of radiographs deposited at the Repository, physical or digital format, (including historical records of Invasive Surgery) made available by the Vendor with respect to a Lot for inspection by the Purchaser's qualified licenced veterinary surgeon, such X-Rays being in the minimum number and taken strictly in accordance with the specifications detailed in the Repository Conditions and otherwise subject to the Repository Conditions displayed at the Repository, the terms of which the Purchaser acknowledges as having read and understood prior to the purchase of a Lot.

43.2 Words not specifically defined in these Conditions of Sale will have the meaning one would normally attribute to them such as the name of a country, state or territory, as referred to in these Conditions of Sale.

43.3 Where the Purchaser of any Lot comprises more than one person or corporation these Conditions of Sale shall bind each such person or corporation severally and any two or more of such persons or corporations jointly.

43.4 A prospective Purchaser is taken to be a principal unless, before bidding, the prospective Purchaser has given to the Auctioneer a copy of a written authority from a third party principal to bid for or on behalf of that third party principal.

## 44. NON-APPLICABILITY OF CONDITIONS 7 AND 8 WITH RESPECT TO THE SALE OF LOTS LOCATED IN NEW ZEALAND ("NZ LOTS") AT THE TIME OF THE SALE

44.1 Except where and to the extent a service is provided in the Jurisdiction in association with the sale/purchase of an NZ Lot (in which case, in respect of the associated service provided in the Jurisdiction, GST will not be payable and NZ GST may be payable), Conditions 7 and 8 of these Conditions of Sale do not apply to the sale/purchase of an NZ Lot

44.2 For the sake of certainty, except for Conditions 7 and 8 of these Conditions of Sale, all other Conditions of Sale (unless otherwise specifically excluded) apply to the sale/purchase of NZ Lots.

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44.3 For the purposes of this Condition 44, and particularly, the sale/purchase of NZ Lots, the following words will have the following meanings:

44.3.1 NZ GST means goods and services taxes charged in accordance with the provisions of the NZ GST Act.

44.3.2 NZ GST Act means the Goods and Services Tax Act 1985 as amended.

44.3.3 Any word not specifically defined in this Condition 44, will have the meaning attributed to it in the NZ GST Act.

44.3.4 The current NZ GST Rate for standard rated supplies is 15%.

44.3.5 The NZ GST Rate may change as determined pursuant to the NZ GST Act from time to time and the Vendor and Purchaser must confirm for themselves prior to the sale the then current NZ GST Rate applicable.

44.4 All NZ Lots are offered on an NZ GST exclusive basis, and NZ GST is payable on the Purchase Price of an NZ Lot where the Vendor is registered for NZ GST.

44.4.1 The NZ GST registration status of each Vendor is noted on the Sale Catalogue page for each NZ Lot offered.

44.4.2 Where a Vendor is fully registered for NZ GST, NZ GST of 15% (or such payment as is at that time required to be paid by the NZ GST Act) will be added to the final bid price.

44.4.3 Where a Vendor is not registered for NZ GST, no NZ GST is added to the Purchase Price.

44.4.4 The Vendor and the Purchaser undertake to do all things necessary to ensure that the provisions of the NZ GST Act are met in relation to sales that do not, or claim not to, attract NZ GST.

44.5 In the event of the Purchaser being a Non-Resident for NZ GST purposes advising the Auctioneer that an NZ Lot is to be exported from New Zealand and submitting a completed export declaration form in a form approved by the Auctioneer ("EDF") so that the sale is zero-rated for NZ GST purposes, then:

44.5.1 The Vendor or his agent (which will not include the Auctioneer as it will not act as an agent for this purpose) shall, in the course of making the sale, enter such NZ Lot for export under the NZ Customs and Excise Act 2018 and export it out of New Zealand provided that the purchaser shall bear all costs of and incidental to the export of such NZ Lot;

44.5.2 Each NZ Lot will be exported out of New Zealand within 28 days of the purchase or within such further time as the New Zealand Inland Revenue Department ("NZ IRD") may permit (currently an extended time of up to 24 months is permitted by NZ IRD);

44.5.3 If the requirements of Conditions 44.5.1 and 44.5.2 of these Conditions of Sale or any other requirement for the Zero Rating of an NZ Lot under the NZ GST Act are not complied with, the purchaser will pay NZ GST in addition to the Purchase Price; and

44.5.4 The agent responsible for shipping and freighting each NZ Lot must comply with all requirements and regulations of the NZ IRD and any other governmental authority, body or department as regards the export of each NZ Lot or thoroughbred horses in general and the receipt of overseas funds.

44.6 The Auctioneer will promptly and as agent for the Vendor provide to the Purchaser a NZ GST invoice addressed to the Purchaser with all required NZ GST taxable supply information.

44.7 Neither the Auctioneer, nor the Promoter, or any of their associated entities accept (and this is agreed by the Vendor and Purchaser) liability for any NZ GST liability arising as between the purchaser and the Vendor and the NZ IRD in respect of each NZ Lot sold by the Auctioneer either at auction or by private sale.

**45. APPLICABILITY OF NEW ZEALAND PERSONAL PROPERTY SECURITIES ACT 1999 ("NZ PPSA") WITH RESPECT TO LOTS LOCATED IN NZ**

45.1 For the purposes of this clause:
"NZ PPSA" means the New Zealand Personal Property Securities Act 1999 which took effect on 1 May 2002 and any amendments thereto from time to time;
"NZ PPSR" means the New Zealand personal property securities register established pursuant to the NZ PPSA;
"NZ Security Interest" has the meaning attributed to security interest in the NZ PPSA;

45.2 Condition 32 of these Conditions of Sale does not apply to any part of a Lot (including any proceeds of that Lot) that it is located in New Zealand from time to time.

45.3 Condition 45 of these Conditions of Sale applies to any part of a Lot (including any proceeds of that Lot) that it is located in New Zealand from time to time.

45.4 The Purchaser grants to the Auctioneer and the Vendor a NZ Security Interest under the NZ PPSA in the Lot (including any proceeds of the Lot) as security for any monies due and owing by the Purchaser to either of them with respect to any Lot purchased by the Purchaser, including for the avoidance of doubt the Purchase Price, and/or any monies paid by the Auctioneer to the Vendor with respect to any Lot purchased by the Purchaser (or any other of these Conditions of Sale with respect to which monies are due and owing by the Purchaser to the Auctioneer), and/or, any credit or financing arrangement for value granted by the Auctioneer to the Purchaser with respect to any Lot and, which may be outstanding from time to time.

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45.5 The NZ Security Interest granted pursuant to Condition 45.4 is a purchase money security interest for the purposes of the NZ PPSA to the extent that it secures the Purchaser's obligations to pay the Purchase Price for the Lot.

45.6 The Purchaser accepts, acknowledges and agrees that it is receiving valuable consideration as, at the date of delivery of the Lot to the Purchaser, it acquires rights in the Lot and the security interest is attached to the Lot which in no way has been deferred or postponed.

45.7 In addition to the NZ Security Interest granted in accordance with Condition 45.4, the Purchaser grants the Auctioneer and the Vendor a NZ Security Interest under the NZ PPSA in any foals of the Lot (including proceeds).

45.8 The Purchaser accepts acknowledges and agrees that the Vendor and the Auctioneer (including as agent on behalf of the Vendor) has the right, pursuant to the NZ PPSA, to register a financing statement on the NZ PPSR with regard to the NZ Security Interests granted in accordance with Conditions 45.4 and 45.7 at the cost of the Auctioneer.

45.9 The Vendor and the Purchaser irrevocably authorise the Auctioneer to register its financing statements in accordance with Condition 45.8. The Purchaser will promptly provide all information and do all things that the Auctioneer or the Vendor may require to perfect and maintain the NZ Security Interests granted in accordance with Conditions 45.4 and 45.7.

45.10 The Auctioneer will deregister, at its cost, and in its absolute discretion, the financing statement that it has registered pursuant to Condition 45.4 and Condition 45.7 from the NZ PPSR as soon as practically possible following the payment of all moneys due and owing by the Purchaser with respect to all Lots sold or purchased through the Auctioneer and with respect to which moneys are due and owing by the Purchaser from time to time.

45.11 The Purchaser accepts, acknowledges and agrees that it will not compete or contest with the Auctioneer (in its own right or as agent for the Vendor, or, in any other capacity) with respect to any security interest available for registration to the Auctioneer or registered by the Auctioneer with respect to any Lot, the progeny of any Lot or any interest claimed by the Auctioneer.

45.12 The Vendor grants to the Auctioneer, a NZ Security Interest in the Lot and in any foals of the Lot (including any proceeds) as security for any monies due and owing by the Vendor to the Auctioneer with respect to any Lot sold by the Vendor, including for the avoidance of doubt all commissions, fees, charges payable by the Vendor with respect of the sale of the Lot or any other Lot .

45.13 The Vendor accepts, acknowledges, and agrees that the Auctioneer has the right, pursuant to the NZ PPSA, to register a financing statement on the NZ PPSR with regard to the NZ Security Interest granted in accordance with Conditions 45.12 at the cost of the Auctioneer and irrevocably authorises the Auctioneer to do so.

45.14 The Purchaser irrevocably appoints the chief executive officer and the chief financial officer, for the time being, of the Auctioneer to execute all documents and do all things necessary to enable the Auctioneer to secure its interest (and those of the Vendor) as hereinbefore and hereinafter referred to and to ensure that the Auctioneer (and the Vendor) obtains and maintains perfected its Security Interest under the NZ PPSA and, as registered on the NZ PPSR, which will have priority over all other NZ Security Interests or encumbrances over or affecting the Lot.

45.15 The Purchaser will not except and until the Purchaser has paid all monies due and owing with respect to a Lot (and as required pursuant to these Conditions of Sale) attempt to register or assist any third party to attempt to register, or register, any interest on the NZ PPSR in respect of that Lot that could compete or conflict with the security interest of the Auctioneer ( and the Vendor) without the prior written consent of the Auctioneer, such consent to be given or refused by the Auctioneer in its absolute discretion.

45.16 The Purchaser agrees that, if, the Purchaser breaches, or attempts to breach, or is a party to any breach or attempted breach of this Condition 45 of these Conditions of Sale, the Auctioneer may terminate any credit or finance arrangement with the Purchaser or any related body corporate or associated entity with respect to any Lot purchased by the Purchaser (or any other Lot with respect to which a credit or finance agreement exists between the Auctioneer and the Purchaser) by giving the Purchaser seven (7) days to remedy such breach, failing which the Auctioneer may cancel such credit or finance arrangement and all monies due and owing by the Purchaser or any related body corporate or associated entity will immediately become payable within fourteen (14) days of the giving of such notice.

45.17 Notwithstanding any other term or condition contained in these Conditions of Sale, the Vendor and the Purchaser accept, acknowledge and agree that in the event that the Auctioneer is of the opinion that the Purchaser is in breach of this Condition 45 of these Conditions of Sale, the Auctioneer may determine, in its absolute discretion, that a dispute exists between the Vendor and the Purchaser and the Auctioneer may refuse to release any monies due or payable to the Vendor or pay to the Vendor any monies due and owing that the Auctioneer may have otherwise agreed to pay pursuant to these Conditions of Sale.

45.18 To the extent permitted by the NZ PPSA, the Purchaser agrees that the provisions of Part 9 of the NZ PPSA will not apply to these Conditions of Sale (except to the extent the Auctioneer agrees to their application) and agrees to waive all rights to any of the following provided for in the NZ PPSA, including, but not limited to, the following:

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45.18.1 section 114(1)(a) (which relates to a debtor's right to receive notice of sale of collateral by a secured party);
45.18.2 section 116 (right to receive a statement of account);
45.18.3 sections 120(2) and 121 (requirement that a secured party give notice to the debtor if it proposes to take collateral in satisfaction of an obligation and a debtor's right to object);
45.18.4 sections 125, 129 and 131 (relating to removal of an accession); and
45.18.5 sections 133 and 134 (which relate to a debtor's rights to reinstate a security agreement after default); and
45.18.6 any notice required under the NZ PPSA (including a notice or copy of a verification statement).

45.19 Notwithstanding any other term or condition contained in these Conditions of Sale, the Auctioneer will not be obliged to pay the Vendor any part of the Purchase Price if the Vendor has failed to provide the Auctioneer with evidence of the discharge of any NZ Security Interest registered on the NZ PPSR by the Vendor or any other party, or, any other encumbrance affecting the Lot.