

## CONDITIONS OF SALE AND PURCHASE

### 1. DEFINITIONS

Unless otherwise stated, or the context otherwise requires, the words and expressions listed below shall bear the meanings ascribed to them:

- 1.1 **Association** - the Thoroughbred Breeders' Association of South Africa, an association registered as an animal breeders' society;
- 1.2 **Auctioneer/s** - the auctioneer/s appointed by the Association for the conduct of the Sale;
- 1.3 **Buyer** - the highest bidder to which a Horse is sold on auction;
- 1.4 **Buyer's Card** - the card issued by the Association to Buyers which enables Buyers to participate in Sales;
- 1.5 **Conditions** - these conditions of sale and purchase together with any appendices hereto;
- 1.6 **Consumer Protection Act** - the Consumer Protection Act No 68 of 2008;
- 1.7 **Credit Terms** - the maximum number of days from the date of Sale within which a Buyer is required by the Association to settle his Debt in full;
- 1.8 **Debt** - the total amount owing by a Buyer to the Association in respect of the purchase of a Horse which shall include but not be limited to, the Purchase Price or any unpaid portion thereof, together with any applicable interest thereon, insurance premiums, the cost of transporting, maintaining and stabling the Horse, any monies paid in discharge of any lien over a Horse in terms of clause 10.3, sales levies, legal fees, costs and microchip fees;
- 1.9 **Direct Payment** - when a Buyer settles the Debt directly with the Vendor, on terms agreed with the Vendor;
- 1.10 **Horse** - a thoroughbred horse and "Lot" shall have a corresponding meaning;
- 1.11 **National Credit Act** - the National Credit Act No 34 of 2005;
- 1.12 **NHRA** - the National Horseracing Authority of Southern Africa, an association which carries out racehorse and jockey control monitoring;
- 1.13 **Parties** - the parties to these Conditions being the Association, Vendors and Buyers; and "**Party**" means one of the parties to these Conditions as the context may require;
- 1.14 **Passport** - a Horse's identity document, as referred to in the rules of the NHRA;
- 1.15 **Purchase Facility** - in respect of each Buyer, the maximum amount in South African Rands that that a Buyer will be allowed to buy for at an auction;
- 1.16 **Purchase Price** - the purchase price payable by a Buyer for a Horse, which unless the context otherwise indicates shall be deemed to include VAT;
- 1.17 **Sale Documents** - includes any of the following documents completed and/or signed by or on behalf of:
  - 1.17.1 the Vendor:-
    - 1.17.1.1 an entry/nomination form;
    - 1.17.1.2 a reserve/valuation form;
    - 1.17.1.3 any power of attorney or agent authorisation form; and
  - 1.17.2 the Buyer:-
    - 1.17.2.1 a credit request;
    - 1.17.2.2 an application for a Buyer's Card;
    - 1.17.2.3 an entry in the vendor roll;
    - 1.17.2.4 the Association's sales invoice;
    - 1.17.2.5 any power of attorney or agent authorisation form.
- 1.18 **Sale** - the sale of a Horse by the Association on behalf of a Vendor by way of auction;
- 1.19 **Sales Ring** - the ring in and/or from which Horses are paraded and sold;
- 1.20 **Shortfall** - the difference, if any, between the Debt and the Purchase Price realized at a Sale contemplated in clause 10.6;
- 1.21 **Surplus** - the additional amount, if any, which may result from the Horse being repossessed and resold at a Sale contemplated in clause 10.6, being the difference between the Purchase Price for which the Horse is sold at the original Sale and the Purchase Price for which the Horse is sold at a Sale contemplated in clause 10.6.
- 1.22 **VAT** - Value Added Tax as defined in the Value Added Tax Act No 89 of 1991; and
- 1.23 **Vendor** - the person on whose behalf a Horse is accepted by the Association for Sale at an auction.
- 1.24 Any reference to the Association, a Vendor, a Buyer or the Auctioneer shall be deemed, unless the context requires otherwise, to include a reference to the respective agents, representatives and employees of the Association, Vendor, Buyer or Auctioneer.
- 1.25 For the avoidance of doubt a sale by auction is complete when the Auctioneer announces its completion by the fall of the hammer or in any other customary manner.
- 1.26 **Signature** - Signature includes a manual signature and an electronic signature in terms of the Electronic Communications and Transactions Act no. 25 of 2002.

### 2. INTRODUCTION

- 2.1 These Conditions shall apply to all sales of Horses by the Association on behalf of a Vendor by way of auction.
- 2.2 The Parties hereby agree to be bound by the terms and conditions contained herein.
- 2.3 These Conditions are reproduced in the sales catalogue pertaining to the Sale, which catalogue is available free of charge to all Buyers and Vendors who attend the Sale. In addition the Conditions are available by printable web-page on the Association's website ([www.tba.co.za](http://www.tba.co.za)) and from the Association's sales premises at corner Rand Airport Road and van Riebeeck Road, Germiston, Gauteng Province.

### 3. NO WARRANTIES OR REPRESENTATIONS; INDEMNITY

- 3.1 Unless otherwise provided for in these Conditions, all Horses shall be sold "voetstoots", on an "as is" basis, with all faults and defects.
- 3.2 **Neither the Association nor the Auctioneer makes or gives any representation, warranty or guarantee, express or implied, whatsoever:**
  - 3.2.1 **in respect of the correctness of any statement or information made by a Vendor pertaining to a Horse including any statement or information contained in any Sale Documents or the sales catalogue, and neither the Association nor the Auctioneer shall be liable for any error in any such statement or information;**

- 3.2.2 as to the merchantability, fitness for any particular purpose, soundness, condition or quality of any Horse offered for Sale.
- 3.3 **Neither the Association nor the Auctioneer accepts any responsibility for:**
- 3.3.1 any defects or errors in relation to the pedigree, description, condition or other particulars relating to a Horse, including, without limitation, the performance of a Horse; or
- 3.3.2 any loss or damage suffered by the Vendor as a result of the accidental omission by the Association of any details of or reference to a Horse entered by the Vendor; save and except where the Association and/or the Auctioneer may be held liable in terms of section 61 of the Consumer Protection Act.
- 3.4 The Vendor may have made oral or written statements or published brochures or advertisements concerning the soundness, physical conditions or the racing abilities of a Horse. Such statements or advertisements do not constitute warranties and do not form part of these Conditions.
- 3.5 If the Vendor gives a special warranty in respect of a particular Horse which is inaccurate or misleading in any material respect, the Buyer's remedy, if any, shall lie against the Vendor and not against the Association or the Auctioneer.
- 3.6 It is specifically recorded that terms such as "in foal", "believed in foal", "tested in foal", "certified in foal", "believed definitely in foal", "pregnancy certificates available", shall not constitute a warranty by the Association or the Auctioneer that any particular mare entered for sale, is in fact in foal at the time of the Sale. The Buyer, if he so wishes, shall be entitled to verify the claim of pregnancy.
- 3.7 **It is the sole responsibility of the Buyer to check the inoculation and/or the vaccination status of any Horse which he may be interested in buying in advance and to satisfy himself that they meet all legal requirements, including the legal requirements stipulated by the NHRA, and his own requirements.**
- 3.8 **The Buyer acknowledges that he has made the purchase in reliance on his own enquiries and inspection, that he has not relied on any statement or representation made by or on behalf of the Vendor, the Association or the Auctioneer and that no compensation shall be payable by the Association or the Auctioneer for any faults, imperfections, conditions or other defects in the Horse, save and except where the Association and/or the Auctioneer may be held liable in terms of section 61 of the Consumer Protection Act.**
- 3.9 **The Vendor and the Buyer indemnify and hold the Association and the Auctioneer harmless against any claims arising from any cause whatsoever relating to the sale of any Horse, and the manner in which the Auctioneer conducts the auction, including but not limited to any administrative or technical error or malfunction, or other act or omission of the Association or any of its officers, directors, employees, agents and subcontractors, save and except where the Association and/or the Auctioneer may be held liable in terms of the Consumer Protection Act.**
- 3.10 **The Association and the Auctioneer shall not be held responsible in the event of the incorrect Horse being auctioned at any particular time, it not being the duty of the Association or the Auctioneer to verify the identity of the Horse being auctioned.**
- 3.11 **Under no circumstances whatsoever shall the Association or the Auctioneer be liable for any consequential losses of either the Vendor or the Buyer relating to the sale and purchase of any Horse at a Sale save and except where the Association and/or the Auctioneer may be held liable in terms of section 61 of the Consumer Protection Act.**
4. **VENDOR'S DUTY TO DISCLOSE; BUYER'S RIGHT TO CANCEL A SALE**
- 4.1 The Vendor of any Horse which is or which shows any signs of being a wind-sucker, a weaver, a wobbler, or which suffers from impaired vision or permanent eye injury or eye defect, shall be obliged to disclose such condition(s) in writing to the Association prior to the auction of the Horse concerned to enable the Auctioneer to announce such condition/s at the time of the Sale.
- 4.2 A wind-sucker is a Horse which habitually swallows air whether in association with grasping fixed objects with incisor teeth or not.
- 4.3 A weaver is a Horse which habitually swings its head and neck to and fro and alternatively transfers weight from one forelimb to the other.
- 4.4 A wobbler is a Horse which suffers from a neurological disease caused by compression of the spinal cord and resulting in lack of balance and co-ordination.
- 4.5 The Buyer shall be entitled to cancel the sale of a Horse found, within 10 days of its sale, to have been suffering, at the time of the Sale, from any of the conditions specified in clause 4.1 above, provided that:
- 4.5.1 the existence of any such condition was not announced at the time of the Sale of the Horse concerned; and
- 4.5.2 the Buyer produces, at his own expense, a veterinary certificate certifying the existence, at the time of the Sale, of any such condition; and
- 4.5.3 the Buyer satisfies the Association or its authorised nominee/s that the Vendor of the Horse knew or ought reasonably to have known of the existence of any such condition; and
- 4.5.4 the Buyer has given written notice of his intention to cancel the Sale to the Association within 10 days of the date of the Sale of the Horse concerned; and
- 4.5.5 the Buyer shall be obliged, at his own expense, to return the Horse to the Vendor. The Buyer shall be entitled to recover, directly from the Vendor, the expense he incurred in returning the Horse.
- 4.6 If the Vendor disagrees with the veterinary certificate supplied by the Buyer in terms of clause 4.5.2 above the Association may appoint an independent veterinary surgeon at the expense of the Vendor, whose certificate shall be binding upon all parties concerned.
- 4.7 Except as provided for in Clause 4.9 the Vendor of a Horse is obliged to fully disclose and document by way of a veterinary report in the Repository described in clause 20, or such other place as the Association may indicate, that one or more of the following conditions are applicable to the aforementioned Horse:
- 4.7.1 has undergone any corrective surgery related to being a wobbler.
- 4.7.2 is two years of age or less and has undergone:
- 4.7.2.1 invasive joint surgery, or
- 4.7.2.2 surgical intervention of the upper respiratory tract.
- 4.7.3 has undergone abdominal surgery of any type that occurred in the past two (2) years preceding the day of the Sale and any resection of an abdominal organ (partial or complete) at any time except to repair a ruptured bladder in a new born foal.

- 4.7.4 has been nerved.
- 4.7.5 is a broodmare and has, within the last two (2) years, undergone either:
- 4.7.5.1 a caesarean section delivering a fetus, or
  - 4.7.5.2 surgery involving the cervix, or
  - 4.7.5.3 an urethral extension, or
  - 4.7.5.4 the removal of an ovary.
- 4.7.6 has undergone any invasive Practice which intentionally conceals a material defect or chronic lameness.
- 4.8 In the event of a breach by the Vendor of clause 4.7, the Buyer may elect to cancel the Sale and return the Horse to the Vendor by giving notice of cancellation in writing to the Association within 10 days of the date of Sale. Notice of cancellation must be accompanied by a veterinary certificate confirming the condition. The Buyer acknowledges that he shall have no other or further claims against the Vendor, the Auctioneer or the Association in the event of the cancellation of the Sale in terms of this clause.
- 4.9 Horses in this Sale may have been subject to surgery(ies) designed to affect permanent changes in physical make-up, which includes, without limitation, transphyseal bridge, periosteal transection, manipulation and elevation. Disclosure by Vendors of such surgery(ies) for Horses in this Sale is voluntary. Non-disclosure of this surgery(ies) shall not be grounds for cancellation of the Sale.
- 4.10 The administration of any anabolic steroids, steroidal or non-steroidal anti-inflammatory drugs and analgesics to any Horse entered for Sale is prohibited. The administration of any such drugs and analgesics within the immediately preceding two months prior to the Sale, or during the Sale, must be disclosed and documented in the Repository described in clause 20, or in such other place as the Association may indicate.
- 4.11 The Buyer of a Horse may, after the Sale but before the Horse leaves the Association's sales premises and at his own cost, request that the Horse
- 4.11.1 be examined for the presence of any drug as described in clause 4.10 above.
- 4.12 The examination must be carried out on the Association's Sales premises by a veterinary surgeon appointed by the Buyer and must be concluded within 48 hours from the end of the Sale. The Buyer and the Vendor, or their authorised representatives shall be entitled to be present during the examination.
- 4.13 The provisions of clause 4.6 above, where applicable, shall apply if the Vendor disagrees with the veterinary certificate supplied by the Buyer.
- 4.14 If the presence of any drug as described in clause 4.10 above is found in the Horse before it leaves the Association's sales premises, and such administered drug has not been disclosed and documented in the Repository, the Buyer may elect to cancel the sale and return the Horse to the Vendor. The Buyer acknowledges that he shall have no other or further claims against the Vendor, the Auctioneer or the Association in the event of the cancellation of the Sale in terms of this clause.
- 4.15 The Buyer of a Horse may, after the Sale but before the Horse leaves the Association's sales premises and at his own cost, request that the Horse:
- 4.15.1 be subjected to an upper respiratory endoscopic examination (excluding the trachea)
- 4.16 The examination must be carried out on the Association's sales premises by a veterinary surgeon appointed by the Buyer and must be concluded within 48 hours from the end of the Sale. The Buyer and the Vendor, or their authorised representatives shall be entitled to be present during the examination. The provisions of clause 4.6, where applicable, shall apply if the Vendor disagrees with the veterinary certificate supplied to the Buyer.
- 4.17 Should the Horse be found to have one of the following conditions: split palate, laryngeal hemiplegia, laryngeal hemiparesis with incomplete abductor function, epiglottal entrapment, persistent dorsal displacement of the soft palate, arytenoid chondritis, subepiglottal cyst, soft palate cyst, rostral displacement of the palatopharyngeal arch, nasopharyngeal cicatrix, space occupying lesions or malformation which comprise the diameter of the upper respiratory tract; and this condition will materially influence the Horse's further racing or breeding career, then the Buyer shall be entitled to cancel the Sale, provided that:
- 4.17.1 the Buyer gives written notice of his intention to cancel the Sale to the Association within 10 days of the date of the sale of the Horse concerned; and
  - 4.17.2 the Buyer shall be obliged, at his own expense, to return the Horse to the Vendor. The Buyer shall be entitled to recover, directly from the Vendor, the expense he incurred in returning the Horse.
- 4.18 For the purposes of this Sale, laryngeal hemiparesis is defined as asynchronous and/or asymmetric movement of the arytenoid cartilage where full arytenoid cartilage abduction cannot be achieved and maintained. This is assessed by endoscopic examination in the standing unsedated Horse.
- 4.19 The Association reserves the right within 30 days from the first day of the relevant Sale to cancel any Sale if in its sole discretion it is of the view that exceptional circumstances warrant such action.
- 4.20 Notwithstanding the cancellation of a Sale in terms of clause 4.5, 4.8, 4.14, 4.17 or 4.19 above:
- 4.20.1 the Vendor of the Horse shall nevertheless remain liable for the Auctioneer's levy, as provided for in clause 12 below, as if the Sale had not been cancelled; and
  - 4.20.2 neither the Association nor the Auctioneer shall be liable for any failure by the Vendor to disclose any of the conditions specified in clauses 4.1, 4.7, 4.10 or 4.17 above, or for any damages suffered by the Vendor or the Buyer pursuant to any cancellation arising from such failure to disclose.
- 4.21 Except as provided for in this clause 4 or other express provisions of these Conditions, no other condition, fact or defect, whether patent or latent shall constitute grounds for the cancellation of the Sale or for a claim for damages, save and except where the Association may be liable therefore in terms of section 61 of the Consumer Protection Act. No Horse shall be returnable for any physical or performance-related reason.
- 4.22 The Association will attempt to resolve Sales related disputes in relation to a Horse, that arise between a Buyer and a Vendor, and which disputes are not covered by Clause 4, in whichever way it deems appropriate and suitable. If, however, it is unable to do so within two months from date of Sale, having used all reasonable endeavours, then the dispute, of whatever nature in relation to a Horse, shall lie and must be resolved by and between Buyer and Vendor only.

The Association, who only act as Agent, shall not take any further responsibility for, nor become further involved in such dispute, nor shall it constitute grounds for cancellation of the Sale or for a claim for damages against the Association.

4.23 It is recommended that Buyers and Vendors resort to Mediation rather than litigation where a dispute cannot be resolved as above.

## 5. BIDDING

- 5.1 A bid taken by the Auctioneer from a person who is not in possession of a valid Buyer's Card issued by the Association for the Sale is invalid.
- 5.2 **The Parties acknowledge that announcements are made from the Auctioneer's rostrum before the commencement of the Sale and from time to time during and after the Sale. The Association disclaims all responsibility for any claims or damages suffered by any person on account of not having heard such announcements.**
- 5.3 Subject to the provisions of clause 5.6 below, the highest bidder whose bid is accepted by the Auctioneer, shall be the Buyer of the Horse; provided that, if a dispute arises between two or more bidders in respect of the Sale of a Horse, and/or if due to any administrative or technical error or malfunction or other act or omission of the Association or any of its officers, directors, employees, agents and subcontractors, the Auctioneer deems it necessary or desirable, the Auctioneer may in his sole discretion, cancel the Sale and re-auction the Horse, or declare the identity of the Buyer of the Horse (which declaration will be final and binding).
- 5.4 The decision of the Auctioneer shall, in the circumstances specified in clause 5.3 above, be absolute, final and binding on all Parties.
- 5.5 The Auctioneer shall notify bidders prior to the commencement of the sale that the Sale of a Horse by auction is subject to a reserved or upset price and/or subject to a right to bid by or on behalf of the Vendor or Auctioneer.
- 5.6 A Vendor may impose a reserve price on a Horse by giving written instructions in this regard to the Auctioneer specifying the reserve price, prior to commencement of the Sale. The Auctioneer shall have the right to bid as agent on behalf of the Vendor to such reserve price. In the absence of such instructions, the Auctioneer will sell to the highest bidder. **The Vendor and the Buyer indemnify and hold the Auctioneer harmless against any claims arising from any errors made by the Auctioneer in conducting the Sale, including any errors made with regard to the reserve price. This clause constitutes a notice for purposes of section 45 of the Consumer Protection Act 68 of 2008 that the sale is subject to reserve prices.**
- 5.7 The Auctioneer shall determine and regulate the advance of the bidding and shall be entitled, in his sole discretion, to ignore or reject any bid, without giving any reasons for such action.
- 5.8 The amount of a bid shall not include any VAT.
- 5.9 Only Buyers in possession of a valid Buyer's Card may bid at a Sale. If, after the fall of the hammer, it transpires that the person to whom a Horse was sold was not, at the time of such Sale, in possession of a valid Buyer's Card, that Sale shall be null and void *ab initio* (meaning "from the beginning") and the Horse shall immediately be re-auctioned. When the Horse is sold the Buyer shall sign the vendor roll forthwith as acknowledgement of purchase.
- 5.10 The Auctioneer or the Association may withdraw any Horse from the Sale without giving reasons for doing so.

## 6. EXPORT AND IMPORT REQUIREMENTS

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

## 7. CHOSEN ADDRESS (DOMICILIUM CITANDI ET EXECUTANDI)

- 7.1 A Buyer must provide current contact details, including current telephone and cellphone numbers and a current physical, email and postal address, in his application for a Buyer's Card. The physical address provided by a Buyer in his application for a Buyer's Card shall be deemed, for the purposes of these Conditions, to be his chosen address (domicilium citandi et executandi) for all purposes under these Conditions, whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for whatsoever purpose under these Conditions.
- 7.2 The association is authorized by the vendor and the buyer to collect their respective personal information, store it in any format (including any database hosted anywhere in the world) and to use and disclose such personal information in any manner specifically for the purpose of the sale, and any reasonably ancillary purpose, for as long as the association deems it necessary, without any further notice to, or consent from, the vendor or the buyer.

## 8. RISK, OWNERSHIP AND MAINTENANCE COSTS

- 8.1 The Association accepts a Horse for sale from a Vendor on condition that:
- 8.1.1 prior to the Sale, a prospective Vendor lodges with the Association an up-to-date passport, as provided for in the rules of the NHRA; and
- 8.1.2 the Association is specifically authorised to complete and sign, on behalf of the Vendor, a change of ownership document, as provided for in the rules of the NHRA; and
- 8.1.3 the Vendor signs an entry/nomination form prior to the Sale stating that he or she is the owner or rightful holder of the Horse and submits such form to the Association.
- 8.2 **All risk in respect of a Horse sold at the Sale shall pass to the Buyer "on the fall of the hammer", at which time the Buyer shall forthwith be responsible for the care, keep, custody, control, insurance and security of and for the Horse and for all expenses relating thereto and shall bear the risk of injury to, sickness or death of the Horse. The Buyer agrees to release, defend, indemnify and hold the Association, its officers, employees, agents and representatives and the owners or operators of facilities in use by the Association (collectively "the Indemnified Parties") harmless from all losses, damages, liabilities, expenses, claims, causes of action or legal fees arising out of or related to the possession, care, keep, custody, control or maintenance of any Horse on which he is the successful bidder, including any claims arising out of injuries, sickness, death or damage caused by the Horse after the fall of the hammer, save and except where the Indemnified Parties or any of them may be held liable in terms of section 61 of the Consumer Protection Act.**
- 8.3 The Buyer shall not allow or cause any Horse bought in terms of these Conditions to become subject to any lien, hypothec or other form of security until such time as the Debt has been settled in full. In the event of such lien, hypothec or other form of security arising, the

Association shall be entitled to act in accordance with the provisions of clause 10.3 below.

- 8.4 The Buyer shall insure the respective interests of the Association and himself in all Horses bought for a period of 90 days from date of the Sale, before leaving the Association's sales premises. If the Buyer's insurance broker does not confirm the insurance cover after the Sale, the Association may automatically insure the Horse and any premiums paid in this regard shall be for the account of the Buyer. The Buyer shall also ensure that the Association's interest is endorsed on the policy provided that:
- 8.4.1 if the Purchase Price of any Horse remains unpaid after a period of 90 days, for any reason whatsoever, the Association shall be entitled, at the cost of the Buyer, to extend such period of insurance until such time as the Purchase Price is paid in full by the Buyer;
- 8.4.2 where the Purchase Price is paid before a period of 90 days has elapsed, the Buyer shall be entitled to cancel the policy of insurance with effect from such date;
- 8.4.3 in the event that the Association arranges insurance for the Buyer it shall be entitled to a handling fee in respect of such insurance, and shall disclose to the Buyer the cost of any insurance supplied including the amount of the handling fee upon request. The Association shall further provide the Buyer with a copy of the insurance policy upon request.
- 8.5 Save as provided in these Conditions or unless other prior arrangements in writing have been made with the Association, the Buyer shall remove the Horse purchased promptly from the Association's sales premises after the Sale. Should the Buyer fail to remove the Horse promptly, the Association may remove the Horse from the sales premises at the Buyer's risk and expense or, alternatively, charge the Buyer for stable space and keep, and any other charges incurred by the Association in this regard, which charges the Buyer agrees to pay to the Association on demand.
- 8.6 Ownership in the Horse shall only pass to the Buyer upon payment of the Debt (as defined in clause 1.8 above) notwithstanding that the Buyer may have taken possession of the Horse. Until the Debt has been paid in full, the Buyer shall not be entitled to have the Horse registered in his name or that of his nominee.
- 8.7 The Buyer shall, until such time as the Debt has been paid in full, keep the Association advised at all times of the physical address at which the Horse purchased is being kept and the Association shall have the right to physically inspect the Horse at any stage prior to payment of the Debt in full. In the event that the Horse is moved to another location prior to the payment of the Debt in full, the Buyer shall notify the Association of the change in location in writing within 7 days of such change.

## 9. PARTICIPATION REQUIREMENTS AND PAYMENT

- 9.1 No prospective Buyer shall be authorised to bid at a Sale unless and until he is in possession of a valid and current Buyer's Card issued by the Association in respect of the Sale in question, and has provided to the Association an acceptable form of identification such as a South African Identity Book or a Passport, or any other applicable form of identification as stipulated in Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act no. 38 of 2001, published in Notice No. R1595 in Gazette No. 24176 of 20 December 2002.
- 9.2 No Buyer who has materially breached any provision of these Conditions, or who still has Debts outstanding from a previous Sale shall be issued with a Buyer's Card.
- 9.3 The Association reserves the right not to enter into a credit agreement (as defined in the National Credit Act) with any prospective Buyer on reasonable commercial grounds and in accordance with its customary risk management and underwriting practices.
- 9.4 The Association reserves the right to determine for itself any scoring or other evaluative mechanism or model to be used in managing, underwriting and pricing its credit risk in a manner which is consistent with the provisions of the National Credit Act.
- 9.5 Subject to compliance with the provisions of clause 9.6 below, only the person to whom the Buyer's Card is issued and whose signature appears on the Buyer's Card, shall be allowed to sign for the purchase on the vendor roll. Where the signature on the vendor roll is that of another person, the Association shall be entitled to regard the Sale as null and void ab initio (meaning "from the beginning") in which event the Horse shall be re-entered into the Sales Ring for re-auction.
- 9.6 The Association shall only issue a Buyer's Card to a prospective Buyer on the following conditions:
- 9.6.1 the Association will approve a Purchase Facility, the amount of which will be endorsed and authorised on the application for a Buyer's Card. In the absence of endorsement or authorisation the maximum purchase facility shall be deemed to be R10,000.00;
- 9.6.2 the prospective Buyer shall not be entitled to exceed the Purchase Facility, in respect of purchases at the Sale. Once that limit has been reached, the Buyer's Card shall be withdrawn unless and until the Association approves, in writing, an increased purchase facility and causes the increased purchase facility to be endorsed on the application for a Buyer's Card;
- 9.6.3 The Association reserves the right, in its sole discretion, to suspend or withdraw the Buyer's Card facility of any Buyer, who generally and/or habitually pays his or her account late;
- 9.6.4 Should a Buyer exceed the Purchase Facility, the Association shall be entitled, in its sole discretion, to declare the Sale/s null and void whereupon the Horse/s shall be re-auctioned;
- 9.6.5 before the Association will issue a Buyer's Card, the prospective Buyer may be obliged to lodge with the Association a deposit for an amount determined by the Association ("the Deposit"). The Deposit shall be paid by electronic funds transfer, bank guaranteed cheque or by commercial letter of credit. In the event of a non-guaranteed cheque being tendered, acceptance thereof shall not constitute payment of the Deposit until honoured by the bank on which the cheque is drawn. **The minimum deposit shall be 75% of the approved purchase facility.** Any cheque tendered must be made payable to "BloodStock S.A." and crossed "Not transferable";
- 9.6.6 the provisions of clause 9.6.2, clause 9.6.3 and clause 9.6.4 shall apply with the necessary changes to any agreed increased purchase facility;
- 9.6.7 notwithstanding the provisions of clause 9.6.5, the Association shall, in its sole and unfettered discretion, be entitled:
- 9.6.7.1 to require any prospective Buyer to lodge with the Association a bank-guaranteed cheque sufficient to cover the agreed Purchase Facility, and/or any agreed increased Purchase Facility; or
- 9.6.7.2 in exceptional or deserving cases, to waive, in writing, compliance with some or all of the provisions of clause 9.6.5 above on such terms and conditions and for such period as the Association may determine.

- 9.7 **A prospective Buyer, including Buyers who are not South African citizens, but excluding a platinum Buyer's Card holder, who requires Credit Terms from the Association for the purpose of payment of a Horse bought at a Sale must apply for such Credit Terms in writing at least 14 days prior to the advertised date of the Sale.** In its sole discretion the Association shall have the right to approve or reject all such credit applications and to determine the conditions and period of payment subject to a maximum period of 21 days from the date of the Sale. Credit terms, if any, shall be endorsed, authorised, accepted and signed for by the Buyer and the Association on the application for a Buyer's Card. In the absence of such endorsement, authorisation, acceptance and signature, the Sale shall be deemed to have been for cash.
- 9.8 **All cash sums paid to the Association are subject to the Financial Intelligence Centre Act No. 38 of 2001 and substantial amounts will have to be reported to the authorities in accordance with the provisions of that Act.**
- 9.9 If a Vendor agrees to advance extended payment terms to a Buyer at any stage of a Sale, the transaction will automatically become a Direct Payment and the sales charges, including the acceptance fee and the sales levy due to the Association become payable immediately. **Any Vendor who elects to make a transaction a Direct Payment absolves the Association of all responsibility in respect of such transactions and will be held responsible for any legal fees and costs and any other costs already incurred by the Association in relation to the purchase of the Horse.**
- 9.10 A Buyer who has been extended credit by the Association at a prior Sale will not automatically have credit at this Sale or any future sales. This means that a Buyer has to reapply for a Buyer's card at every Sale in terms of these Conditions. The Association reserves the right to revoke any credit previously established and to refuse to accept the bid(s) of such Buyers.
- 9.11 Unless Credit Terms have been arranged and approved in terms of clause 9.7 above all Horses bought at the Sale must be paid for in full by the Buyer prior to obtaining the required release permit. Purchases shall be paid by bank-guaranteed cheque, electronic funds transfer, or by an irrevocable commercial letter of credit. In its sole discretion, the Association may accept a non-guaranteed cheque but acceptance thereof shall not constitute payment until honoured by the bank on which the cheque is drawn. Any cheque tendered must be made payable to "BloodStock S.A." and crossed "not transferable".
- 9.12 In the event of any Buyer, who does not have prior approval of credit, failing to pay by any prior agreed mode of payment, then such a Buyer shall be deemed a defaulter and the Horse shall re-enter the Sales Ring when and if practicable, with the prior attempted Sale being void ab initio (meaning "from the beginning"). If it is impracticable or impossible to re-sell the Horse at the same sale, it shall be returned to the Vendor or owner to be resold at a future sale. Any Shortfall on resale, and all costs, interest, insurance, damages, legal costs and other fees and disbursements associated with the prior attempted sale and the re-sale of the Horse, including care, keep and transport of the Horse, shall be for the defaulter's account and shall be paid by him on demand from the Association.
- 9.13 The Association reserves the right not to release a Horse to a Buyer, and to keep it stabled at its sales premises or at any other suitable place chosen by the Association at the cost of the Buyer, until payment by cheque from the Buyer has been honoured and cleared by the bank.
- 9.14 Where a Deposit as defined in clause 9.6.5 is lodged with the Association, the Association shall deal with the deposit in the following manner:
- 9.14.1 should the prospective Buyer not have purchased any Horse the Deposit shall be refunded to the prospective Buyer as soon as possible, but not later than 14 days after he has surrendered and handed back his Buyer's Card;
- 9.14.2 should the Purchase Price/s in respect of the Buyer's total accepted bids be less than the amount of the Deposit, the amount owing in respect of the purchases will immediately be deducted from the Deposit and the balance refunded to the Buyer as soon as possible but not later than 14 days after the date of the Sale;
- 9.14.3 should the Purchase Price/s in respect of the Buyer's total accepted bids exceed the amount of the Deposit, then the Deposit will be offset pro rata against the Purchase Price/s of the Horse/s bought;
- 9.14.4 the balance of the Purchase Price ("the balance") after the Deposit has been offset as envisaged in clause 9.14.3 shall be paid for as set out in clause 9.11 above.
- 9.15 Any amounts due to the Association in respect of purchases on credit and not paid in full within the agreed terms shall attract interest at 2% per month, from the 21st day after the date of Sale to date of actual payment. If the Debt is not paid in full within the agreed terms, the Association shall be entitled to take action in terms of clause 10 below.
- 9.16 No Horse may be removed from the sales premises before a release permit in respect of that Horse has been issued by the Association. The Association will only issue the release permit if the Horse is paid in full or if prior Credit Terms have been arranged and approved in terms of this clause 9.
- 9.17 The Buyer of a Horse shall be obliged to pay any VAT payable in respect of such Horse.
- 9.18 Payment can be made by telegraphic transfer (foreign) or direct bank deposit (local) to:

**BLOODSTOCK SA**

**Nedbank**

**Business East Rand**

**Account No: 1288 059744**

**Branch No: 128842**

**Proof of payment is to be faxed or emailed to the Association immediately after payment.**

- 9.19 All cash deposits and cash sums shall be subject to clause 9.8 above. Bank charges on cash payments or credit card payments shall be paid for by the Buyer.
- 9.20 The Association shall be entitled to charge for the microchip fees incurred by the Vendor, including Vat. The fees are subject to adjustments at the Association's discretion as and when the costs increase. These fees shall be borne by the Buyer. The Association will reimburse these fees to the Vendor.
10. **LEGAL REMEDIES, REPOSSESSION AND COSTS**
- 10.1 **Subject to applicable law, including the National Credit Act, the Buyer agrees and acknowledges that in the event of:**
- 10.1.1 **the Buyer materially breaching any provision of these Conditions;**

- 10.1.2 **the Buyer failing to pay the Debt in full within the agreed terms for payment, which includes failing to make payment for any Horse within 21 days from the date of the Sale;**
- 10.1.3 **the Buyer dying;**
- 10.1.4 **the Buyer's estate being placed under any order of provisional or final sequestration, provisional or final winding-up or in the event that the Buyer is placed under liquidation or supervision and/or is subject to business rescue proceedings, as the case may be; then and in that event the Association shall, without notice and without detracting from any other remedies which may be available to it:**
- 10.1.5 **be entitled to summarily cancel the Sale of any Horse to the Buyer (in respect of which monies are owing by the Buyer) and to take the action in clause 10.2 to repossess such Horse from anyone in possession of it ("the Repossessed Horse"); or**
- 10.1.6 **to claim specific performance of all the Buyer's obligations whether or not such obligations would otherwise then have fallen due for performance;** in either event without prejudice to the Association's right to claim and recover damages for breach of contract.
- 10.2 The Association shall be entitled to immediately apply for and obtain a repossession order from a court of competent jurisdiction. All costs and expenses occasioned by such repossession shall be recoverable by the Association from the Buyer on demand, on an attorney and own client scale, or on the scale prescribed by the National Credit Act, if applicable.
- 10.3 Where any person claims to have a lien over any Horse in respect of which the Purchase Price has not been paid, the Association has the right to settle such lien as it deems fit to recover possession of the Horse. Any monies paid in discharge of any lien shall form part of the Debt which the Association shall be entitled to recover from the Buyer in addition to any other amounts which may be payable.
- 10.4 **If after repossession the Vendor elects to keep the Horse or elects to buy it in at a subsequent Sale, or resells it privately at any stage, he absolves the Association of all further responsibility and claims in respect of such Horse and its sale. The Vendor will remain liable to pay the Association its levies as if the Sale had not been cancelled.**
- 10.5 Notwithstanding the cancellation of the Sale by the Association, the Association shall be entitled to retain:
- 10.5.1 any sums paid by the Buyer in respect of the Debt; and/or
- 10.5.2 the Deposit or any portion thereof which was offset against the Purchase Price; in reduction of damages, if any, which may be suffered by the Association and/or the original Vendor by reason of the breach by the Buyer and the resultant cancellation of the agreement of Sale.
- 10.6 Should the Association elect to cancel the Sale and repossess the Horse sold, the Association shall be entitled, but not obliged, to attempt to re-sell the Repossessed Horse at any future Sale. If the Repossessed Horse is sold, then the Purchase Price, if and when paid in full, shall be used in reduction of the Shortfall, if any, which may have resulted by reason of the breach by the Buyer and the resultant cancellation of the agreement of Sale. The Association shall also be entitled to resell any Horse in respect of which the Buyer cannot be found or traced.
- 10.7 If the Sale is cancelled, whether the Horse is resold or not, the defaulting Buyer agrees to pay all costs which arise from the cancellation, which include but are not limited to transport and keep costs, veterinary fees, insurance, legal costs on the attorney and own client scale, loss of interest and loss of income (e.g. sales levy), on the Purchase Price in respect of such Horse.
- 10.8 Any Shortfall remaining after the resale shall be made good by the defaulting Buyer on demand from the Association. Under no circumstances shall the Association be liable to the Vendor for the Shortfall.
- 10.9 In the event of a Surplus arising from the resale, the Surplus shall then be applied to the settlement of sales levies from the original Sale and any other costs and charges including insurance premiums, the cost of transporting, maintaining and stabling the Horse, any monies paid by the Association in discharge of any lien over a Horse in terms of clause 10.3, legal fees and legal costs, interest on the original Purchase Price from the date of Sale to the date of actual payment, and any other costs arising from the repossession of the Horse. Where there is any Surplus remaining after these costs are settled, the Association shall in its sole discretion be entitled to determine how such Surplus will be applied or utilised.
- 10.10 If the Sale is cancelled and a Horse repossessed and sold at a future sale of the Association, the levies in respect of the original Sale will be cancelled and claimed from the defaulting Buyer. New levies will be raised on the future Sale.
- 10.11 Neither the Association, nor the auctioneer, shall have any liability to either the Vendor or the Buyer in consequence of any act or omission, breach or default on the part of either or both of them, including but not limited to any administrative or technical error or malfunction.
- 10.12 Forty-five days after the Sale any remaining Debt, which includes interest, insurance costs and any other amount which may be due and payable to the Association, will be handed over to attorneys for collection on behalf of the Association. In the event of the Association instructing attorneys, for whatever reason, to (including but not limited to): collect any amount owing to the Association, obtain a repossession order, and/or to draft any agreement to secure the Association's rights, the Buyer agrees to pay all the costs of the Association on the scale as between attorney and own client, whether or not summons is actually issued or on the scale prescribed by the National Credit Act, if applicable.
- 10.13 The Parties consent to the jurisdiction of the Magistrate's Court in terms of section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) having jurisdiction under section 28 of the said Act, notwithstanding that the claim by the Association exceeds the normal jurisdiction of the Magistrate's Court as to amount. The Association shall, in its discretion, be entitled to proceed against the Buyer and/or the Vendor in any other court of competent jurisdiction notwithstanding the foregoing.
- 10.14 No relaxation or indulgence granted to the Buyer or the Vendor by the Association at any time shall be deemed to be a waiver of any of the Association's rights in terms hereof, and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein or create any estoppel against the Association. For the sake of clarity "estoppel" refers to the principle that where a person by his words or conduct wilfully causes another to believe the existence of a state of things and induces him to act in that belief, so as to alter his own previous position, to his detriment, the former is precluded from averring against the latter a different state of things as existing at the same time. For the sake of clarity "novation" takes place as the result of an agreement between the parties substituting a new obligation for an existing one.
- 10.15 Should a dispute arise regarding the purchase of a Horse, the Buyer shall be obliged, if required to do so by the Association, to return the

Horse at his own expense to a party nominated by the Association. The nominated party shall maintain the Horse until the dispute has been resolved on condition that the Buyer shall be liable for the costs of stabling and maintaining the Horse, which amounts he shall pay to the nominated party on demand.

- 10.16 No right of set-off between a Buyer and a Vendor shall be valid or recognised by the Association. The Association shall be entitled to set-off against any money due by the Association to any Buyer or Vendor, any amount due to the Association or payable to the Association by such Vendor or Buyer, irrespective of whether or not the amount be disputed by the Buyer or the Vendor.
- 10.17 The Association shall be entitled to appropriate and deduct from any monies held or received by it from any source on behalf of the Vendor, such amounts as may be necessary to cover any levies, fees, costs, repayment in terms of clause 14 below or any other monies owing to it by the Vendor.
- 10.18 No Buyer who has materially breached any condition contained in these Conditions shall be entitled to a Buyer's Card at future sales of the Association.
- 10.19 A certificate under the hand of the Association or the Chief Executive Officer ("C.E.O.") of the Association (whose appointment need not be proved) as to any amounts due and owing by the Buyer or the Vendor in terms of these Conditions shall constitute prima facie proof of the matters therein stated for all purposes including, without limitation, summary judgement, default judgement and provisional sentence proceedings.

## 11. AGENTS

- 11.1 Any person acting as an agent on behalf of a principal:
- 11.1.1 Shall, if he is buying as an authorised agent on behalf of a principle, ensure that his or her principal has completed and signed an Authorisation of Agent form and that this form has been submitted to the Association prior to the Sale;
- 11.1.2 shall ensure that a Buyer's Card application in the name of the principal has been completed and signed by the principal and submitted to the Association prior to the Sale;
- 11.1.3 may be required, prior to his participation in the Sale, to establish to the satisfaction of the Association, his authority to so act and to furnish the Association with the necessary documentation in substantiation thereof;
- 11.1.4 shall, if he is the Buyer, disclose the name and address of his principal if so requested by the Association;
- 11.1.5 shall, if he is the Vendor, disclose full contact details including the name and address of his principal when entering Horses for the Sale, if so requested by the Association;
- 11.1.6 **shall be jointly and severally liable to the Association for the timeous fulfilment of all the obligations of his principal in terms of the Conditions, renouncing the benefits of division and excussion. An Agent shall be so liable even if he fails to disclose the information as required by clauses 11.1.1 to clause 11.1.5 above inclusive. For the sake of clarity by renouncing the benefits of division, the agent renounces the defence that liability must be divided among the sureties and that each one can only be sued for his pro rata share. By renouncing the benefits of excussion, the agent renounces the defence that may be taken by a surety in order to oblige the creditor first to proceed and levy execution against the principal debtor before any action may proceed against the surety.**
- 11.2 **No person acting as an agent and buying in his own name on behalf of a principal will be released from his responsibility to pay the Debt owing to the Association on account of his inability to secure payment from his principal or his principal defaulting in making payment.**
- 11.3 **When an agent discloses his principal after purchasing a Horse, there shall be no obligation whatsoever on the Association to invoice his principal and collect the Debt from such principal. If the invoice is sent to the principal, who defaults in paying the Debt, the responsibility for payment remains with the agent who has purchased the Horse in the Sales Ring, whose Buyer's Card was used and who signed for the purchase on the vendor roll.**
- 11.4 No person, with a valid Buyer's Card, who allows another person without a Buyer's Card, to use his card to purchase Horses and sign for the Horses, will be released from his responsibility to pay the Debt owing to the Association on account of his inability to secure payment from such Buyer.
- 11.5 Notwithstanding anything to the contrary contained in these Conditions, any person acting on behalf of another, shall be deemed to have full legal capacity to do so.
- 11.6 By entering a Horse for Sale, a Vendor shall be deemed to have irrevocably authorised the Association to dispose of the Horse concerned on behalf of the Vendor or owner in terms of these Conditions.

## 12. LEVY

- 12.1 Subject to the remaining provisions of this clause 12, the Vendor shall be liable to pay the Association the following levies: A sales levy at a rate of 8% plus VAT. A compulsory reserve commission of 5% plus VAT shall apply to the sale. The levy for non-members of the Association is 10% plus VAT.
- 12.2 Acceptance of a Horse for sale shall, notwithstanding the provisions of clause 3.3 above, be deemed to have occurred upon the acceptance by the Association of details relating to such Horse for its sales catalogue.
- 12.3 Levies as per 12.1 shall be payable on the price realised if the Horse is sold by auction or private treaty by the Association, the Vendor, his agent or representative at any time during the period commencing upon acceptance of the Horse and concluding 60 days after the Sale has been held or the date upon which the Sale has been advertised to be held.
- 12.4 If any Horse is entered for the Sale and accepted by the Association and such Horse is then subsequently sold by the Vendor by private treaty or any other arrangement at any time before the Sale, the Vendor, his agent or representative must immediately inform the Association of this fact and must, at the same time, withdraw the Horse from the Sale. Such Horse may not, under any circumstance, be allowed to go through the Association's Sales Ring.
- 12.5 Any Vendor, wishing to put a reserve price on a Horse, must complete, in writing, the Association's official reserve price form and submit the form to the Association before the Horse enters into the Sales Ring. No verbal instructions to the Auctioneer or any rostrum team member regarding the reserve price will be accepted or permitted. In the absence of an official reserve price, the particular Lot will be considered on the market and will be sold to the highest bidder. The Auctioneer and/or the rostrum team will not accept any form of



selling price instructions from a Vendor regarding Horses with no official reserve prices nor will it be permitted.

- 12.6 If an unsold Horse is sold privately after the Sale, levies as per 12.1 will apply.
- 12.7 **If a Horse is withdrawn from the Sale, for any reason whatsoever, except if a veterinary certificate certifying that the Horse is unfit for Sale due to injury or illness is produced, the Vendor undertakes to pay the Association a levy as per clause 12.1, calculated on the average price realised in the particular category for which the Horse was entered. Such veterinary certificates must be lodged with the Auctioneer or the Association prior to commencement of the Sale. A certificate lodged after the closure of the Sale, will not be considered and all levies will be due and payable.**
- 12.8 The Association reserves the right to send a vet approved by it to the premises where the Horse is being kept or stabled, to inspect the Horse to confirm and satisfy itself as to the validity of the certificate referred to in clause 12.9 above.
- 12.9 The minimum price that will be accepted for any Horse at the Sale shall be R15,000 excluding VAT.
- 12.10 Entry and acceptance fees are payable prior to the auction sale.
- 12.11 **A Sales race levy of R3,450 (R3,000 + R450 VAT) will be raised against every horse that has passed through the sales ring (sold and unsold) to fund the Sales Race. This levy will be deducted from sales proceeds of the Vendor. The sales race levy payable by the buyer will be R5,750 (R5,000 + R750 VAT).**

### 13. RIGHTS AND OBLIGATIONS OF A VENDOR

- 13.1 The Vendor of a Horse shall be entitled to receive from the Association, on the 35th day after the last day of the Sale, payment of the Purchase Price realised, less levies and other charges deductible in terms of these Conditions; provided that the Association shall be entitled, in its sole discretion, to withhold payment:
- 13.1.1 in the event of the Vendor being in breach of these Conditions;
- 13.1.2 in the event of the Vendor, acting as an agent, having failed to comply with clause 11.1; or
- 13.1.3 until the Association has received payment from the Buyer; or
- 13.1.4 until, where applicable, the payment has been cleared by the relevant bank or other financial institution.
- 13.2 The Association shall be entitled to deduct, in addition to the amounts referred to in clause 13.1, from the proceeds of the Sale of any of the Vendor's Horses which have been entered, whether the Vendor is acting as a principal, as an agent, or as a partner any amounts which may be due to the Association by the Vendor, any of his principals, or any of his partners.
- 13.3 The Association will pay out the proceeds from the Sale only to the Vendor or his duly authorised representative who has entered the Horse on the Sale, unless such Vendor or his duly authorised representative gives the Association written instructions to do otherwise. The Association will not accept instructions from anybody else in this regard.
- 13.4 The Association shall be entitled to pay any amount which is due to the Vendor directly into the bank account nominated by the Vendor on the prescribed form.
- 13.5 If a Vendor, contrary to the provisions of clause 9.13 and clause 9.16 above permits the removal of the Horse after the Sale, the Association shall not be obliged to collect the Purchase Price in respect of the Horse; however the Vendor shall nevertheless remain liable for the payment, on demand, of all levies and other amounts provided for in these Conditions.
- 13.6 **Notwithstanding anything contained herein, it is the intention of the Association and the Vendor that the Association shall, immediately following upon the Sale until such time as payment of the Debt has been made by the Buyer, be entitled to exercise in its own name all the rights of ownership in respect of the Horse sold. For the purposes of the foregoing the Vendor, as owner or duly authorised agent of the owner:**
- 13.6.1 **hereby irrevocably authorises the Association to exercise all status, rights and powers that the owner may exercise, including, but not limited to the protection and enforcement of ownership, the right to complete and sign any change of ownership form and the right to institute any legal proceedings regarding the repossession of and/or payment for the Horse;**
- 13.6.2 **cedes to the Association all rights, title and interest in and to all remedies that the Vendor may have in law against the Buyer in respect of the Sale of the Horse in question.**
- 13.7 No Horse entered for Sale shall be sold privately prior to the auction without the Association's prior written consent. In the event of any prior Sale, the Association shall be entitled to its full levy and fees as if the Lot was sold under the hammer, and the Vendor shall provide the Association with full details of any such Sale.
- 13.8 The Vendor warrants that he has the necessary title to sell the Horse.
- 13.9 Under no circumstances shall any part or all of the Purchase Price of a Horse be paid directly to a Vendor by the Buyer, unless otherwise agreed to, in writing, by the Association.
- 13.10 **It is the Association's intention to collect the entire Debt from the Buyer. If, however, it is unable to do so within 6 months from the date of Sale, having implemented all reasonable collection steps available to it, the Association shall be absolved in all respects by the Vendor to collect the Debt still outstanding at the time. The Association may then elect to cede its rights associated with the Debt to the Vendor. The Association will not be liable for any losses or costs incurred by the Vendor on account of the Association having been unable to collect the Debt in full or in part.**
- 13.11 If the Vendor agrees to extend any Credit Terms to the Buyer beyond the period already extended by the Association, if any, then the Association shall be under no obligation whatsoever to the Vendor as to the collection and payment of the Purchase Price. In any such case the Vendor shall remain fully responsible for the due payment of all levies, fees and monies owing to the Association in connection with the auction and sale of the Horse, whether or not the Buyer has paid either the Association or the Vendor directly.
- 13.12 The NHRA registration and cost of registration of all foals is always the sole responsibility of the breeder of such foals.
- 13.13 Where covering fees of mares and/or the NHRA registration fees of foals sold at foot and weanlings are outstanding in respect of such animals having been sold by the Association, the Association will only pay out the proceeds of such sales to the Vendor once the outstanding matters have been resolved.

- 13.14 All in-foal mares not subject to a live foal guarantee must be accompanied by the relevant covering certificate to the sale venue. The Vendor is to deliver such certificates to the Association on arrival at the sale venue.
- 13.15 The Association reserves the right to withhold payment from the proceeds of the Vendor of live foal fees until such time as the relevant covering certificates are submitted to the Association.
- 13.16 Live foal fees, stallion covering fees and/or any other relevant fees/charges remain the responsibility of the Vendor and may not be transferred to the Buyer.
- 13.17 **The Vendor acknowledges that the Association shall not be liable for any loss incurred by the Vendor as a result of a breach by the Buyer of these Conditions. In addition, the Association shall not be liable for any loss or damages sustained by the Vendor as a direct or indirect result of the Association's omission or refusal, for whatever reason, to enforce any of its or the Vendor's rights in terms of these Conditions, or as a result of granting the Buyer credit facilities.**
- 13.18 **A Vendor, either directly or through the Auctioneer or an agent shall be entitled to bid for and to buy-in his own Horse at the Sale on condition that such Vendor has notified the Association and the Auctioneer has announced, prior to the commencement of the sale, that the Sale is subject to a right to bid by or on behalf of the Vendor. This clause constitutes a notice for purposes of section 45 of the Consumer Protection Act 68 of 2008 that this sale is subject to a right to bid by or on behalf of the Vendor.**
- 13.19 **No Buyer shall be entitled to cancel any Sale in the event that the Vendor exercises his entitlement to bid as provided for in clause 13.18.**
- 13.20 The Vendor shall at their own cost and risk, deliver the horse to the auction venue, provide sufficient staff to care for and handle the horse prior to and during the auction. The association shall free of charge, provide reasonably secure and safe stabling and bedding facilities for each horse and the same is used at the risk of the Vendor. The association is not liable to the vendor for, and the vendor indemnifies the association against any claims in relation to, any loss, damages or costs suffered as a consequence of the vendor's use of such facilities.
14. **REPAYMENT BY THE VENDOR**  
Notwithstanding anything contained in these Conditions, the Vendor undertakes to repay to the Association upon demand, any amounts paid by the Association to the Vendor if the Association is unable, for any reason, to recover the Debt or any portion thereof payable by the Buyer, within a period of 6 months of the date of Sale.
15. **THE ASSOCIATION TO ACT AS AGENT**
- 15.1 **The Buyer and the Vendor acknowledge and agree that, save as is otherwise provided for in these Conditions, the Association acted at all times as an agent only. Accordingly, any remedy which the Buyer may have in law shall lie against the Vendor and any remedy which the Vendor may have in law shall lie against the Buyer; provided that nothing contained in this clause shall affect any of the Association's rights in terms of these Conditions.**
- 15.2 Each of the Vendor and the Buyer, for the purpose of enabling and permitting the Association to give full force and effect to these Conditions, hereby irrevocably appoint the Association to be their attorney, with full power to the Association to execute on their behalf any necessary documents, to give all necessary instructions, and to do all such other acts and things as may be necessary.
16. **THE ASSOCIATION NOT LIABLE FOR ANY LOSS OR DAMAGE**
- 16.1 **Save and except where the Association and/or the Auctioneer may be held liable in terms of section 61 of the Consumer Protection Act:**
- 16.1.1 **no person who attends a sale or who is present on any property under the control of the Association, shall have any claim of any nature whatsoever and however arising, now or in the future, (including, but not limited to the foregoing, any claims for damage to or loss or destruction of any Horse or other property or death or injury to such person) against the Association or the Auctioneer arising out of any cause whatsoever;**
- 16.1.2 **neither the Association nor the Auctioneer shall be responsible for any damage, loss or injury caused by or to any Horse entered for the Sale, while such Horse is under the control or supervision of the Association or the Auctioneer.**
17. **RIGHT OF ADMISSION**
- 17.1 The Association retains the right to prohibit the entry to the premises at which the Sale is conducted of any Horse which is suspected to be suffering from an infectious or contagious disease and/or does not have the necessary veterinary proof of inoculation/vaccination that may be required at any time by law, the Association and/or the NHRA.
- 17.2 The Association reserves the right to refuse entry to the premises at which the Sale is conducted of any Horse not registered or for which an up-to-date passport, as provided for in the rules of the NHRA, has not been lodged with the Association prior to or on arrival of the Horse.
- 17.3 The Association reserves the right, but is not obligated, to examine any or all Horses entering or stabled within the Association's sales premises and to withdraw any Horse before or during any Sale without giving any reason therefor.
- 17.4 The Association shall be entitled, in its absolute discretion and at the expense of the Vendor or the Buyer (as the case may be) to engage a veterinary surgeon to inspect and/or treat any Horse whilst such Horse is on or at any sales premises used by the Association during a Sale and if deemed necessary, to have such Horse removed off/from such Sales premises.
- 17.5 The Association reserves the right to refuse entry into the Sales Ring of any Horse for which the entry fee has not been paid on time as prescribed by the Association on its official entry form for each Sale.
- 17.6 The Association reserves the right of admission and retains the right to prohibit entry to any premises under its control of any person, vehicle and/or animal whatsoever and shall be entitled at any stage to require any person, vehicle and/or animal to vacate with immediate effect any premises under its control.
18. **NO VARIATION OR ALTERATION EXCEPT IN WRITING**
- 18.1 These Conditions, as amended by the Association from time to time, shall apply to all sales conducted by the Association and the Auctioneer. No variation, alteration or cancellation of these Conditions shall be of any force and effect unless reduced to writing and signed by the C.E.O. of the Association.
- 18.2 If one or more of the provisions or part of a provision in these Conditions is or becomes unenforceable or invalid, the remaining provisions or part thereof shall not be affected, but shall remain in full force and effect to the fullest extent permitted by law.

## 19. COPYRIGHT AND CATALOGUE

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

## 20. REPOSITORY FOR DIGITAL RADIOGRAPHIC IMAGES

- 20.1 The Repository Terms, Conditions and Procedures, which relate to information lodged and viewed in the Repository, are attached hereto as Appendix 2, and are available by printable web-page on the Association's website ([www.tba.co.za](http://www.tba.co.za)) and from the Association's sales premises at corner of Rand Airport Rd and Van Riebeeck Rd, Germiston, Gauteng Province. The Repository Terms and Conditions form part of these Conditions.
- 20.2 The Repository may only be used by Vendors, Buyers and their authorized agents in accordance with the Repository Terms, Conditions and Procedures. Vendors, Buyers and their authorized agents hereby agree to be bound by the same in all respects.
- 20.3 Where the Vendor or agent of the Vendor has lodged material or information relating to a Lot in the Repository, the Vendor warrants to the Association that the material and information is in all respects valid, complete (as to compliance with the specifications and requirements set out in the Repository Terms, Conditions and Procedures), accurate and authentic as at the date it is lodged. Further, if the Association determines, in its sole discretion, that a Vendor has deliberately and knowingly either placed incorrect information in, or omitted material information from, the Repository which is deemed to be materially misleading regarding the condition of the Horse, the Association may elect, in its sole discretion, to impose sanctions against such Vendor which may include, without limitation, prohibiting such Vendor from selling horses at future sales conducted by the Association.
- 20.4 **Buyers and/or their authorised agents who fail to inspect for any reason material or information placed in the Repository in respect of any Lot, do so at their own risk.**
- 20.5 The Repository exists for the purpose of facilitating inspection by Buyers of bloodstock for sale which they may be interested in buying. The Repository and its operation shall not otherwise change any of these Conditions, which shall continue to be binding on all parties and does not create any additional express or implied warranties or assurances.
- 20.6 **The Association does not review the material or information in the Repository and gives no warranty, guarantee or assurance of any kind in respect of the validity, completeness, accuracy or authenticity of the material or information all of which is the sole responsibility of the Vendor. Knowledge of the Repository information therefore shall not be imputed to the Association and/or the Auctioneer.**
- 20.7 If the Buyer alleges a breach of clause 20.3 then the Vendor and the Buyer must resolve their respective rights and liabilities amongst themselves and the Association shall have no responsibility in relation thereto and will not become involved.
- 20.8 **Each Buyer, as per these Conditions and elsewhere, accepts that any Horse is purchased with all faults and defects, irrespective of whether patent or latent, except those covered by the limited warranties expressed in these Conditions.**
- 20.9 All items and information placed by the Vendor, or his agent, in the Repository are the sole property of the Vendor and the Vendor shall have the right to receive all such material back at the end of the Sale. However, the Association reserves the right and may elect to hold such items back in the event a dispute arises and may only return the items to the Vendor upon the resolution of the dispute. Further, the Association may permit the Buyer to receive such items only if the Vendor has agreed so in writing.
- 20.10 **In the event of the Vendor failing to collect the items contained in the Repository within thirty (30) days after the end of the Sale, the Association is entitled to destroy or dispose of the items at its sole discretion and the Association shall be held harmless by the Vendor for any losses, expenses or liabilities incurred by the Vendor and/or his agent or principal as a result of the disposal of the said items.**

## APPENDIX 1

### REPOSITORY FOR DIGITAL RADIOGRAPHIC IMAGES ("DRI'S") – TERMS, CONDITIONS AND PROCEDURES BINDING UPON VENDORS AND BUYERS

#### 1. INTRODUCTION:

- 1.1 The Association has established a Repository where Vendors may deposit DRI's for inspection by prospective Buyers' registered veterinarians. The lodging and inspection of DRI's, and access to the Repository are subject to these Repository Conditions and the Conditions of Sale and Purchase.
- 1.2 The use of the Repository is voluntary and is also recommended for use by veterinarians familiar with interpretation of equine DRI's. It is designed to assist Buyers via their registered veterinarians in assessing Lots of interest to them. The Association has determined that access to DRI's will be restricted to Veterinarians registered with the S.A. Veterinary Council.
- 1.3 Immediately upon the fall of the hammer, access to DRI's within the repository will be restricted to the Vendor of that Lot sold. DRI's of unsold horses may be viewed after the fall of the hammer, but only with the written permission of the Vendor.
- 1.4 Words or terms, where not defined in these Repository Conditions, will be deemed to have the meanings attributed to them in the Conditions of Sale and Purchase.
- 1.5 Repository Conditions include a minimum of 34 DRI's taken strictly in accordance with the specifications detailed in the minimum requirements list below and marked "A" & "B". The Association will supply computer equipment for the purpose of viewing DRI's.
- 1.6 Sufficient computer stations will be available so that veterinarians can view and report on a particular horse in a timely manner for Buyers' requirements.
- 1.7 All images must be submitted in DICOM format to ensure the integrity of the veterinary medical record.

2. **REPOSITORY LOCATION:**

The Repository's location will be signposted at the venue.

3. **HOURS OF OPERATION OF THE REPOSITORY:**

The hours of operation will be advertised at the Repository and are subject to change as required.

4. **DRI'S TO BE ACCEPTED TO THE REPOSITORY:**

4.1 The DRI's may be submitted to the Repository during times indicated in 3 above. A minimum of 34 DRI's taken strictly in accordance with the specifications detailed in the minimum requirements list attached and marked "A" must be submitted.

4.2 DRI's should be delivered to the Repository at the location referred to in point 2 above, at which time the depositor must sign the deposit form.

5. **OBLIGATIONS OF VENDORS:**

5.1 The Vendor must deliver the DRI's to the Association at the Repository or have these delivered on his/her behalf.

5.2 The DRI's must have contained within the digital image of view the name of the veterinarian or clinic, date of examination, sex, Sale lot number, passport number, name and year of the Sale. In addition, the envelope or file in which the DRI's are delivered to the Repository must contain the name of the Vendor.

The Association acknowledges that the Vendor will only allow access to the DRI's to registered veterinarians.

5.3 Subject to the Association's right to retain possession of the DRI's for whatever reason and for so long as the Association chooses, the Association will allow the Vendor or his nominated agent, with the Association's written permission, to collect the DRI's from the Repository any time within thirty (30) days from the last day of the Sale.

5.4 The South African Veterinary Council advises that: "DRI's form part of a veterinarian's records and as per the Veterinary Regulations, records should be kept for a minimum of three years by the Veterinarian who took the DRI's."

6. **OBLIGATIONS OF BUYERS (INCLUDING THEIR AGENTS):**

6.1 The Association, in its sole discretion, may require any veterinarian desiring to inspect the DRI's on behalf of their Buyer client to first sign the Repository Registration Form and Repository Sign Out Notice and Agreement.

6.2 No person may remove the DRI's from the Repository, or copy or reproduce or attempt to copy or reproduce the DRI's, without the prior written consent of the owner (Vendor) thereof.

6.3 A person registered to inspect the DRI's, may only inspect one set of DRI's at any one time.

6.4 Persons inspecting the DRI's shall not collaborate with or advise others who are not their client(s) (i.e. potential Buyers) when evaluating the DRI's. A veterinarian may however consult with another veterinarian in order to obtain a second opinion if needed.

6.5 The Repository is designed for use by registered veterinarians on behalf of their Buyer clients. Access to a Vendor's DRI's will be declined to non-veterinarians or veterinarians not registered in South Africa. Any registered veterinarian representing a Buyer will, in addition to complying with points 6.1 to 6.4 above inclusive:

6.5.1 Act ethically and professionally and with due regard to the interests of the Association, Auctioneer, the Vendor and the Buyer;

6.5.2 Retain as confidential for the Buyer he is representing on inspection, the information obtained from inspection of the DRI's with respect of each Lot;

6.5.3 Acknowledge that the Association and the Auctioneer do not warrant the accuracy, validity, sufficiency, quality, authenticity or completeness of the DRI's.

7. **LEGAL NOTICE BINDING UPON ALL PARTIES INTERESTED IN THE SALE OR PURCHASE OF LOTS DURING THE THOROUGHBRED BREEDERS' ASSOCIATION'S SALES**

7.1 The maintenance of the Repository by the Association shall not vary, or be deemed to vary in any way any of the provisions of the Conditions of Sale and Purchase which shall continue to be binding upon all parties.

7.2 **Each Buyer is encouraged to instruct his registered veterinarian to inspect the DRI's for each Lot and to physically inspect each Lot prior to the purchase thereof. As provided in the Conditions of Sale and Purchase, each Lot is purchased, at the fall of the hammer, with all defects and deficiencies, latent and patent, subject only to the exceptions set out in the Conditions of Sale and Purchase, or, announced prior to the auction of a Lot.**

8. **VENDOR'S ACKNOWLEDGEMENTS AND WARRANTIES:**

8.1 The Vendor acknowledges that he has been informed by the Association of the opportunity to provide DRI's with respect to each Lot offered for Sale by the Vendor.

8.2 The Vendor warrants that the DRI's provided to the Association will be certified as originals by a registered veterinarian and will meet all the requirements set out in this Repository Terms and Conditions.

8.3 The Vendor warrants that he has the right to use the DRI's and irrevocably authorizes the Association to hold the DRI's at the Repository and to release the DRI's for inspection by a prospective buyer's registered veterinarian prior to and during the Sale as provided in this Repository Terms and Conditions.

8.4 The Vendor acknowledges that the Association may vary, at any time, without notice, the Repository Registration Form or the Repository Sign Out Notice and Agreement.

8.5 The Vendor acknowledges that, until the conclusion of the Sale, once the DRI's are deposited at the Repository, the Vendor may not remove the DRI's from the Repository.

9. **PURCHASER'S ACKNOWLEDGMENTS AND WARRANTIES**

9.1 The Buyer acknowledges that the Association/Auctioneer/Vendor may, for whatever reason, refuse inspection by the Buyer or his agents of the DRI's, and, specifically acknowledges that the Association has instructed that access to the DRI's be restricted to registered veterinarians.

9.2 The Buyer acknowledges that it is his sole responsibility to determine the quality, authenticity, validity, sufficiency, accuracy and completeness of the DRI's and to obtain independent advice with respect thereto from a registered veterinarian.

9.3 The Buyer acknowledges that any Vendor may, in his absolute discretion, determine not to provide DRI's for a Lot, and, accordingly the

Buyer will purchase such Lot with all faults and defects, if any, latent and patent, and otherwise subject to the Conditions of Sale and Purchase.

- 9.4 The Buyer acknowledges that the Association may vary, at any time, without notice, the Repository Registration Form or the Repository Sign-Out Notice and Agreement.
10. **VENDOR'S/BUYER'S ACKNOWLEDGMENTS AND INDEMNITIES:**
- 10.1 The Vendor and the Buyer acknowledge and accept that neither the Auctioneer nor the Association will review the DRI's and therefore make no warranty or assurance of any kind concerning the authenticity, quality, validity, sufficiency, accuracy or completeness of the DRI's, the responsibility for which lies with the Vendor.
- 10.2 The Vendor and the Buyer acknowledge and accept that the depositing and inspection of the DRI's, and, the use of the Repository, will not vary or amend the terms of the Conditions of Sale and Purchase which shall continue to be binding upon the Vendor and the Buyer, nor does such deposit, inspection or use create any additional express or implied warranties upon which either the Vendor or the Buyer can rely, other than those allowed by statute or law.
- 10.3 The Vendor and the Buyer acknowledge and accept that neither the Auctioneer nor the Association will be liable for any claim, damages, liability, actions, demands or losses whatsoever in the event that the DRI's are of poor quality, inaccurate, invalid, incomplete, insufficient or not authentic.
- 10.4 The Vendor and the Buyer acknowledge and accept that the Sale and purchase of a Lot is effected on the fall of the hammer pursuant to clause 3 of the Conditions of Sale and Purchase and that, subject to the Conditions of Sale and Purchase, the Buyer purchases each Lot subject to all faults and defects, latent and patent. The Vendor acknowledges and accepts that the Association will be entitled to its Sales levy and charges immediately upon the effecting of the Sale (subject to the Conditions of Sale) and the Vendor's obligation to pay the Sales levy and charges will stand notwithstanding any subsequent dispute between the Vendor and the Buyer.
- 10.5 The Vendor and the Buyer acknowledge that the Association has determined that access to the DRI's will be restricted to veterinarians licensed by the S.A. Veterinary Council.
11. **ASSOCIATION'S ACKNOWLEDGMENTS AND OBLIGATIONS:**
- 11.1 The Association will, at its cost, construct and make available the Repository for use by the Vendor, the Buyer and the Buyer's registered veterinarian in accordance with these Repository Terms, Conditions and Procedures.
- 11.2 The Association will make the Repository available to receive the DRI's from the Vendor, and make available the DRI's for inspection, by the Buyer's registered veterinarian subject to these Repository Terms, Conditions and Procedures and the Conditions of Sale and Purchase;
- 11.3 Subject to the Association's right to retain possession of the DRI's for whatever reason and for so long as the Association chooses and subject to clause 5.3 above, the Association will allow the Vendor or his nominated agent (with written permission), to collect the DRI's from the Repository within thirty (30) days from the last day of the Sale; after which the Association is entitled to destroy or dispose of the DRI's at its sole discretion and the Association shall be held harmless by the Vendor for any losses, expenses or liabilities incurred by the Vendor and/or his principal and/or his agent as a result of the disposal of the said DRI's.
- 11.4 The Association has requested each Vendor of a Lot to provide DRI's 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, Buyer or any person or party by virtue of the fact that a Vendor elects not to provide DRI's with respect to any Lot.
- 11.5 The Vendor will, in accordance with the Repository Conditions, be entitled to inspect a register, kept for that purpose by the Association, of any party who has inspected the DRI's of a Lot submitted by the Vendor.
- 11.6 The Auctioneer acts as agent for the Thoroughbred Breeders' Association of S.A.

## **PART A OF APPENDIX 1**

### **MINIMUM REQUIRED DRI'S FOR REPOSITORY**

1. **FEET (HOOVES): (2)**  
Front only, one (1) each. – Lateral to medial
2. **CARPUS: (6)**  
Lateral/Medial Oblique (30° - 40°) (Dorsolateral 35°, to palmar medial oblique);  
Medial/Lateral Oblique (20° - 30°) (Dorsomedial 25°, to palmar lateral oblique);  
Flexed Lateral (Flexed lateral to medial).
3. **FETLOCK: (16)**
- 3.1 Front: (8)  
AP elevated 15° (Dorsal, 15° elevated, to palmar);  
Medial Oblique (Dorsomedial 30°, to palmar lateral oblique);  
Lateral Oblique (Dorsolateral 30°, to palmar medial oblique);  
Lateral to medial (flexed).
- 3.2 Hind: (8):  
AP elevated 15° (Dorsal, 15° elevated, to plantar);  
Medial Oblique (Dorsomedial 30°, 15° elevated to plantar lateral oblique);  
Lateral Oblique (Dorsolateral 30°, 15° to palmar medial oblique);  
Standing Lateral to medial.
- Obliques should be elevated slightly to separate the sesamoid and PI interface.
4. **HOCK: (6)**  
Medial/Lateral Oblique (or 15° PALMO) (Dorsomedial 65° to plantar lateral oblique) or (Plantaro-lateral 25° to dorsomedial oblique);  
Off Centre AP (Slightly Lateral) (Dorsolateral 10° to plantar medial);  
Lateral to Medial.
5. **STIFLE: (4)**  
Lateral to Medial; 20° PALMO (Posterior lateral 20° to anterior medial oblique), or caudocranial (pa).

NB Please sort images by joint and present them in the above joint order

#### **HONG KONG PROTOCOL**

For those vendors wishing to supply additional radiographic information and compliance with current Hong Kong Horses In Training Protocol the following Additional Views are required:

1. (2) Upright pedal view of both front feet to demonstrate the solar margin of P3
2. (2) Lateral oblique (D45° LP I MO) of both hocks
3. (2) Dorso-palmar (AP) view both carpi
4. (2) Skyline view of distal carpal bones (Flexed DPR-DdiOb)

Total Views (42)

**NB Please sort images by joint and present them in the above joint order**

#### **PROTOCOLS & LABELLING**

Standard markers for DRI's are always lateral unless there is no lateral aspect, and then they are placed anteriorly. For oblique views, the marker is located posteriorly on a (DLPMO) lateral oblique and anteriorly on a (DMPLO) medial oblique. For an AP view, the marker is located laterally and for a lateral view, the marker is located anteriorly.

Labeling of DRI's to include:

1. Date of examination.
2. Name of veterinarian or clinic
3. Name and year of Sale
4. Sale Lot number and Passport number e.g. 023NS127589

Limb and specific view markers should be placed lateral and/or cranial/dorsal.

Labeling on envelopes containing the DRI's should show the following:

1. Vendor
2. Lot number and Horse's name
3. Name and year of Sale.

NOTE: DRI's must comply with existing SAEVA Protocols.

Veterinarians using the Repository facilities must be registered with the South African Veterinary Council.

A Vendor may also deposit with the DRI's relevant surgical reports or other information for each Lot that has undergone surgical intervention prior to the Sale.

#### **PART B OF APPENDIX 1**

Statement on Digital Radiography in Thoroughbred Yearling Repositories

Digital radiography is a system whereby images are stored in digital format, rather than in the "hard copy" film of traditional radiography.

Digital radiographic techniques offer advantages over traditional radiographic techniques and Vendors must present images of their yearlings in digital format to the radiographic repositories.

All images must be submitted in DICOM format to ensure the integrity of the veterinary medical record.

All Buyers must ensure that the veterinarians they contract to view and interpret DRI's at Sales are familiar with digital format radiography and can interpret digital radiographic images in a meaningful way for their particular needs. The increased tissue definition afforded by digital radiographic imaging means that more anatomical structures are presented on a digital image for interpretation. Contracted veterinarians should be familiar with the increased information to be interpreted and possibly reported on in digital radiographic images.

#### **APPENDIX 2**

##### **SECTION 65(2) AND SECTION 45(1) TO (5) OF THE CONSUMER PROTECTION ACT NO. 68 OF 2008**

1. A vendor is required to sign an entry/nomination form prior to the Sale stating that he or she is the owner or rightful holder of the Horse and submits such form to the Association.
2. The Association is the rightful holder of the Horse upon accepting a Horse for sale from a Vendor, and has the right to sell the Horse to be auctioned on behalf of the Vendor in terms of Regulation 22 of the Act and as set out in the Conditions of Sale and Purchase and the Sale Documents.
3. Section 65(2) of the Consumer Protection Act provides that:  
*When a supplier has possession of any prepayment, deposit, membership fee, or other money, or any other property belonging to or ordinarily under the control of a consumer, the supplier -*
  - (a) *must not treat that property as being property belonging to the supplier;*
  - (b) *in the handling, safeguarding and utilisation of that property, must exercise the degree of care, diligence and skill that can reasonably be expected of a person responsible for managing any property belonging to another person; and*
  - (c) *is liable to the owner of the property for any loss resulting from a failure to comply with paragraph (a) or (b).*
4. Section 45(1) to (5) of the Consumer Protection Act provides that:  
*Auctions -*
  - (1) *In this section, "auction" includes a sale in execution of or pursuant to a court order, to the extent that the order contemplates that the sale is to be conducted by an auction.*

- (2) *When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.*
- (3) *A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in any other customary manner, and until that announcement is made, a bid may be retracted.*
- (4) *Notice must be given in advance that a sale by auction is subject to -*
  - (a) *a reserved or upset price; or*
  - (b) *a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.*
- (5) *Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer -*
  - (a) *the owner or auctioneer must not bid or employ any person to bid at the sale;*
  - (b) *the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and*
  - (c) *the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.*

### APPENDIX 3 RULES OF AUCTION – RESERVE SALES

Date of auction: 3 November 2019

Place: TBA Sales Complex, Gosforth Park, Johannesburg, Time: 14h00

#### 1. THE AUCTIONEER'S DETAILS

- 1.1 The auction will be held by the Thoroughbred Breeders' Association of South Africa (**the Auctioneer**), having premises situated at TBA Sales Grounds, Gosforth Park, Johannesburg, South Africa.
- 1.2 The Auctioneer's contact details are: The Thoroughbred Breeders' Association of South Africa, PO Box 78035, Avondale Road, Durban 4101, South Africa. Tel: +27 (0) 31 303 1017; Fax: +27 (0) 31 303 1200; Email: bsa@equine.co.za; Web: bsa.co.za.
- 1.3 The Auctioneer is the agent of the owner of the horse/s, or the owner's authorized representative. The owner or the owner's authorized representative has declared in writing that he is entitled to sell the horse/s.

#### 2. COMPLIANCE WITH THE CPA

These rules are drafted in terms of, and in compliance with, the requirements of section 45 of the Consumer Protection Act, 2008 (CPA) and the Regulations thereto.

#### 3. BEFORE THE AUCTION

- 3.1 The auction will commence at the published time and will not be delayed to enable any person/s to take part in the auction.
- 3.2 If before the auction, the Auctioneer becomes aware of any fault on advertising material or any other publication or any amendment to these Rules of Auction, the Auctioneer will point out and if necessary amend such mistakes in the advertisement or publication.
- 3.3 Each bidder must register as a buyer on the bidder's role and must provide to the satisfaction of the Auctioneer, proof of identity, residence and any other documentation required by the Auctioneer in relation to the bidder's financial means or as security for payment. On completion of registration on the bidder's role, the Auctioneer will issue the bidder with a bidder's card which entitles the bidder to make purchases to a specified maximum value (**the Approved Purchase Facility**).
- 3.4 **By registering as a buyer on the bidder's roll, the bidder is deemed to be bound by these Rules of Auction and the Conditions of Sale provided to the bidder and otherwise available at <http://www.bsa.co.za/pdf/conditions3.pdf>**
- 3.5 **The Auctioneer may in its discretion, as a condition of issuing a bidder's card or increasing an Approved Purchase Facility, require a bidder to pay the Auctioneer a refundable cash deposit of a minimum of 75% of the Approved Purchase Facility or increase thereto.**
- 3.6 If the bidder is bidding on behalf of a third party, the bidder must submit letters of authority authorizing the bidder to bid on that third party's behalf and must comply with the FICA Requirements in relation to the third party.
- 3.7 If the third party is a company or other incorporated entity, the bidder's letter of authority must be printed on the entity's letterhead and must include a certified copy of a resolution authorizing the bidder to bid on the entity's behalf.
- 3.8 The bidder may inspect the horses prior to the auction. The Auctioneer will, subject to reasonable security measures, make the horses available for inspection for a reasonable time prior to the auction.
- 3.9 The bidder's roll and the vendor roll which records all necessary information relating to the auction, may be inspected by registered bidders, free of charge, at the Auctioneer's premises during normal office hours.

#### 4. THE AUCTION

- 4.1 The Auctioneer will announce the reason for the auction unless it is a normal and voluntary disposal by the owner.
- 4.2 The Auctioneer will notify bidders prior to the commencement of a sale whether the sale is subject to a reserved price or a right to bid by the owner (or his authorized representative) or the Auctioneer.
- 4.3 Bids may only be placed in person, at the premises at which the auction is scheduled to take place, or telephonically.
- 4.4 **A bid by an unregistered bidder is invalid.** A bidder who has outstanding debts from a previous sale or who otherwise fails to meet the Auctioneer's requirements will not be issued a bidder's card. Only the bidder who holds the bidder's card may sign for any purchase.
- 4.5 **A bidder may not exceed his Approved Purchase Facility unless the Auctioneer approves an increase in such facility.** Unless the Auctioneer increases the Approved Purchase Facility, a sale in excess of the Approved Purchase Facility is void.
- 4.6 As provided in section 45(2) of the CPA, when horses are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction.
- 4.7 **In the event of a dispute between two or more bidders in relation to the purchase of a horse, the Auctioneer may in its discretion, determine who the purchaser is, or re-auction the horse. The Auctioneer's decision is final and binding on the**

parties to the dispute.

4.8 All bids are binding and cannot be withdrawn.

4.9 The highest registered bidder recognized as such by the Auctioneer will be the purchaser of the horse (Sold Horse).

4.10 A bid made by an insolvent or irresponsible person, a person under the age of eighteen, or a bid which is not supported by satisfactory credit or otherwise may be disregarded by the Auctioneer.

4.11 A bid may be declined by the Auctioneer if not compliant with these Rules or the CPA at any time before the Auctioneer announces the completion of the sale by the fall of the hammer or in any other customary manner.

## 5. VOETSTOOTS SALES

All horses are sold "voetstoots" and the purchasers do not have the protection of sections 55 and 56 of the CPA.

## 6. RISK

6.1 All risks, responsibilities and liabilities in and to a Sold Horse pass to the purchaser when the Auctioneer declares the sale complete. This means that from the time when the sale is complete, the purchaser is liable for amongst other things, the care, keep, custody, control, insurance and security of and for the Sold Horse and for all expenses relating thereto and bears the risk of injury to, sickness or death of the Sold Horse.

6.2 The purchaser indemnifies the Auctioneer, its officers, employees, agents and representatives and subcontractors (collectively Indemnified Parties) against all loss, damages, liabilities, expenses, claims, causes of action or legal fees directly or indirectly related to the possession, care, keep, custody, control or maintenance of any Sold Horse which he purchases, including any claims arising out of injuries, sickness, death or damage caused by the Sold Horse after the sale is complete, unless the Indemnified Parties or any of them may be held liable in terms of section 61 of the CPA.

## 7. INSURANCE

7.1 On the date of the sale, the purchaser must insure the Sold Horse/s which he purchases to the value of their respective purchase prices, for a period of 90 days from the date of the sale, with an insurance provider and on terms and conditions acceptable to the Auctioneer, and must provide the Auctioneer with written confirmation of such cover, failing which the Auctioneer may arrange such insurance and may recover the costs thereof from the purchaser on demand. The Auctioneer's interests must be noted on the policy.

7.2 If the purchase price of any Sold Horse is not paid in full within the 90 day period, the Auctioneer may at the purchaser's cost, extend the period of the insurance cover until the purchase price is paid in full by the purchaser.

## 8. OWNERSHIP

8.1 Despite the fact that the purchaser may have taken possession of a Sold Horse, ownership in the Sold Horse shall only pass to the purchaser on full payment of all amounts owing in respect of the Sold Horse. The purchaser may not register the Sold Horse in his name until all such amounts have been paid in full.

8.2 Until such time that all amounts owing in respect of a Sold Horse have been paid in full, the purchaser:

8.2.1 must advise the Auctioneer in writing of the physical address at which the Sold Horse is being kept, and must allow the Auctioneer and/or its authorized representative to access and inspect the Sold Horse at all reasonable times;

8.2.2 may not relinquish possession of the Sold Horse, cede any of his rights and obligations in terms of these Rules to a third party or otherwise allow the Sold Horse to become the subject of any right of retention, hypothec, pledge or any other encumbrance; and

8.2.3 must take care of and maintain the Sold Horse in good condition.

## 9. DELIVERY

9.1 Except as otherwise agreed by the parties in writing, the purchaser must remove the Sold Horse from the Auctioneer's premises immediately after the sale, failing which the Auctioneer may stable and maintain the Sold Horse at the purchaser's cost, which costs are payable on demand.

9.2 The purchaser may not remove the Sold Horse without a release permit. A release permit will not be issued unless the Sold Horse is paid for in full or credit terms have been arranged and approved by the Auctioneer.

## 10. LIMITATION OF LIABILITY

Except if as a direct consequence of an intentional and unlawful or grossly negligent act or omission of an Indemnified Party, the Indemnified Parties are not liable for any loss, damage, cost, claim or expense suffered or incurred by the purchaser as a consequence of:

10.1 these Rules of Auction;

10.2 any misrepresentation by the seller of the Sold Horse as to its qualities or characteristics;

10.3 the handling, feeding, upkeep, transporting or stabling of the Sold Horse; or

10.4 the purchaser's participation in the auction.

## 11. EXPORT AND IMPORT REQUIREMENTS

The purchaser of any Sold Horse required to be exported or imported is responsible for ensuring that all requirements necessary for the export or import of such Sold Horse are met. The purchaser may not terminate the sale or withhold payment as a consequence of such requirements.

## 12. PAYMENT

12.1 All amounts payable in respect of the purchase of a Sold Horse must be paid into the Auctioneer's trust account for the benefit of the seller (less the agreed commission).

12.2 Unless the Auctioneer has granted credit terms to the purchaser for this specific auction, all Sold Horses must be paid for



**in full before the Sold Horses will be released to the purchaser.**

12.3 If:

- 12.3.1 the bidder does not make any purchases, the deposit will be refunded to the bidder within 14 days after the bidder's card has been returned to the Auctioneer;
- 12.3.2 the value of the bidder's purchases be less than the amount of the deposit, the amounts owing for the purchases will be deducted from the deposit and the balance of the deposit will be refunded to the bidder within 14 days after the date of the sale/s;
- 12.3.3 the value of the bidder's purchases exceed the amount of the deposit, the amounts owing for the purchases will be deducted from the deposit and the balance of the amounts owing by the bidder will be payable in terms of this clause.

**13. VAT AND OTHER CHARGES**

- 13.1 **Bids exclude VAT which, where applicable, will be added to the bidding price for which a VAT invoice will be issued.**
- 13.2 **The purchaser is responsible for all costs associated with a Sold Horse purchased from the time when the sale is declared complete, including handling, upkeep, stabling, feeding and transport costs.**

**14. RESCISSION OF SALE**

14.1 **The Auctioneer may rescind a sale if the purchaser:**

- 14.1.1 breaches any provision of these Rules of Auction and fails to remedy that breach within 7 days after receiving a written notice to do so;
- 14.1.2 being a natural person, dies or takes steps to place himself, or is placed in insolvency; or
- 14.1.3 being a juristic person, takes steps to place itself, or is placed in, liquidation or business rescue, or commits an act which would be an act of insolvency if committed by a natural person.

14.2 **If a sale is rescinded as provided for above, the purchaser remains liable for the Auctioneer's commission and any expenses incurred by the Auctioneer as a consequence of the purchaser's breach.**

**15. MISCELLANEOUS LEGAL ISSUES**

- 15.1 The parties consent to the jurisdiction of the Magistrates' Court. The Auctioneer may nevertheless elect to institute proceedings in a High Court having jurisdiction.
- 15.2 No relaxation by a party of any of its rights in terms of these Rules of Auction at any time shall prejudice or be a waiver of its rights (unless it is a signed written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 15.3 These Rules of Auction shall be governed by and construed according to the law of South Africa.
- 15.4 Unless inconsistent with the context, words signifying any one gender will include the others, words signifying the singular will include the plural and vice versa and words signifying natural persons will include artificial persons and vice versa.
- 15.5 For the purposes of these Rules of Auction:
  - 15.5.1 "day" means a calendar day;
  - 15.5.2 whenever any number of days is prescribed, it excludes the first and includes the last day unless the last day falls on a Saturday, Sunday or South African public holiday in which case the last day will be the next succeeding business day.

I certify that these Rules of Auction are to the best of my knowledge, compliant with Regulation 21 of the Regulations to the Consumer Protection Act, 2008.

Signed at Durban on this 16th day of September 2019



For Bloodstock South Africa  
who hereby warrants that he is duly  
authorised to sign on its behalf

Full names: Michael Holmes

Designation: Chief Executive Officer