

Auction Terms and Conditions Limburg Foal Auction Foundation

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**1. General**

1.1

These auction terms and conditions apply to all agreements concluded at the foal auction between vendor and buyer with regard to foals offered through the foundation, as well as to any agreements resulting from those agreements. These terms and conditions also apply to the preparatory stage of the auction, for example the selection days, so-called photo or inspection day and the day of the auction itself.

1.2

These agreements are subject to Dutch law.

1.3

Visitors of the auction shall be informed of these auction terms and conditions before the start of the Foal auction by or on behalf of the Limburg Foal Auction Foundation. Furthermore these auction terms and conditions shall be included in the foal auction catalogue.

1.4

The concepts stated in capital letters in section 2 of these auction terms and conditions shall have the meaning stated after the aforementioned concepts.

1.5

All foals to be auctioned shall be clinically inspected by a certified veterinary surgeon prior to the auction. The findings of this veterinary surgeon shall be binding.

1.6

The Foundation board shall at all times retain the right to decline a selected and/or clinically approved Foal at a later time, for administrative or veterinary reasons. The board shall also be competent to decline a Foal if for any reason whatsoever the Foal does no longer meet the selection demands. In addition, with regard to the provisions stated in section 4.2, one or more Foals can be randomly or specifically tested for illegal substances by or on behalf of the Foundation board during the selection days, the photo or inspection day and on the day of the auction itself.

1.7

Embryos can be auctioned at the Limburg Foal Auction. The auction terms and conditions shall apply unless the text explicitly states otherwise. Please consult the additional terms and conditions for the auctioning of Donor Mares.

**2. Definitions**

2.A

**BUYER:** natural person or legal person who acts as buyer in a purchasing and sales agreement for a Foal or Donor Mare at the foal auction.

2.B

**NOTARY:** the notary in the presence of whom the Foal or Embryo auction takes place.

2.C

**FOUNDATION:** the Limburg Foal Auction Foundation who is responsible for the organization of the auction.

2.D

**SELECTION COMMITTEE:** the committee that has been charged by the Foundation with the selection of the Foals and who also manages the selection of the mares and stallions for the benefit of the Embryos to be auctioned.

2.E

**VENDOR:** natural person or legal person who acts as vendor in the purchasing and sales agreement for a foal or Embryo at the foal auction.

2.F

**FOAL:** a foal appointed by the selection committee for the foal auction.

2.G

**EMBRYO:** a genetically high-quality embryo placed in a Donor Mare

2.H

**DONOR MARE:** a mare carrying a genetically high-quality embryo.

2.I

**FOAL AUCTION:** the annual auction of foals and/or Embryos organized by the Limburg Foal Auction Foundation.

2.J

**AUCTIONEER:** an auctioneer appointed by the foundation directing the Foal and Embryo auction.

### 3. Auction

The Foal and Embryo auction is organized by the Foundation in the presence of Van Gorp Malherbe, notaries in Weert, or a representative.

### 4. Purchase agreement

4.1 The purchase agreement is concluded directly between Vendor and Buyer, committing Vendor and Buyer to pay the Foundation the auction costs determined in these auction terms and conditions.

4.2 By offering the Foal for auction, Vendor declares that he does not know of any facts or circumstances that make the Foal unsuitable for normal use as a Foal. Vendor furthermore shall guarantee that the Foal is not under the influence of illegal substances as stated in the most recent list of illegal substances of the Fédération Equestre Internationale (FEI) and that the Foal does not suffer from the stable vices air sucking, weaving or crib-biting.

4.3 The Foundation shall by means of a presentation before the auction give Buyer the opportunity to form an opinion about the Foal and the degree in which the Foal meets his wishes with regard to the specific purchasing aims of Buyer. Buyer shall call in the independent advice of experts where required or desired within all bounds of reasonableness.

4.4 The Foundation/Selection Committee shall select a Foal on the basis of quality of the exterior and ancestry. Prior to the Auction every Foal is clinically inspected by a certified veterinary surgeon. On the day of the auction a short inspection is carried out preferably by the same veterinary surgeon. A radiology inspection is not carried out. Furthermore it is not common to carry out an inspection into illegal substances.

### 5. The Auction

#### 5.1

The Auction is directed by an Auctioneer appointed by the Foundation.

#### 5.2

The Foals and Embryos are sold by auction. The Foals and Embryos are offered in catalogue order. The catalogue order is determined by the Foundation in consultation with the Selection Committee.

#### 5.3

Bids are made by raising the catalogue. Unless the Auctioneer indicates otherwise, bids are made up to 4,000 Euro in amounts of 250 Euro (in words: two hundred and fifty Euro), followed by 500 Euro (in words: five hundred Euro) up to an amount of 10,000 Euro and after that in amounts of 1000 Euro (in words: a thousand Euro). The Foundation or Auctioneer shall retain the right to refuse a bidder without reason given.

#### 5.4

Every bidder is expected to bid for him- or herself and shall be bound to his or her bid until a higher bid is accepted.

#### 5.5

If the Auctioneer has made a mistake, he shall have the right to correct his mistake.

#### 5.6

The Notary establishes, as far as necessary, facts occurring during the Foal or Embryo Auction. Any disputes connected to the auction shall be decided upon by the Notary and shall be binding, on the basis of his findings and documentation.

5.7 Buyer and Vendor shall prove their identity at the request of the Foundation.

5.8 The Foundation shall be competent to refuse a Foal, stated in the auction catalogue, at all times for the actual auction without being held to pay any damages.

5.9 The Foundation shall never be liable for loss of profits, consequential losses and/or indirect losses.

5.10 The Foundation's liability shall be limited to the amount that is paid out in the aforementioned circumstances by the Insurance company giving out the liability insurance policy, increased by the own risk under the insurance. If and as far as no sum is paid out under the liability insurance, every claim shall be limited to an amount of € 5000.00.

### 6. Exclusion of liability

#### 6.1

The Foundation shall, in accordance with the law, exclude any liability with regard to Buyer, Vendors and third parties and in particular, but not limited to, with regard to the cases stated below.

#### 6.2

The Foundation cannot be held liable if a Foal or Embryo stated in the auction catalogue is not offered in the auction.

#### 6.3

The Foundation shall exclude any liability with regard to the state of health of the Foals to be auctioned. More specifically liability shall be excluded with regard to osteochondrotic defects in the knee and tarsal joints of the Foal and/or other defects that are discovered at a later time. In addition, the Foundation shall also exclude any liability with regard to the Embryos and Donor Mares, transport, etc.

6.4

The Foundation cannot be held liable for any accident or any form of damage suffered by anyone in, on or near the grounds or buildings accessible for visits and views, where the foal or embryo auction is held or where the sold Foals or Donor Mares are collected. Entering these grounds and buildings shall be at one's own risk.

6.5

The Foundation cannot be held liable for losses suffered by third parties, occurring during the foal and embryo auction, except for losses as a result of malice aforethought or reckless acts of the Foundation, or its management.

## **7. Payment and delivery of the foal**

7.1

The Foundation shall pay the purchase price, after having received this amount from Buyer and after deduction of the auction costs owed to the Foundation, into a bank or giro account to be indicated by the Vendor.

To ensure a successful payment process, Vendor shall be obliged to, prior to the delivery of the foal, ascertain from the treasurer of the Foundation:

- a. if Buyer has fully fulfilled his obligation to pay, and
- b. if not, not to deliver the foal until payment has been made.

If the purchase price for any reason whatsoever is not paid to the Foundation, the Foundation's obligation to pay the Vendor, as intended in the first paragraph, shall expire. For more information, see section 10 of these auction terms and conditions.

7.2

After allotment of a Foal younger than 4½ months, Buyer shall pay the Foundation the full purchase price, including 7% of the purchase price as auction costs in cash or by standing order. This sum shall be placed under trust of the Foundation and shall not be paid out to Vendor until the delivery to all parties has been completed correctly, also see section 7.4, 7.5, 7.6 etc.

7.3

After allotment of a Foal older than 4½ months or an Embryo, Buyer shall pay the Foundation the purchase price, including 7% of the purchase price as auction costs in cash or by standing order.

7.4

If Vendor sells a Foal at the foal auction, which with regard to its age (usually older than 4½ months) can be immediately delivered to Buyer by Vendor, the Foal is in fact delivered to Buyer by Vendor, after Buyer has fulfilled all his financial obligations, both towards Vendor and the Foundation.

If Vendor sells an Embryo at the foal auction, which can be delivered to Buyer by Vendor immediately, the Embryo is in fact delivered to Buyer by Vendor, after Buyer has fulfilled all his financial obligations, both towards Vendor and the Foundation.

If Buyer has fulfilled all his financial obligations at the foal auction, Buyer is given an internal movement certificate on behalf of the Foundation on the basis of which the delivery to Buyer by Vendor shall take place at the location of the foal auction.

7.5

Vendor shall be obliged to leave a foal younger than 4½ months with the mare, without any compensation indebted by Buyer.

7.6

Until the moment of actual delivery to Buyer, the Foal, the Embryo and/or the Donor Mare shall be at the expense and risk of Vendor, unless at the foal auction a Foal younger than 4½ months has been purchased / sold, in which case the risk shall be transferred to Buyer after 4½ months. A Foal purchased / sold at the foal auction which at the time of the auction was younger than 4½ months, must be in the possession of Buyer before it reaches the age of 4½ months.

If Buyer or Vendor do not meet their collection or delivery obligations with regard to a Foal, younger than 4½ months, purchased / sold at the foal auction, the defaulting party shall, with respect to the other party, forfeit an immediately claimable fine of 2,500 Euro (in words: two thousand and five hundred Euro), increased by a fine of 250 Euro (in words: two hundred and fifty Euro) for each day this negligence is continued.

7.7

The Foal or Donor Mare shall be delivered at the address of Buyer by Vendor, except for deliveries at the Auction itself. If Buyer and/or Vendor is/are domiciled abroad, the delivery location shall be in the Netherlands, unless agreed upon otherwise.

7.9

Broker's commission.

The auction costs for Vendor shall amount to 7% of the purchase price. The auction costs for Buyer shall also amount to 7% of the purchase price. In the event of concurrence of purchase and sale, when Vendor and Buyer are one and the same person, this amount shall be 7% for a purchase price up to € 4000. If however in the event of concurrence of purchase and sale, when Vendor and Buyer are one and the same person the purchase price amounts to more than € 4000, a broker's commission of 14% of the full purchase price shall be owed.

**8. Payment and delivery of Embryos / Donor Mare(s)**

8.1

Payment and delivery.

See sections 4 and 7.1 and the following auction terms and conditions, which shall remain fully applicable. Moreover, the provisions regarding the delivery of a Foal of 4½ months or older shall apply to the delivery – see sections 7.3 and 7.7.

8.2

The auction costs for Vendor shall amount to 7% of the purchase price. The auction costs for Buyer shall also amount to 7% of the purchase price. Section 7.9 is also applicable here.

8.3

Contrary to definition 2.G, Buyer of the Embryo shall commit himself to return the Donor Mare to its owner gratis as soon as the foal has been weaned off, which shall be within five months after the birth of the Foal.

**9. Non-observance of the agreement**

9.1

If Buyer is of the opinion that the Foal after actual delivery is not in accordance with the agreement, Buyer can no longer appeal to this opinion if he has not notified Vendor of this by means of a registered letter within 3 weeks after he discovered this or should within all bounds of reasonableness have discovered it.

9.2

Vendor shall guarantee, for a period of 10 times 24 hours after actual delivery of the Foal by Vendor to Buyer that the Foal sold by him does not suffer from stable vices wind sucking, systematic weaving or crib-biting.

9.3

If a veterinary surgeon, preferably a veterinary surgeon who specializes in the inspection of horses, identifies one of the stable vices stated in section 9.2 and has given a written statement to confirm that, signifying that the stable vice in his expert opinion existed before the date of actual delivery, Buyer shall be competent to claim annulment of the purchase agreement or to consult with Vendor about a reduction of the purchase price. A written (in the case of a registered letter or letter with confirmation of receipt) request for that shall reach Vendor within three weeks after the actual delivery, in default of which the right to claim annulment of the purchase agreement shall expire, as well as the opportunity to negotiate a reduction of the purchase price.

**10. Default on the side of buyer**

If Buyer does not fulfil his obligations with regard to his purchase, Vendor shall be competent, by his choice and decision, to either claim observance of the obligations, or to consider the purchase agreement annulled, without any further proof of default or judicial intervention being required. In both cases however without the retention of any rights and claims on full compensation.

**11. Disputes**

11.1

Disputes as a result of agreements concluded at the Auction with regard to Foals / Embryos and their Donor Mare, or of further agreements which may have been the result of those, shall be settled in arbitration court (without appeal) in accordance with the Foundation's arbitration regulations. A copy of the arbitration regulations can be requested from the Secretariat of the Foundation.

11.2

Arbitration shall take place in accordance with the aforementioned regulations, in which the first obligation of the arbitrators shall be to set a term within which the lawsuit shall be carried on and within which, apart from unforeseen circumstances, the arbitrators shall pass their judgement. The arbitrators shall always pass judgement as soon as possible. Their obligation shall last until a final judgement has been passed.

11.3

At least one of the arbitrators shall be a veterinary surgeon and graduate of the University of Utrecht, and at least one of the arbitrators shall be familiar with the customs of the foal auction.

Weert, Mai 2010.

*The auction terms and conditions are available on request from the secretariat in the Dutch and German language. In the event of a dispute, the Dutch auction terms and conditions shall prevail.*