



# **AUCTION TERMS AND CONDITIONS**

## **Limburg Foal Auction on 25<sup>th</sup> September 2019 in Kronenberg**

### **1. GENERAL**

- 1.1 Hendrix Events BV [trading under the name Limburgse Veulenvelling (trad. Limburg Foal Auction)] (hereinafter individually and collectively referred to as: LVV), is organising in its function as intermediary between sellers and buyers the Limburg Foal Auction (hereinafter referred to as: the Auction) on 25<sup>th</sup> September 2019, on the property of Equestrian Centre de Peelbergen in Kronenberg (in the Netherlands). The auction will be held under the supervision of a notary appointed by LVV.
- 1.2 These auction terms and conditions are applicable to all sales agreements concluded during the Auction relating to the foals offered via the LVV, as well as to all agreements resulting herefrom.
- 1.3 Dutch law is applicable to these agreements and to these auction terms and conditions with total exclusion of applicability of the Vienna Sales Convention (CISG)
- 1.4 A purchase agreement is reached solely between seller and buyer. Buyer is obliged to sign the written purchase agreement, whereby LVV acts solely as intermediary.
- 1.5 These terms and conditions are to be published prior to the start of the Auction and are included in the auction catalogue and are also intended for of all of those who are or were working for LVV. These (legal) persons can directly invoke these auction terms and conditions.

### **2. SELECTION PROCEDURE**

- 2.1 The LVV, or selection committee set up by the LVV, inspects and selects the foals that qualify for participation in the Auction. A decision by the LVV/ the selection committee is binding. The LVV/ the selection committee is authorised to seek advice from third parties but, at all times, has the right to refuse a foal or foals without stating reasons, on the basis of (physical) defects as well as on other grounds determined by the LVV/ the selection committee, even if a foal or foals has or have already been selected for the Auction. The LVV/the selection committee is never liable, for whatever reason, to compensate the seller for costs incurred.
- 2.2 Prior to the Auction every foal (hereinafter: Foal) undergoes a clinical examination by an equine veterinarian appointed by LVV. On the day of the Auction, prior to the Auction, a short examination takes place, preferably by the same equine veterinarian. An X-ray examination has not been carried out. Likewise, no check for prohibited substances will be carried out.
- 2.3 By offering the Foal for auction, the seller certifies that there are no facts or circumstances known to him/her that would make the foal unsuitable for training in the normal manner. The seller also guarantees that the Foal is free from any prohibited substances stated on the Fédération Equestre Internationale 's (FEI) most recent list of prohibited substances.
- 2.4 The LVV offers by means of a presentation prior to the Auction the buyer the possibility to form their own judgement regarding the Foal and the extent to which the Foal matches

his/her wishes taking into consideration the buyer's specific intended use. If necessary or desired the Buyer should seek independent professional advice in this regard.

### **3. SALE/AUCTION**

- 3.1 The foals are sold by bidding. The foals are auctioned according to the order in the catalogue. The catalogue order is determined by the LVV together with the selection committee.
- 3.2 During the Auction the foals will be sold by an LVV-appointed auctioneer (hereinafter: Auctioneer) by bidding in Euros, unless otherwise stated, with a minimum opening bid of €3,000-. Bids are to be made in increments of €250 at a time up to €4,000, and then in increments of €500 at a time up to €10,000, and above that in increments of €1,000 at a time. A potential buyer will be held to his/her bid until a higher bid is received. If the buyer is awarded the lot by the Auctioneer then the buyer in question is obliged to pay the amount due, as defined in article 4.2. In the event of doubt regarding the validity of a final bid, the previous bid can be accepted again and bidding will be resumed. The decision of the notary is binding in the event of disputes arising with or during the bidding process.
- 3.3 Each bidder bids for himself/herself and is bound to his/her bid until a higher bid is accepted.

### **4. SETTLEMENT OF AUCTION FEES AND EXPENSES**

- 4.1 Immediately after the Auction the buyer is obliged to settle his/her payment obligations in the auction office (hereinafter: Auction office). Should the buyer fail to comply with this, the LVV is entitled to not recognise the offer and to declare it invalid and to either auction the purchased Foal again or to allocate the purchased Foal to the second-highest bidder. The buyer is in that case in legal default and shall be liable to compensate LVV for any damage incurred, without prejudice to any other rights the LVV may have.
- 4.2 The amount due shall be calculated as follows:  
Highest bid price +  
8% commission fee (excluding Dutch VAT) +  
1.1% insurance (optional) +  
Invoice amount excluding Dutch VAT
- The amount due is payable immediately. Payment is to be made by bank transfer only.  
Settlement of any counter-claims is excluded
- 4.3 The LVV is permitted to gather information regarding the financial credibility of a specific bidder/buyer and to make participation in the Auction by, and settling of an agreement with, that particular bidder/buyer conditional on the information obtained.
- 4.4 During settlement at the Auction office the buyer has the option to take out insurance for the foal they have purchased. Such insurance is not taken out by the LVV.

### **5. PAYMENT AND DELIVERY OF THE FOAL**

- 5.1 The LVV pays the fall of hammer price, once they have received this from the buyer, after deduction of the auction commission owed to LVV and any insurance premium, to the bank account number or bank giro account number indicated by the seller. This amount is not paid out before the seller has given the LVV the proof of delivery, in the LVV-format, signed by the buyer.

The seller receives an invoice for the fixed auction fee of €250 – excluding Dutch VAT, shortly after the selection day during which his/her foal is selected. This invoice must be paid within

the specified payment term. If the seller defaults, LVV has the right to refuse the Foal for the Auction.

To enable the financial settlement to proceed smoothly, before handing over his/her foal, the seller is obliged to verify with the LVV that:

- a. the buyer has satisfied his/her payment obligations in full, and
- b. if this is not the case, not to handover the Foal before these obligations are met in full.

- 5.2 Up until the actual handover the risks and costs of the Foal remain the responsibility of the seller. Immediately after handover by the seller to the buyer the risks and costs regarding the Foal are transferred to the buyer.
- 5.3 The seller accepts the responsibility to leave a Foal younger than 4½ months with the mare until the Foal has reached the age of 4½ months, at no extra expense to the buyer. The stay is at the expense and risk of the seller.
- 5.4 In the event the seller sells a Foal at the Auction that, given the age of the Foal (usually older than 4½ months), can immediately be handed over to the buyer, the Foal is handed over by the seller to the buyer after the buyer has satisfied all his/her financial obligations towards the seller and LVV.
- 5.5 The Foal is delivered by the seller to the buyer's address, except in the case of handover at the Auction itself. If buyer and/or seller are resident outside the Netherlands the delivery location is in the Netherlands, unless the parties agree otherwise.
- 5.6 The Foal is delivered by the seller to the buyer's address, except in the case of handover at the Auction itself. If the Foal is bought by a foreign buyer, the buyer shall, except in the situation where the buyer intends to use the horse in the Netherlands, and with due observance of a reasonable period of time required to arrange export documents, ensure immediate transport abroad of the purchased foal.
- 5.7 The costs for the seller amount to €250,- (excluding Dutch VAT) in fixed auction fees, plus 8% commission fees (excluding Dutch VAT) over the fall of hammer price. For the buyer this is also 8% commission fees (excluding Dutch VAT) of the fall of hammer price. However, if seller and buyer are the same person, a commission fee of 16% (excluding Dutch VAT) over the full fall of hammer price is due.

## **6. EXCLUSION OF LIABILITY**

- 6.1 The LVV excludes, in so far as is legally permitted, any liability with respect to buyer, sellers and third parties and in particular, but not limited to, regarding the following cases:
- 6.2 The LVV excludes any liability if a Foal stated in the auction catalogue is not offered for auction.
- 6.3 The LVV excludes all liability regarding the state of health of the foals to be auctioned. More particularly excluded is liability regarding osteochondrotic defects in the stifle and hock joints of the Foal, based on DNA-tests (genome selection) and/or other defects. Furthermore, the LVV also excludes all liability regarding transport.
- 6.4 The LVV is not liable for any accident or any type of damage to anyone in or close to the grounds or buildings where there is an opportunity to view, where the Auction takes place or where the foals sold are collected. Entering these grounds and buildings is at one's own risk.
- 6.5 The LVV excludes liability for damage by third parties, that occurs during the Auction, except for damage that is the result of intentional or deliberate recklessness by the LVV or its managers.

## **7. NOT CONFORMING TO THE AGREEMENT**

- 7.1 If, after actual delivery, a buyer is of the opinion that the Foal purchased does not conform to the agreement, the buyer is not entitled to any recourse if the seller has not been informed thereof by registered letter (with a copy to the LVV), within three weeks after the discovery.
- 7.2 The seller guarantees, unless notified in writing prior to the sale, that a Foal purchased by the buyer does not have any stable vices such as cribbing, systematic weaving or wood-chewing for a period of 2 times 24 hours after actual delivery to the buyer.
- 7.3 If a KNMvD (Koninklijke Nederlandse Maatschappij voor Dierengeneeskunde (trad. Royal Dutch Society for Veterinary Medicine) veterinarian, registered as an inspection veterinarian for horses or an equine veterinarian states in writing that one of the stable vices listed under article 7.2 in his/her expert opinion was present prior to the date of actual delivery, the buyer has the right to terminate the purchase agreement, with all resulting consequences.

## **8. BIDDING ONLINE / BY TELEPHONE**

- 8.1 A bid made by a bidder by telephone or online is, just as applies to a bidder in the room, irrevocable and unconditional.
- 8.2 A potential buyer will be held to his/her bid regardless of whether it has been made online, by telephone or in the room. The Auctioneer's decision regarding which bid was made first is binding.
- 8.3 When a potential buyer at the Auction proceeds to make a bid, either online or by telephone, this bid has the same legal effect as a bid made in the auction room.
- 8.4 To be able to bid online or digitally at the Auction, a potential buyer may be requested by the LVV (Limburg Foal Auction) to pay a deposit to LVV's bank account. In this case, the potential buyer must satisfy this deposit request before the potential buyer's is approved to participate in the Auction.
- 8.5 By making a bid either online or by telephone, the potential buyer authorises each of the staff who at the time the authorisation was given were employed by the LVV to sign, on behalf of the potential buyer, the process regarding the auction and the final sale process regarding the relevant auction item. The authorised representative can, on the basis of this authorisation, sign the sale process and do what he/she deems necessary and useful in this respect. The authorised representative has the power of substitution so that, under his responsibility, he can delegate another in his place.
- 8.6 The LVV is never liable for damage suffered as a result of: actions and/or negligence by third parties; delay that occurs during the use of the auction site; failure or unavailability for any other reason of the auction site. This also includes the unavailability of a specific auction. Such delay or failure may be caused by the malfunctioning or availability of internet connections, or the malfunctioning or availability of (computer) equipment, among other things.

## **9. DUTCH TEXT BINDING**

The English version of these Auction terms and conditions is a translation of the Dutch text. As such only the Dutch-language version is legally binding.

## **10. DISPUTES**

- 10.1 All disputes with the LVV – including those that are considered as such by only one party – resulting from the purchase agreement concluded at the Auction or resulting from these auction terms and conditions, shall be settled by NAI arbitration (Dutch Arbitration Institute in Rotterdam), or if the buyer is a consumer, at his/her request in compliance with the Dutch Civil Code, in an ordinary civil court, in which case in the first instance only the Court in Limburg is entitled to rule on this matter.
- 10.2 If the seller or LVV intends to file proceedings and if the buyer is deemed to be a consumer, he/she shall be given the opportunity to disclose in writing within the period of one month his/her decision pertaining to article 9.1. In the event of an urgent matter (summary procedure) the seller (casu quo LVV) can decide to shorten the period to five business days.
- 10.3 In the event of a continuing dispute, the LVV may decide to initiate mediation between buyer and seller, at its discretion, at its own expense. Such mediation may be undertaken in accordance with NAI-Mediation Regulations.