

TERMS & CONDITIONS OF SALE – SERIES 21

- All bids and offers to purchase shall be treated as offers made upon the following Conditions of Sale and all persons attending the Sale or bidding at the Sale be deemed to have notice of such Conditions of Sale.
- 1. INTERPRETATION**
 - 1.1** In these Conditions: "Auctioneer" means (the selling Agent at each Sale) and includes its officers and agents. "Purchaser" means the person or corporation to whom any Lot is sold as referred to in Condition 2. "Vendor" means the person or corporation on whose behalf any Lot is sold by the Auctioneer and where more than one, shall mean each severally and any two or more jointly. "Promoter" means a third party (if any), identified in the Sale catalogue or other documentation issued in respect of the Sale as the promoter or sponsor of the Sale or of a closed race series or incentive race series in association with which the Sale is conducted. "Series Race" means the closed race series or incentive race series (if any) identified in the Sale catalogue or other documentation issued in respect of the Sale. "Lot" or "horse" includes gelding, colt and filly. The expression "colt" includes rig or cryptorchid, namely male animals in which one or both testes have not descended into the scrotum from the abdomen, however, it is the responsibility of the Vendor to have the Auctioneer announce that the "colt" is a rig or cryptorchid if that be so.
 - 1.2** Where the Purchaser of any Lot comprises more than one person or corporation, these Conditions shall bind each such person or corporation severally and any two or more of such persons or corporations jointly.
 - 1.3** Where any Lot is purchased by a person as an agent for a principal, whether disclosed or undisclosed, such agent shall, without prejudice to the principal's obligations pursuant to these Conditions, be personally bound to purchase the Lot for the price accepted by the Auctioneer upon these Conditions and the term "Purchaser" shall be construed to mean each of the agent and the principal severally and both the agent and the principal jointly.
 - 2. CONDITIONS OF ENTRY**
 - 2.1** No horse will be accepted for entry in the race series unless such horse has been foaled in Australia and has the Freeze Brand of the Australian State of registration.
 - 3. COMMISSION**
 - 3.1** Commission will be payable by the vendor on all lots entering the sale ring. If the final bid price exceeds the upset price, commission will be charged on the final bid price at 10% + GST. If a lot does not attract a bid or the final bid price does not exceed the upset price, commission will be charged at 10% (+GST) of the upset price.
 - 4. CATALOGUING FEE: \$220 (\$330 for Premium Gold)**
 - 5. UPSET PRICE: \$4,000 (\$10,000 for Premium Gold)**
 - 6. CONDUCT OF SALE**
 - 6.1** The Vendor shall have the right to bid personally or through an agent during the sale of each respective lot.
 - 6.2** The highest bidder shall be the Purchaser, but should any dispute arise the Lot shall be immediately put up for Sale at the last undisputed bid or the dispute may be determined by the Auctioneer, whose decision shall be final and binding.
 - 6.3** The Auctioneer shall have the right and absolute discretion to:
 - (i) determine who is the Purchaser;
 - (ii) settle any dispute in such manner as it thinks fit;
 - (iii) withdraw any Lot before or during the Sale;
 - (iv) advance the bidding as it thinks fit;
 - (v) exclude any person from the Sale venue; or
 - (vi) refuse to acknowledge any bid without giving any reason therefore, and the Auctioneer's decision shall be final and binding upon all persons;
 - (vii) bid as an Agent on behalf of a principal.
 - 6.4** All Lots are sold at the final bid accepted by the Auctioneer in Australian currency dollars. (Any other bids displayed on the indicator board are displayed as a guide only).
 - 7. VENDOR'S OBLIGATIONS**
 - 7.1** The Vendor shall be responsible for the accuracy of any statement, description or particular relating to the horse contained in the Sale Catalogue and shall notify the Selling Agent or Auctioneer of any error, omission or inaccuracy prior to the Sale of the particular Lot.
 - 7.2** The Vendor shall, before the Sale, provide each horse with a proper and secure headstall which shall remain the property of the Vendor. No horse shall be permitted to enter the Sale Ring unless equipped with such headstall and a rearing bit.
 - 7.3** Upon delivery of the horse to the buyer the Selling Agent shall, at the cost of the Vendor, provide the horse with a suitable headstall which shall remain the property of the buyer.
 - 7.4** The Vendor guarantees that any horse offered for sale:
 - (i) will not be in foal unless so stated in the Sale Catalogue or by the Auctioneer prior to the Auction of that particular lot;
 - (ii) is correctly sexed; and
 - (iii) the horse's identity is genuine.
 - 7.5** Each horse shall be at the Vendor's risk as to damage or injury whether by disease, accident or otherwise from the time of delivery to the Selling Agent until the horse has been sold when the risk shall pass to the buyer.
 - 7.6** The Vendor warrants that the horse
 - (i) is not broken to gait (pacer) and is generally only educated to be handled;
 - (ii) has no known bone fractures or chips affecting racing soundness;
 - (iii) is not suffering from founder; and
 - (iv) has never been nerved. Any horse not in accordance with this warranty and if its condition is not announced by the Auctioneer from the Stand or published in the Sale Catalogue, may, at the discretion of the Selling Agent, be returned to the Vendor and the purchase price refunded to the buyer.
 - 7.7** In the case of a return of the horse to the Vendor, as in the preceding condition, the Vendor shall be responsible for and shall pay all proper expenses incurred by the Selling Agent and the buyer for the care, feeding and transport of the horse from the fall of the hammer until its return to the Vendor.
 - 7.8** Transfer Forms for each horse must be furnished to the Selling Agent by the Vendor fully executed for transfer before the commencement of each individual sale. The Selling Agent will withhold from the Vendor settlement of the proceeds of Sale until the Transfer Form has been so delivered to the Selling Agent.
 - 7.9** Prior to the commencement of the Auction, the vendor shall make a sustaining payment in the sum of \$137.50 (including GST) per horse, payable to APG for eligibility to the race series.
 - 7.10** The Vendor shall closely clip the area of the horse's freeze brand to enable the horse's brand to be easily read by the Inspecting Official or any other person.
 - 8. RISK AND EXPENSE**
 - 8.1** Upon the fall of the hammer each Lot shall be at the risk and expense in all respects of the Purchaser and the Purchaser shall indemnify the Auctioneer in respect of and pay to the Auctioneer on demand all losses, damages, costs and expenses incurred or suffered by the Auctioneer in respect of the Lot while the Lot is at the Purchaser's risk and expense. In particular, the Purchaser will be liable for livery, agistment and transport charges of Lots not removed on the day of the Sale and they may be moved to alternate stables or agistment at the Auctioneer's discretion. Payment of Lots shall not be regarded as made until such charges have been paid.
 - 8.2** Prior to the fall of the hammer each Lot shall be at the risk and expense in all respects of the Vendor, and the Vendor shall indemnify the Auctioneer in respect of and pay to the Auctioneer on demand all losses, damages, costs and expenses incurred or suffered by the Auctioneer in respect of the Lot while the Lot is at the Vendor's risk and expense.
 - 8.3** Notwithstanding any other provisions hereof, the Auctioneer shall not be liable for any damage, loss or injury occurring to any Lot or to any person or property caused by any Lot, whether caused by disease, accident, the negligence of the Auctioneer or otherwise and whether the Lot shall be in the custody, control or possession of the Auctioneer or otherwise.
 - 8.4** The Auctioneer may upon receipt of written instruction to do so, or where the Auctioneer in its absolute discretion considers it desirable to do so, make arrangements on the Purchaser's or Vendor's behalf of the stabling, feeding, transportation or general attendance to Lots while at the Sale's venue, provided that the Auctioneer accepts no responsibility for any act or omission whether negligent or otherwise in respect of the stabling, feeding, transportation or general attendance of the Lot.
 - 8.5** Any Lot not sold, or in respect of which any Sale is subsequently terminated, shall remain at or revert to the risk and expense in all respects of the Vendor who shall arrange for the removal of the Lot immediately following the Sale.
 - 9. INSPECTION AND EXAMINATION**
 - 9.1** All Lots may be inspected at reasonable times prior to Sale. Prior to Sale, a prospective Purchaser may arrange for a veterinary examination of a Lot with the Vendor. Such examination shall be carried out in the privacy of a stable and may not be carried out in the Sale Ring or within the public view. The cost of this examination shall be paid by the prospective Purchaser, solely to whom the veterinarian should make his report. The Auctioneer or Vendor may refuse examination.
 - 9.2** Subject to Condition 19, the Purchaser assumes all consequences and risk arising from failure to carry out an inspection or to seek an examination of a Lot.
 - 9.3** The Directors of APG have the right to refuse entry to any yearling deemed to be inadequately prepared for sale.
 - 9.4** The Directors of APG have the right to refuse entry to the Sale Ring any person parading a yearling who is deemed to be unprofessionally or inadequately attired. In such circumstance APG will provide a person to parade the yearling and pass the cost on to the Vendor.
 - 10. PURCHASE AND PAYMENT**
 - 10.1** On the fall of the hammer the Purchaser shall give his Bidder Registration Number, name and address and the name and address of the principal for whom he bids (if applicable) to the Auctioneer and shall immediately complete, sign and hand to the Auctioneer an acknowledgement of his purchase in such form as shall be required by the Auctioneer and provide to the Auctioneer any such other information in respect of the purchase as the Auctioneer may reasonably require.
 - 10.2** The Purchaser shall sign on the fall of the hammer their intent to further sustain the horse in APG Series 21.
 - 10.3** Subject to Condition 11, the full purchase price shall be due and payable to the Auctioneer in Australian currency within one hour of purchase or within such other period of time as the Auctioneer in its absolute discretion may agree, time being of the essence, notwithstanding that delivery may not have been made.
 - 10.4** The Auctioneer may in its absolute discretion reject payment otherwise than in cash.
 - 10.5** The Purchaser shall pay to the Auctioneer on demand all collection costs and expenses (including legal costs) incurred in recovering any payment from the Purchaser.
 - 10.6** No rebate shall be allowed to any Bloodstock Agent accepting an invoice on behalf of a buyer.
 - 11. CREDIT ARRANGEMENTS**
 - 11.1** Purchasers who require credit are to make application to APG no later than seven (7) days before the date of the Sale.
 - 11.2** Purchasers who enter into credit arrangements with APG will be charged interest at a rate of 15% from the date of the respective Sale if they default on said credit arrangement.
 - 12. DELIVERY**
 - 12.1** The Auctioneer shall not be obliged to deliver any Lot to the Purchaser until:
 - (i) the Auctioneer shall have received from the Purchaser full payment of all monies payable by the Purchaser to the Auctioneer pursuant to these Conditions (including the purchase price for the Lot, unless the Auctioneer is satisfied that a prior credit or terms agreement in writing has been made with the Auctioneer or Vendor) or any other agreement, oral or written, entered into between the Auctioneer or Vendor and the Purchaser, and until all bills or exchange tendered in payment have been honoured;
 - (ii) the Purchaser shall have completed signed and delivered to the Auctioneer a delivery slip in such form as shall be required by the Auctioneer;
 - (iii) the Purchaser shall have complied to the satisfaction of the Auctioneer, with all his other obligations in respect of insurance of the Lot pursuant to Condition 14;
 - (iv) where the Purchaser requires the Lot to be delivered to his agent, the Auctioneer has received a written direction from the Purchaser directing the Auctioneer to deliver the Lot to such Agent providing that nothing in this Condition shall oblige the Auctioneer to obtain such written authority from an Agent prior to delivering any Lot to such Agent; and
 - (v) the Purchaser shall remove his Lot from the Sale venue within twenty-four (24) hours of the Purchaser receiving delivery of the Lot. The Purchaser shall ensure that the Auctioneer has firstly checked and confirmed the identity of the Lot prior to its removal.
 - 13. INSURANCE**
 - 13.1** Where the Auctioneer agrees to deliver any Lot to the Purchaser prior to the Auctioneer receiving from the Purchaser the full purchase price for the Lot, or on the basis of any credit or terms agreement made
 - 16.9** The Selling Agent shall pay to the Vendor the net proceeds of Sale upon the expiration of twenty eight (28) days following the date of Sale, provided always that payment shall not be made until:
 - (i) payment of the purchase price and sustaining payment have been made by the Purchaser in full;
 - (ii) delivery of the horse has been taken by the Purchaser;
 - (iii) all registration documents have been completed, signed and delivered to APG; and
 - (iv) transfer of ownership has been fully effected.
 - 16.10** Vendors have the right to more than one bid.
 - 17. CONDITIONS AND WARRANTIES**
 - 17.1** Other than for any express conditions, warranties or representations included herein, or as may be implied by Federal or State legislation (including the Trade Practices Act 1974 (Cwth)) and which may be excluded by agreement:
 - (i) all conditions, warranties and representations in respect of a Lot or a Sale are hereby excluded;
 - (ii) no condition, warranty or representation is given or implied or may be inferred from any affirmation made at or before the Sale or any of the circumstances of the Sale; and
 - (iii) the Purchaser acknowledges that, in making any purchase, he is relying solely on his own enquiries and inspection, and that he has not relied or been induced by any statement or representation made by the Vendor or the Auctioneer or by any person purporting to act on their behalf.
 - 18. ROADERS, WINDSUCKERS, WOBBLERS, IMPAIRED VISION, CRYPTORCHID (RIG)**
 - 18.1** For the purpose of this Condition: "Windsucker" shall mean a Lot which suffers from the vice of noisily drawing in and swallowing air through its mouth; "Wobbler" shall mean a Lot which stands or moves unsteadily or with uncertain direction; "Roarer" shall mean a Lot which suffers from a disease causing it to make a loud noise when breathing under exertion; "Impaired Vision" refers to impaired sight in one or both eyes. "Cryptorchid (Rig)" shall mean a colt in which one or both testes have not descended into the scrotum from the abdomen
 - 18.2** Should any Lot be a Windsucker, Wobbler, Roarer or Cryptorchid (Rig) or to the knowledge of the Vendor have shown any symptoms of being so, the Vendor shall disclose such fact to the Auctioneer to enable the Auctioneer to disclose such fact to prospective bidders. Any horse that has impaired vision will NOT knowingly be offered for Sale.
 - 18.3** In the event that any Lot proves within seven (7) days after the Sale to be a Windsucker, Wobbler, Roarer or Cryptorchid (Rig) or to have been sold with impaired vision:
 - (i) the Purchaser produces to the Auctioneer or Vendor prior written certification obtained at the cost of the Purchaser that the Lot is a Windsucker, Wobbler, Roarer or Cryptorchid (Rig) or has impaired vision, as the case may be, signed by an independent Veterinarian nominated by the Auctioneer; and
 - (ii) the Auctioneer or Vendor did not disclose at the Sale that the Lot was or showed symptoms of being a Windsucker, Wobbler, Roarer or Cryptorchid (Rig) or having impaired vision, as the case may be, the Purchaser may terminate his purchase of the Lot by giving the Auctioneer written notice of termination within seven (7) days after the date of Sale provided that the Purchaser shall upon termination at his own cost and expense, return the Lot to the address of the Vendor specified in the Sales catalogue. The decision of the independent Veterinarian nominated by the Auctioneer as to whether any Lot is a Windsucker, Wobbler, Roarer, Cryptorchid (Rig) or has impaired vision, shall be final and binding on all parties.
 - 18.4** Where the Purchaser terminates his purchase and returns the Lot to the Vendor pursuant to Condition 18.3, he shall be entitled to a refund from the Vendor of all purchase monies paid in respect of the Lot and upon receiving same shall have no further claim against the Auctioneer or Vendor.
 - 19. UPPER RESPIRATORY LARYNGOSCOPI EVALUATION**
 - 19.1** Notwithstanding any other provision of these Conditions of Sale and notwithstanding any prior custom and usage of the trade, horses which are sold in this Sale may be subject to a post Sale upper respiratory laryngoscopic evaluation (excluding the trachea) by a veterinary surgeon approved by the Auctioneer obtained at the Purchaser's expense within twenty four (24) hours of the fall of the hammer.
 - 19.2** If a veterinary surgeon, so approved, is of the opinion that the horse has any of the following conditions:
 - (i) laryngeal displacement (complete immobility of the cartilage);
 - (ii) rasal displacement of the palatopharyngeal arch;
 - (iii) epiglottic entrapment;
 - (iv) permanent dorsal displacement of the soft palate;
 - (v) Severe arytenoid chondritis or chondroma; or
 - (vi) subepiglottic cyst(s) and this condition(s) has not been announced prior to the horse being offered for Sale, then the Purchaser may cancel the Sale by notice in writing to the Auctioneer within twenty four (24) hours of the fall of the hammer.
 - 19.3** Any Purchaser who wishes to have a post Sale upper respiratory laryngoscopic evaluation, as above, is advised that this examination must be conducted by the veterinary surgeon, so approved, prior to the horse being removed from the Auctioneer's complex.
 - 19.4** The Auctioneer reserves the right to obtain a confirmatory opinion by a panel of not more than three (3) veterinary surgeons appointed by the Auctioneer at the Purchaser's expense, before a notice of cancellation of Sale is accepted by the Auctioneer.
 - 20. OCCUPATIONAL HEALTH AND SAFETY**
 - 20.1** To the extent that a vendor or a purchaser or their employees or agents may conduct any activities on the premises of the Sale Venue then that vendor or purchaser shall be responsible, to the exclusion of the auctioneer, for establishing and observing appropriate occupational health and safety procedures, and for complying with any relevant legislation provisions, in relation to these activities.
 - 20.2** A vendor or purchaser conducting any activities on the premises of the Sale Venue does so at his own risk in all respects and must indemnify the auctioneer in respect of any claims for personal injury or damage to property which may be made against the auctioneer arising out of any such activities
 - 21. ATTORNEY**
 - 21.1** The Vendor and the Purchaser for the purpose of enabling the Auctioneer to give full force and effect to these Conditions, each irrevocably appoint the Auctioneer his true and lawful attorney, with full power in his name or in the name of the Auctioneer to do all such things, to take all such actions, to sign and execute all such documents, and to give such instructions for the purpose of these Conditions as may be necessary or in the Auctioneer's opinion desirable, and hereby agrees to ratify and affirm anything done by the Auctioneer as such attorney.