TERMS & CONDITIONS OF SALE

IMPORTANT PLEASE READ

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

1.1 No horse will be accepted for entry in the sales or race series unless such horse has been foaled in Australia and properly registered with a relevant State Controlling Board or Authority.

2. CONDUCT OF SALE

2.1 APG may appoint a person or persons as auctioneers to carry on sales under these terms and conditions and that person or persons must carry out the functions set out in these terms and conditions and holds the authority which is contained in this document.

2.2 All auctions shall be conducted as Reserved Sales and will be subject to the following conditions:

(a) Subject to any reserve price, the highest bidder shall be the purchaser;

(b) Reserve cards are mandatory. The Vendor must advise the Auctioneer in writing of the reserve price for each Lot before the Lot is offered for Sale. Where no reserve card is provided the Vendor or his representative must attend the Auctioneer's rostrum to advise the Auctioneer and will be required to sign a reserve card before leaving the rostrum if the Lot is passed in. In the absence of a reserve card, a Vendor or a Vendor's representative in the Auctioneer's rostrum at the time that the Lot is offered for Sale, then the Lot shall be sold to the highest bidder and the Vendor shall pay the full commission and any other amounts payable.

(c) The vendor shall have the right to bid personally or through an agent during the sale of each respective lot. However, the vendor shall not enter a bid either personally, or through an agent/associate, at a price equal to or above the vendor's nominated reserve (unless the vendor is only a part-owner of the horse and is bidding with the sole intention of buying out the other owner(s)).

(d) Subject to any statutory requirements, the auctioneer shall have the right to bid as agent of the vendor on any lot on which a reserve price has been placed up to that reserve price;

(e) The auctioneer may determine an upset price for each lot, and if no bid at or above the upset price is received within 30 seconds of the lot entering the sales ring, the auctioneer may pass in the lot;

(f) The option of the last bidder to buy a passed in lot at the reserve price must be exercised within 60 seconds of the horse having been passed in by proceeding directly to the back of the auction box and notifying the auctioneer's assistant;

(g) If a bid is disputed, or there is any other problem in relation to the Sale, the auctioneer will be the sole arbiter of the dispute, and may settle the dispute or problem on whatever terms the auctioneer sees fit. The auctioneer's decision shall be final and binding on all parties.

(h) A bid is not valid unless it is acknowledged by a bid spotter or the auctioneer. It is the responsibility of the bidder to ensure any bid is so acknowledged and the failure by a bid spotter or the auctioneer to acknowledge a bid does not, under any circumstances, constitute a dispute arising in respect of a sale.

(i) Any auctioneer's announcements on the day of the sale which are announcements from the auctioneer's stand will take precedence over:

i) These conditions of sale;

ii) Any statements in the sale catalogue; or

iii) Any other written or oral statement, particular or other representation previously published or made

(j) The auctioneer shall have the right and absolute discretion to:

i) determine who is the Purchaser;

ii) settle any dispute in such manner as the auctioneer thinks fit;
iii) withdraw any Lot before or during the Sale without being required to provide a reason for the withdrawal;
iv) advance the bidding as the auctioneer 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.

(k) All sales are made 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).

3. NOMINATION / CATALOGUING FEE

3.1 APG's nomination / cataloguing fee is $495 per entry. However, all Melbourne or Sydney Sale vendors, as well as all trotting vendors (regardless of which sale they are nominated for) will receive a full credit of their $495 nomination / cataloguing fee if:
(a) the sales entry nomination is received by APG prior to 5pm on 16 August 2021; and
(b) the horse is subsequently presented for sale by auction at the 2022 Neds APG Yearling Sales.

3.2 An additional administration fee of $55 per entry applies to any entries that are not submitted via APG's Online Entry System which can be accessed via the APG website at www.apgold.com.au

3.3 Entries close on 16 August 2021. Late entries may be accepted at the discretion of APG, however, late entries will not be eligible for the credit of their nomination / cataloguing fees set out in Condition 3.1 (above), nor will late entries be eligible for the $200,000 of vendor bonuses available to the vendors of horses that qualify for the $500,000 Neds APG 2yo Gold Bullion Finals (Vendor Bonuses are detailed in Condition 12.2 of APG's Series 33 Race Series Terms & Conditions).

4. UPSET PRICE: $4,000 (This is the minimum opening bid that will be accepted by the Auctioneers)

5. COMMISSION – PACING BRED HORSES

5.1 The commission payable by the Vendor to the Auctioneer in respect of the sale price of each pacing bred yearling sold will be 10% plus GST, whether by auction or privately within 14 days after the Sale is held or advertised to be held (subject to a minimum Commission payment of $440).

5.2 With respect to passed in lots:
(a) **If the Vendor elects to sustain the lot** to keep it eligible for APG's Race Series, an offering fee of 10% of the reserve price (plus GST) will be payable on the lot. APG will waive the sales day sustaining fee of $770 for all vendors that elect to sustain a passed in lot, regardless of the reserve price.

Example: If the vendor of a horse that was passed in with a reserve of $40,000 wished to sustain the horse, that vendor would need to pay $4,400 commission. APG would waive the sales day sustaining fee of $770.

(b) **If the Vendor elects not to sustain the lot** to keep it eligible for APG's Race Series, an offering fee of 5% of the reserve price (plus GST) will be payable on the lot (subject to minimum Commission payment of $220).

6. COMMISSION – TROTTING BRED HORSES

6.1 The commission payable by the Vendor to the Auctioneer in respect of the sale price of each trotting bred yearling sold will be 8% plus GST, whether by auction or privately within 14 days after the Sale is held or advertised to be held (subject to a minimum Commission payment of $352).

6.2 With respect to passed in lots:
(a) **If the Vendor elects to sustain the lot** to keep it eligible for the Neds APG Trotting Race Series, an offering fee of 8% of the reserve price (plus GST) will be payable on the lot (subject to a minimum Commission payment of $352). In addition, the vendor will also be liable for payment of the series payment (refer clause 3.5 of APG's Series 33 Race Series Terms & Conditions).
(b) **If the Vendor does not elect to sustain the lot** to keep it eligible for the Neds APG Trotting Race Series, an offering fee of 4% of the reserve price (plus GST) will be payable (subject to minimum Commission payment of $176).

7. OUTSIDE SALES

7.1 A lot entered for sale at the auction may be sold outside the auction only in accordance with the following provisions:

(a) No lot shall be sold privately prior to auction without the prior written consent of APG. Any lots sold prior to auction are ineligible to sustain for APG's Race Series;

(b) In the event of any prior sale, APG shall be entitled to a commission as if the lot were sold under the hammer, and the vendor shall provide APG with full details of any such sale;

(c) Any lot passed in at auction shall, unless APG waives this condition, remain on sale at the reserve price for a period of 14 days. APG shall be entitled to commission on any sales as though the lot was sold under the hammer.

(d) Any person wishing to make an offer on a passed in lot should contact APG, who will then make the offer to the vendor.

(e) A vendor shall not refuse an offer that meets the vendor's official reserve (as notified to APG in writing on sales day) except in the instance where the offeror is refused credit by APG and a suitable payment arrangement cannot be reached with the vendor.

(f) In the event that a Vendor receives an offer directly from a potential purchaser (i.e. the potential purchaser makes the offer directly to the vendor, instead of submitting the offer to APG), the vendor shall immediately inform APG of their willingness to accept any such offer. The sale may only be finalised once the purchaser has been approved by APG.

(g) If an offer is accepted, the purchaser shall also have the option of sustaining the lot for the APG Race Series, provided that the purchaser immediately notifies APG of their intention to sustain, and provided that the sale takes place within 14 days of the auction date when the lot was originally passed in.

8. VENDOR'S WARRANTIES AND OBLIGATIONS

8.1 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.

8.2 The vendor warrants that the vendor has the right to sell the Lot and can give good title to the Lot and in the case where there is more than one owner of the Lot, has the authority of every owner to sell the Lot;

8.3 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.

8.4 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.

8.5 The Vendor guarantees that any horse offered for sale:

(a) will not be in foal unless so stated in the Sale Catalogue or by the Auctioneer prior to the Auction of that particular lot;

(b) is correctly sexed; and

(c) the horse's identity is genuine.

8.6 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.

8.7 The Vendor warrants that:

(a) The horse is not broken to gait (pacer) and is generally only educated to be handled;

(b) Full, complete and accurate disclosure has been made by the Vendor to the Auctioneer as to whether the horse has undergone:

i) invasive joint surgery (as defined as if there has been an arthroscope used to assess or treat a joint or a surgical manipulation of the joint has been performed including insertion of a needle to inject beneath the cartilage into a cyst);

ii) surgery to repair a fracture;

iii) abdominal surgery of any type (with the exception of the surgical repair of a non-strangulating umbilical hernia)

iv) surgical intervention of the upper respiratory tract;

v) any other surgical procedure that may, in the opinion of a sophisticated purchaser, acting reasonably, affect the suitability of racing of the Lot

Any requisite disclosures must be made by the Vendor to the Auctioneer within 72 hours of the disclosable surgical procedure taking place.

(c) Full, complete and accurate disclosure has been made by the Vendor to the Auctioneer as to whether the horse has undergone any radiographic procedures that have identified the presence of Osteochondritis Dissecans;

(d) the horse is not suffering from founder; and

(e) the horse has never been de-nerved.

8.8 The vendor shall, at the Auctioneer's request, provide the Auctioneer with full details of all licensed veterinarians whose services the Vendor has engaged during the previous 24 months and irrevocably authorises those veterinarians to provide full disclosure to APG of any procedures that those veterinarians may have performed on any Lot that would fall within the scope of Condition 8.7.

8.9 In the event of a breach by the vendor of any of the warranties in condition 8.7, the purchaser may elect to cancel the sale by notice in writing to the Auctioneer within 28 days of the date of the sale and will be entitled to the return in full of the purchase price if paid and acknowledges that it shall have no other claims against the Auctioneer or vendor.

8.10 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.

8.11 If the vendor agrees to extend any credit terms to the purchaser, then APG shall be under no obligation to the vendor as to collection and payment of the purchase price. In any such case the vendor shall remain fully responsible for the due payment to APG of the commission and all other moneys owing to APG in connection with the auction and sale of the lot, whether or not the vendor is paid by the purchaser.

8.12 Any arrangements under clause 8.9 must be in writing and executed by the vendor, purchaser and APG.

8.13 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 may withhold from the Vendor settlement of the proceeds of Sale until the Transfer Form has been so delivered to the Selling Agent.

8.14 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.

9. RISK AND EXPENSE

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

10. INSPECTION AND EXAMINATION

10.1 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.

10.2 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.

10.3 The Directors of APG have the right to refuse entry to any yearling deemed to be inadequately prepared for sale

10.4 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.

11. PURCHASE AND PAYMENT

11.1 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.

11.2 The Purchaser shall sign on the fall of the hammer their intent to sustain the horse in the APG Race Series.

11.3 If the Purchaser fails to comply with the requirements of Condition 12.1, then the Auctioneer may elect to declare the Purchaser in default and cancel the Sale and re-sell the Lot. If, on resale of the Lot, a lower price is obtained, the difference in price plus any expenses of the resale shall be a debt owing by the Purchaser to the Vendor payable on demand, with interest to be applied at the rate of 15% per annum calculated daily in arrears from the date of resale until payment.

11.4 Subject to Condition 14, 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.

11.5 The Auctioneer may in its absolute discretion reject payment otherwise than in cash.

11.6 If the purchase price or any part is not paid in accordance with condition 12.3, the purchaser is liable to pay interest on the outstanding balance at the rate of 15% per annum calculated daily in arrears from the date of sale up to and including the date of payment.

11.7 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.

11.8 Where a Purchaser purchases two or more lots at the sale, the Auctioneer may, in the absence of written directions from the purchaser directing that any monies received for purchases at the sale be directed to a specific lot, allocate such payment as it sees fit and may allocate these monies in relation to the purchase price of any such lot or lots, in the Auctioneer's absolute discretion.

12. DEFAULT BY PURCHASER

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

(a) terminate the Sale of the Lot; and/or

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

(c) resell the Lot by auction or private Sale at the risk and expense of the Purchaser and if upon such resale a lower price is obtained than that for which the Purchaser had agreed to buy the Lot, the Auctioneer or Vendor may recover the difference from the Purchaser as a debt due on demand together with interest from the date of Sale to the date of payment; and/or

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

(e) retain any deposit or part payment to the extent of twenty-five percent (25%) of the purchase price for the benefit of the Vendor.

12.2 Alternatively, the vendor, or if APG has already accounted to the vendor for the purchase price then APG, may elect to affirm the sale and sue the initial purchaser for the purchase price and interest and other moneys payable by the initial purchaser under the conditions of sale, or such part or parts of such moneys as may be outstanding at any time.

12.3 The Purchaser authorises APG to disclose information relating to the Purchaser's creditworthiness or default in payment to a credit reporting agency if:

(a) the Purchaser is in arrears in making payments relating to credit provided;

(b) sixty (60) days have elapsed since the day on which payment was due and payable by the Purchaser; and

(c) the Auctioneer has sent written notice to the last known address of the Purchaser advising the Purchaser of the overdue payment and requesting payment of the amount outstanding.

13. CREDIT ARRANGEMENTS

13.1 Purchasers who require credit should make application to APG no later than seven (7) days before the Sale.

13.2 Purchasers who enter into credit arrangements with APG will be charged interest at a rate of 15% from the due date of payment if they default on said credit arrangement.

13.3 Purchasers that are granted credit terms greater than seven (7) days agree that they shall sustain any credit purchases that they make for the APG Race Series (by choosing either the sales day sustaining option or the series sustaining option) and shall continue to keep the horse sustained by agreeing to pay any further sustaining charges that may fall due until the purchaser's account (including all horses, sustaining fees and other charges) is paid in full.

13.4 For any purchaser that defaults on their credit arrangements, APG reserves the right to take all or any action for enforcement thereof available to it, including those listed in Condition 13 as well as seeking to have the purchaser placed on the Unpaid Forfeits list with the appropriate Harness Racing Authority.

14. DELIVERY

14.1 The Auctioneer need not deliver any Lot to the Purchaser until:

(a) 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;

(b) the Purchaser shall have completed signed and delivered to the Auctioneer a delivery slip in the form required by the Auctioneer;

(c) 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;

(d) 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

14.2 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 checked and confirmed the identity of the Lot prior to its removal.

15. INSURANCE

15.1 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 between the Auctioneer and the Purchaser or the Vendor and the Purchaser whether before or after the Sale, the Purchaser shall effect and maintain until such time as the Auctioneer shall have received all monies payable in respect of the Lot or repayable by the Purchaser pursuant to any credit agreement entered into in respect of the purchase of the Lot, at the Purchaser's cost and expense, insurance satisfactory to the Auctioneer in respect of the damage, injury or death of the Lot from any cause whatsoever and shall ensure that the policy of insurance bears an endorsement as may, in the opinion of the Auctioneer, be necessary to transfer to the Auctioneer and/or the Vendor all the Purchaser's interest under such insurance absolutely.

15.2 In the event that the Purchaser fails to produce evidence to the Auctioneer within one hour of purchase that he has met his insurance obligations pursuant to Clause 14.1, the Purchaser authorises the Auctioneer to enter into such a policy of insurance on the Purchaser's behalf and the Purchaser shall indemnify the Auctioneer in respect of and pay to the Auctioneer on demand all costs incurred by the Auctioneer in respect of the policy of insurance. Payment of Lots shall not be regarded as made until such charges have been paid.

15.3 Nothing in Clause 16.2 seeks to impose an obligation on the Auctioneer to obtain a policy of insurance on the vendor's behalf. Any decision to obtain such a policy of insurance will be at the discretion of the Auctioneer, and the Purchaser acknowledges that the Auctioneer has no liability whatsoever in the event that the Auctioneer does not obtain a policy of insurance in respect to a particular Lot.

16. TITLE OF LOTS

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

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

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

16.4 Purchasers are reminded of their obligations under Australian Harness Racing Rule 111 requiring them to lodge transfer forms with the relevant Racing Authority or Governing Body within 7 days of receiving such transfer forms from APG.

17. RIGHTS AND LIABILITIES OF AUCTIONEER

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

17.2 In the event of any dispute including without limitation, as to defects in title, misdescription, pedigree, condition or otherwise, the Purchaser and the Vendor shall settle the matter between themselves and

the Purchaser shall have no rights against nor return any Lot to the Auctioneer which acts in respect of the Sale merely as agent for the disclosed Vendor.

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

17.4 If the Auctioneer accounts to the Vendor for the purchase price or the balance of the purchase price owed to the Vendor less any monies owed by the Vendor to the Auctioneer, before the purchase price and other amounts payable by the Purchaser have been paid, title to the Lot shall thereupon pass to the Auctioneer, and the Auctioneer shall have the right and remedies under these Conditions as if it were the Vendor.

17.5 The description of all Lots has been provided by the Vendors, and the Auctioneer shall not be liable or responsible for any error whatsoever in the description of the Lot.

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

17.7 The Auctioneer or its servants may sign the Sale Book or any Memorandum of Sale on behalf of either the Vendor or the Purchaser or both.

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

17.9 The Selling Agent shall pay to the Vendor the net proceeds of Sale upon the expiration of thirty (30) days following the date of Sale, provided always that APG does not need to pay the vendor until:-

(a) APG is satisfied that it will receive payment of the purchase price from the purchaser;
(b) delivery of the horse has been taken by the Purchaser;
(c) all registration documents have been completed, signed and delivered to APG; and
(d) transfer of ownership has been fully effected.

17.10 Prior to paying the proceeds of sale to the vendor, APG may deduct all of its fees as set out on the in these terms & conditions or as otherwise agreed in writing.

18. CONDITIONS AND WARRANTIES

18.1 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:

(a) all conditions, warranties and representations in respect of a Lot or a Sale are hereby excluded;
(b) no condition, warranty or representation is given or implied or any be inferred from any affirmation made at or before the Sale or any of the circumstances of the Sale; and
(c) 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 and, subject to these conditions, the Purchaser shall take the Lot in its present condition and subject to all defects, faults, imperfections and the like, if any, whether latent or patent.

19. WINDSUCKERS, WOBBLERS AND IMPAIRED VISION

19.1 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; "Impaired Vision" refers to impaired sight in one or both eyes.

19.2 Should any Lot be a Windsucker or Wobbler 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.

19.3 In the event that any Lot proves within seven (7) days after the Sale to be a Windsucker or Wobbler or to have been sold with impaired vision:

(a) 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 or has impaired vision, as the case may be, signed by an independent Veterinarian nominated by the Auctioneer; and

(b) the Auctioneer or Vendor did not disclose at the Sale that the Lot was or showed symptoms of being a Windsucker, Wobbler 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 or has impaired vision, shall be final and binding on all parties.

19.4 Where the Purchaser terminates his purchase and returns the Lot to the Vendor pursuant to Condition 20.3, 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.

20. CRYPTORCHIDS (RIG)

20.1 Where any Lot is described in the Sales catalogue or by the Auctioneer or Vendor to be a 'colt' the Purchaser shall not be entitled to make any objection and shall not have any claim against the Auctioneer or Vendor if such Lot is an animal in which one or both testes have not descended into the scrotum from the abdomen.

21. UPPER RESPIRATORY LARYNGOSCOPIC EVALUATION

21.1 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.

21.2 If a veterinary surgeon, so approved, is of the opinion that the horse has any of the following conditions:

(a) laryngeal neuropathy (Grossly deficient abductor function of one or both Arytenoid cartilages – Grades 4 and 5, Lane – Bain Fallon Proceedings 1993);

(b) rostral displacement of the palatopharyngeal arch;

(c) epiglottic entrapment;

(d) persistent dorsal displacement of the soft palate;

(e) arytenoid chondritis or chondroma;

(f) subepiglottic cyst(s);

(g) cleft palate; or

(h) any airway condition or lesion causing significant airway obstruction resulting in exercise intolerance,

and this/these condition(s) have 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.

21.3 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.

21.4 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.

22. ANABOLIC ANDROGENIC STEROIDS

22.1 All yearlings nominated for the APG sales may be subject to drug testing carried out by the relevant Harness Racing Authorities. Such testing may be carried out from birth through to sales day.

22.2 In the event that APG becomes aware that a yearling has tested positive to an anabolic androgenic steroid prior to the APG Sales, the horse will be withdrawn from the APG Sales.

22.3 In the event that APG becomes aware post sale that a yearling has tested positive to anabolic androgenic steroids as a result of a test carried out by the relevant Harness Racing Authority either prior to the APG Sales or at the APG Sales, the Purchaser may terminate his purchase of the Lot by giving the Auctioneer written notice of termination within seven (7) days of receiving written notification that the horse has tested positive for an anabolic androgenic steroid.

22.4 In the event that the Purchaser elects to terminate his purchase, the Purchaser shall upon termination at his own cost and expense, return the Lot to the address of the Preparer or Vendor (as appropriate).

22.5 Where the Purchaser terminates his purchase and returns the Lot to the Vendor pursuant to Condition 23.3, 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.

23. OCCUPATIONAL HEALTH AND SAFETY

23.1 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 those activities.

23.2 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

24. ATTORNEY

24.1 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 action, 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.

25. INTERPRETATION

25.1 In these Conditions: "Auctioneer" means the selling Agent at each Sale and includes Australian Pacing Gold Ltd (APG), 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.

25.2 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.

25.3 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