

# CONDITIONS OF SALE

("the Conditions")

## 1 INTERPRETATION

In these Conditions and in the sale documents, clause headings are for convenience only and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention

- 1.1 a word or an expression which denotes
  - 1.1.1 any gender includes the other genders;
  - 1.1.2 a natural person includes an artificial or juristic person and vice versa;
  - 1.1.3 the singular includes the plural and vice versa;
- 1.2 the following words and expressions shall bear the meanings assigned to them below and cognate words and expressions bear corresponding meanings –
  - 1.2.1 "**Acceptance Fee**" means the fee payable by a Vendor in respect of each horse whose details are included in the sales catalogue, as more fully described in the Vendor entry form;
  - 1.2.2 "**acknowledgment of purchase form**" means the form issued by CTS and to be completed and signed by CTS and every Buyer in order to record a concluded sale, which duly completed and signed acknowledgement of purchase form shall constitute written evidence of a sale;
  - 1.2.3 "**application for a Buyer's Card**" means the document entitled as such, an example of which is contained in the sales catalogue and a copy for completion of which is available at CTS' offices and at [www.capethoroughbredsales.com](http://www.capethoroughbredsales.com);
  - 1.2.4 "**Auction**" means the public auction of thoroughbred horses to be conducted by CTS and the Auctioneer(s) on behalf of and in conjunction with CTS, particulars whereof appear in the Rules of Auction;
  - 1.2.5 "**Auctioneers**" or "**Auctioneer**" shall mean the individual(s) appointed by CTS to conduct the Auction, particulars of whom appear in the Rules of Auction;
  - 1.2.6 "**Auctioneer Agreement**" shall mean the agreement concluded or to be concluded between CTS and the Auctioneer/s, as contemplated in clause 16 below;
  - 1.2.7 "**authorisation of agent form**" means the form to be duly completed and signed by or on behalf of a principal who wishes to appoint an agent to bid on his/her/its behalf at the Auction, an example of which form is contained in the sales catalogue and a copy for completion of which is available at CTS' offices and at the Auction and at [www.capethoroughbredsales.com](http://www.capethoroughbredsales.com);
  - 1.2.8 "**Bidders' Record**" means the written record maintained by CTS containing the identities of all the registered buyers at the Auction, as required in terms of Regulation 26;
  - 1.2.9 "**Buy Back**" shall occur when a Vendor (or an agent of the Vendor) is the highest bidder a lot so that consequently, the Vendor "buys back" the lot, in accordance with provisions of clause of 16.7.2 below;
  - 1.2.10 "**Buyer**" shall mean, in respect of a lot offered for sale at the Auction, a person (natural or juristic) in possession of a valid Buyer's Card (whether acting in his or her own capacity or through an agent or representative) who was the highest bidder on a lot at the fall of the hammer and who has signed an acknowledgment of purchase form (or has caused his/her/its agent or representative to sign an acknowledgment of purchase form) thus becoming obliged to settle any CTS sales invoice issued pursuant thereto;
  - 1.2.11 "**Buyer's Card**" means an application for a Buyer's Card duly completed and signed by a registered bidder and by CTS, which Buyer's Card shall contain a Buyer's Card number as assigned by CTS;
  - 1.2.12 "**CPA**" shall mean the Consumer Protection Act 68 of 2008, as amended;
  - 1.2.13 "**CTS**" means Cape Thoroughbred Sales Proprietary Limited;
  - 1.2.14 "**CTS' offices**" means the offices of CTS located at CTS' physical address as described in the Rules of Auction;
  - 1.2.15 "**the debt**" shall mean the total amount owing by a Buyer in respect of a sale and shall include but not be limited to, the purchase price or the unpaid portion thereof, any interest which accrued on the purchase price, the applicable portion of the Race Levy (if any), insurance premiums payable in respect of a horse purchased, the cost of transporting, maintaining and stabling the horse, the amount payable in terms of clause 19.4 and all other amounts which may be payable by the Buyer in terms of the Conditions;
  - 1.2.16 "**deposit**" means the refundable deposit which may be required by CTS from any prospective Buyer, as contemplated in 13;
  - 1.2.17 "**Entry Fee**" is the non-refundable entry fee payable by a Vendor upon acceptance of a horse for inspection by CTS, as more fully described in the Vendor entry form;
  - 1.2.18 "**fall of the hammer**" shall, in respect of any lot offered at the Auction, mean the Auctioneer's acceptance of the highest bid received;
  - 1.2.19 "**FICA**" means the Financial Intelligence Centre Act 38 of 2001, as amended;
  - 1.2.20 "**horse**" shall mean a thoroughbred horse offered for sale at the Auction and "**lot**" shall have a corresponding meaning;
  - 1.2.21 "**NHRA**" shall mean The National Horseracing Authority of Southern Africa;
  - 1.2.22 "**prospective Buyer**" shall mean any person (natural or juristic) who wishes to participate in bidding at the Auction (whether in his or her own capacity or through an agent or representative);
  - 1.2.23 "**purchase facility**" shall mean, save as may otherwise be agreed upon in writing between CTS and the Buyer, the maximum amount which any Buyer will be allowed to spend on purchases of horse/s at the Auction;
  - 1.2.24 "**purchase price**" shall mean the consideration payable by a Buyer in respect of any lot purchased at the Auction, which purchase price shall be deemed to include VAT (unless the context requires otherwise);
  - 1.2.25 "**Race Levy**" is a levy which may be imposed by CTS on the Buyer and the Vendor in respect of each lot that passes through the sales ring, details of which will, if applicable, appear in the sales catalogue;
  - 1.2.26 "**registered bidder**" means every prospective Buyer (being a natural person or a juristic person), and every agent of a prospective Buyer, who have duly registered to participate in bidding at the Auction the Auction in terms of clause 12 below and who is in possession of a valid Buyer's Card (whether in his or her own name or in his/her capacity as duly authorised agent or representative of a prospective Buyer);
  - 1.2.27 "**Regulation**" shall be a reference to the regulations published in terms of the CPA in Government Gazette No. 34180 on 1 April 2011

(Volume 550) and any amendments thereto from time to time;

- 1.2.28 **"repository"** shall mean the repository for radiographic images located at the venue;
- 1.2.29 **"Repository Terms, Conditions and Procedures"** shall be those terms, conditions and procedures published and issued by CTS from time to time and available at the offices of CTS, relating to information lodged and viewed in the repository;
- 1.2.30 **"RNA"** means "reserved not attained", which occurs when the reserved price of a particular horse is not reached and the Vendor does not agree to sell the horse at a lesser price;
- 1.2.31 **"Rules of Auction"** shall mean the written rules of the Auction as required by Regulation 21, which Rules of Auction will be displayed at the venue at least 24 hours prior to the Auction and for the duration of the Auction;
- 1.2.32 **"sale"** shall mean the sale agreement concluded between a Vendor and the Buyer in respect of any lot;
- 1.2.33 **"sales catalogue"** means the written booklet published by CTS for purposes of the Auction encompassing, inter alia, the Conditions, examples of the authorisation of agent form and of the application for a Buyer's Card, details of the Race Levy (if any) and details pertaining to the various lots which are entered for sale at the Auction;
- 1.2.34 **"sales documents"** mean the following written documents :
- 1.2.34.1 the Vendor entry form;
- 1.2.34.2 the application for a Buyer's Card;
- 1.2.34.3 the authorisation of agent form;
- 1.2.34.4 the Buyer's Card;
- 1.2.34.5 the acknowledgement of purchase form; and
- 1.2.34.6 the sales invoice,
- which, together with the Rules of Auction and the Conditions and the information contained in the sales catalogue, govern the relationships and agreements between CTS and, respectively, any registered bidder, Buyer and/or Vendor;
- 1.2.35 **"sales invoice"** means a written invoice issued by CTS to a Buyer evidencing the debt;
- 1.2.36 **"Sales Commission"** shall have the meaning ascribed to such term in the Vendor entry form, and shall be payable by the Vendor;
- 1.2.37 **"sales proceeds"** means, in respect of any sale at the Auction, the purchase price realised at the Auction in respect of the horse entered by the Vendor, less the fees, commissions, levies and other charges deductible (including inter alia the Acceptance Fee, the Sales Commission and the applicable portion of the Race Levy (if any));
- 1.2.38 **"sales ring"** shall mean the ring in and/or from which the horses are paraded and sold at the venue;
- 1.2.39 **"the shortfall"** shall mean the difference, if any, between the purchase price realised at an Auction contemplated in clauses 14.10 and 19.6, and the amount of the debt;
- 1.2.40 **"South Africa"** means the Republic of South Africa;
- 1.2.41 **"VAT"** shall mean value added tax as defined in the Value Added Tax Act 89 of 1991, as amended;
- 1.2.42 **"Vendor"** shall mean the owner or rightful holder of a horse (who has the right to sell) which is entered for sale at the Auction, or any duly authorised agent of such owner or rightful holder;
- 1.2.43 **"Vendors' roll"** means the Vendors' roll which must be prepared by CTS to record the details of the Auction, in accordance with Regulation 28(4);
- 1.2.44 **"Vendor entry form"** means the form, together with its annexures, to be completed and signed by any Vendor wishing to enter a horse for sale at the Auction, a copy for completion of which is available at CTS' offices and at [www.capethoroughbredssales.com](http://www.capethoroughbredssales.com);
- 1.2.45 **"venue"** shall mean the physical location at which the Auction shall be conducted, as indicated in the sales catalogue;
- 1.3 any reference to CTS, a Vendor, a Buyer or the Auctioneer shall be deemed, unless the context requires otherwise, to include a reference to such persons' respective duly authorised agents or representatives.

## 2 INTRODUCTION

- 2.1 The Conditions apply to and must be read and considered by prospective buyers, registered bidders, and vendors, in conjunction with the Rules of Auction and the sales documents.
- 2.2 The Conditions form an integral part of any agreement between CTS and, respectively, every registered bidder, Buyer and Vendor, and shall be binding on every registered bidder, Buyer and Vendor.
- 2.3 The action by any :
- 2.3.1 Vendor of entering a lot for sale at the Auction by completing and signing a Vendor entry form; and
- 2.3.2 registered bidder or Buyer of registering for the Auction by completing and signing an application for a Buyer's Card, shall be taken as confirmation that the Vendor, registered bidder or Buyer (as the case may be) has read, understood, accepts and is bound by the Rules of Auction, the Conditions and the relevant sales documents.
- 2.4 CTS reserves the right to alter or amend the Conditions in its discretion as it deems fit and necessary.

## 3 ENTRY BY VENDOR

- 3.1 Any owner or rightful holder of a horse who wishes to enter such horse for sale at the Auction shall duly complete and sign a Vendor entry form.
- 3.2 CTS, in conjunction with the Auction's selection, inspection and screening panels, reserves the right to inter alia :
- 3.2.1 accept or reject any nomination for sale at the Auction;
- 3.2.2 reject any horse that was previously accepted for the Auction or for any other auction conducted or to be conducted by CTS.
- 3.3 CTS specifically reserves the right to reject entries from any Vendor who, for whatever reason, is indebted to CTS.
- 3.4 CTS shall be entitled to deduct from the sales proceeds of any horses sold at the Auction, any amount which may be due to CTS by the Vendor or by any party for whom the Vendor acts or has acted as agent.
- 3.5 Acceptance by CTS of a horse for the Auction shall be deemed to have occurred upon the written acceptance by CTS of particulars relating to such horse for the sales catalogue.
- 3.6 By the completion and signature by a Vendor of a Vendor entry form :-
- 3.6.1 such Vendor warrants that he has the necessary title to sell the horse/s entered for the Auction; and

3.6.2 the Vendor shall be deemed to have irrevocably authorised CTS to dispose of the horse/s concerned on behalf of the Vendor in terms of the Conditions and the relevant sales documents.

**3.7 The Vendor acknowledges and agrees that every horse entered for sale at the Auction will be auctioned subject to a reserve price.**

3.8 The Vendor must inform the Auctioneer directly of the amount of the reserve price under which a horse will be auctioned prior to the commencement of the bidding on that lot.

3.9 No horse entered for sale at the Auction shall be sold by private treaty or any other arrangement at any time before to the Auction without prior written disclosure to CTS. In the event of any prior sale :-

3.9.1 the Vendor shall provide CTS with full details of any such sale; and

3.9.2 the Vendor shall pay CTS, on demand, the full fees, commissions and levies (including the Sales Commission) as if the lot was sold at the average price reached at the Auction.

3.10 In the event that a horse is withdrawn from the Auction after signature of a Vendor entry form, save if a legitimate veterinary certificate certifying that the horse is unfit for sale due to injury or illness is produced, the Vendor undertakes to pay CTS the Entry Fee, the Acceptance Fee, as well as the Sales Commission calculated on the average price realised in the particular category for which the horse was entered.

3.11 A veterinary certificate contemplated in 3.10 must be lodged with the Auctioneer or CTS prior to commencement of the Auction. A certificate lodged after the completion of the sale in respect of that horse will not be considered and all fees and levies related to such sale will remain due and payable.

#### **4 CTS' AUTHORITY TO ACT ON BEHALF OF VENDOR**

4.1 Notwithstanding anything contained in these Conditions, it is the intention of CTS and the Vendor that CTS shall, immediately following any sale at the Auction until such time as payment of the debt has been made by the Buyer, be entitled to exercise in its own name all the rights of ownership in respect of the horse sold on behalf of the Vendor, including any entitlement to proceeds emanating from such sale. For the purposes of the foregoing the Vendor hereby -

4.1.1 irrevocably authorises CTS to exercise in its sole discretion all the rights and powers that the Vendor may exercise, including inter alia the protection and enforcement of ownership, the right to complete and sign any change of ownership form and the right to institute any legal proceedings regarding repossession and/or payment of the Vendor's horse; and

4.1.2 cedes to CTS all rights, title and interest in and to all remedies that the Vendor may have in law or otherwise against the Buyer in respect of the sale of the horse in question.

4.2 The Vendor expressly agrees that, notwithstanding 4.1 and the rights that CTS will obtain in terms thereof, none of the Vendor's obligations whatsoever will pursuant to the sale of a lot be delegated to CTS.

**4.3 The Vendor acknowledges that CTS shall not be liable for any loss incurred by the Vendor as a result of a breach by the Buyer of the Conditions or any sales document. In addition, CTS shall not be liable for any loss or damages sustained by the Vendor as a direct or indirect result of CTS's omission or refusal, for whatever reason, to enforce any of its or of the Vendor's rights in terms of the Conditions, or as a result of either CTS or the Vendor granting the Buyer credit facilities.**

4.4 CTS may accept a horse for entry at the Auction from a Vendor on condition that:

4.4.1 prior to the Auction, the Vendor lodges with CTS an up to date passport, as provided for in the rules of the NHRA; and

4.4.2 CTS is specifically authorised to complete and sign, on behalf of the Vendor, a change of ownership document, as provided for in the rules of the NHRA.

#### **5 FEES, COMMISSIONS AND LEVIES PAYABLE BY VENDOR**

Every Vendor will be liable towards CTS for the fees, commissions and levies set out in the Vendor entry form, and shall settle such fees, commissions and levies in accordance with the provisions of the Vendor entry form.

#### **6 PAYMENTS BY CTS TO VENDOR**

6.1 Subject to clauses 6.3 and 11.3 CTS shall, within 30 days following the last day of the Auction, make payment to the Vendor of the sales proceeds.

6.2 For the avoidance of doubt payment of the purchase price in respect of a sale shall, subject to clause 6, be made by the Buyer to CTS in accordance with clause 14 and the Vendor shall not be entitled to accept payment of the whole or any portion of the purchase price from the Buyer directly, unless specifically permitted by CTS in writing.

6.3 CTS shall be entitled, in its sole and unfettered discretion, to withhold payment to the Vendor of the sales proceeds in the event of the Vendor either being in breach of the Conditions and/or any sales document or if the Vendor has, without the written consent of CTS prior to the Auction, entered into an arrangement with a prospective Buyer whereunder the latter has or will be afforded credit for the purchase of a horse(s) at the sale.

6.4 CTS shall be entitled to deduct from the sales proceeds of the sale of any of the Vendor's horses at the Auction any further amounts which may be due to CTS by the Vendor or any of his principals, agent or partners.

6.5 CTS will pay the sales proceeds from any sale at the Auction only to the relevant Vendor or his duly authorised representative who has entered the horse on the Auction, save if such Vendor or his duly authorised representative gives CTS written instructions to do otherwise. CTS will not accept instructions from anybody else in this regard.

6.6 CTS shall pay any amount which is due to the Vendor directly into the bank account nominated by the Vendor on the Vendor entry form.

#### **7 UNSOLD HORSES**

7.1 In the event of a Buy Back or RNA or if the highest bid at the fall of the hammer is a bid by or on behalf of the Auctioneer, the relevant horse will be considered not sold to a third party and accordingly :-

7.1.1 the Vendor of the horse shall procure that the horse is removed from the venue immediately upon the completion of the Auction, unless otherwise agreed in writing by the Vendor and CTS;

7.1.2 CTS shall not be obliged to collect the purchase price in respect of the horse;

7.1.3 CTS shall not be obliged to make payment of any amount to the Vendor, whether in respect of the proceeds from the sale of the horse or otherwise; and

7.1.4 the Vendor shall remain liable for the payment to CTS, on demand, of all commissions, fees, levies and other amounts provided for in the

Vendor entry form.

7.2 The Auctioneer shall in the Vendors' roll record or cause to be recorded lots that are not sold to third parties.

## **8 SALES ON CREDIT BY VENDOR**

If the Vendor agrees to extend credit to a Buyer for purposes of funding a sale of the Vendor's horse/s at the Auction, then the obligation to collect the purchase price from the Buyer shall rest on the Vendor. For the avoidance of doubt, in such circumstances :-

- 8.1 CTS shall be under no obligation whatsoever to the Vendor as to the collection and payment of the purchase price; and
- 8.2 the Vendor shall remain fully responsible for the due payment of all levies, fees and monies owing to CTS in connection with the Auction and sale of the horse, whether or not the Buyer has made payment of the purchase price to either CTS or directly to the Vendor.

## **9 VENDOR'S DUTY RELATING TO STATUS AND CONDITION OF HORSE(S)**

- 9.1 The Vendor is responsible for ensuring that all horses entered for the Auction are fit for sale and are delivered to the venue free from contagious and infectious diseases.
- 9.2 The Vendor must, upon arrival at the venue, deliver NHRA regulation passports to CTS (at the CTS sales office located at the venue) in respect of every horse entered for sale at the Auction.
- 9.3 It is an express condition of entry that every horse is vaccinated in accordance with the rules of the NHRA (in this regard special mention is made of A.H.S. and Equine flu).
- 9.4 The Vendor of any horse which :-
  - 9.4.1 has undergone invasive surgery; and/or
  - 9.4.2 is or which shows any signs of being a wind-sucker, a weaver, a wobbler, a bleeder, a box walker or which suffers from impaired vision or permanent eye injury or eye defect, shall be obliged to disclose such fact and/or condition(s) in writing to CTS prior to the auction of the horse concerned to enable the Auctioneer to announce such fact and/or conditions at the time of the sale.
- 9.5 For purposes of 9.4.2 -
  - 9.5.1 a wind-sucker is a horse which habitually swallows air whether in association with grasping fixed objects with incisor teeth or not;
  - 9.5.2 a weaver is a horse which habitually swings its head and neck to and fro and transfers weight from one forelimb to the other alternately;
  - 9.5.3 a wobbler is a horse which suffers from a neurological disease caused by compression of the spinal cord and resulting in lack of balance and co-ordination;
  - 9.5.4 a bleeder is a horse which suffers from a lung haemorrhage which is visible by inspection through the nostrils;
  - 9.5.5 a box walker is any horse that habitually walks either backwards and forwards or round and round the box repeatedly in an aimless manner.
- 9.6 In the event that a Buyer discovers, within 7 days of purchasing any horse at the Auction, that, at the time of the Auction the horse the horse had undergone invasive surgery or was suffering from any of the conditions specified in clause 9.4.2, the Buyer shall be entitled to cancel the purchase, provided that:
  - 9.6.1 the existence of any such fact or condition was not announced at the time of the sale of the horse concerned at the Auction; and
  - 9.6.2 the Buyer produces, at his own expense, a veterinary certificate certifying the existence, at the time of the sale, of any such fact or condition; and
  - 9.6.3 the Buyer satisfies CTS or its authorised nominee/s that the Vendor of such a horse knew or ought to have known of the existence of any such fact or condition; and
  - 9.6.4 the Buyer gives CTS written notice of his intention to cancel the sale, within 8 days of the date of the sale of the horse concerned;
  - 9.6.5 the Buyer shall be obliged, at his own expense, to return the horse to the Vendor.
- 9.7 In the circumstances described in clause 9.6 the Buyer shall be entitled to recover, directly from the Vendor, the expense he incurred in returning the horse.
- 9.8 If the Vendor disagrees with the veterinary certificate supplied by the Buyer in terms of clause 9.6.2, CTS may in its sole discretion appoint an independent veterinary surgeon or veterinary panel at the expense of the Vendor to verify the same, whose certificate shall be binding upon all parties concerned.
- 9.9 The Vendor of any horse which is one of twins, shall be obliged to disclose such fact in writing to CTS prior to the sale of the horse concerned to enable the Auctioneer to announce such fact at the time of the sale; failing which disclosure the Buyer shall be entitled to cancel the sale, provided that the Buyer complies with the provisions of clause 9.6.4 and clause 9.6.5 above.
- 9.10 The Buyer of a horse may after the sale, but before the horse leaves the venue, and at his own cost, request that the horse:
  - 9.10.1 be subjected to an upper respiratory endoscopic examination (excluding the trachea); and/or
  - 9.10.2 be examined for the presence of any drug, chemical, compound, stimulant or substance which may have influenced the performance of the horse at the sale.
- 9.11 The examination contemplated in clause 9.10.2 must be carried out at the venue by a veterinary surgeon appointed by the Buyer and must be concluded within 48 hours from the conclusion of the relevant sale. The Buyer and the Vendor, or their authorised representatives, shall be entitled to be present during the examination. The provisions of clause 9.8 shall apply mutatis mutandis if the Vendor disagrees with the veterinary certificate supplied to the Buyer.
- 9.12 The Buyer shall be entitled to cancel a sale (provided that the Buyer complies with the provisions of clause 9.6.4 and clause 9.6.5 above) if, upon an examination conducted in terms of this clause 9.10, it is concluded that a horse has one of the following conditions and that such condition will materially influence the horse's racing or breeding career : split palate, laryngeal hemiplegia, laryngeal hemiparesis with incomplete abductor function, epiglottal entrapment, persistent dorsal displacement of the soft palate, arytenoid chondritis, subepiglottal cyst, soft palate cyst, rostral displacement of the palatopharyngeal arch, nasopharyngeal cicatrix, space occupying lesions or malformation which comprise the diameter of the upper respiratory tract.
- 9.13 CTS reserves the right to cancel any sale within 30 days from the date of the sale if, in its sole discretion, it is of the view that exceptional circumstances warrants such cancellation.
- 9.14 Notwithstanding the cancellation of a sale by a Buyer in terms of this clause 9 :

- 9.14.1 the Vendor of such a horse shall nevertheless remain liable for the Entry Fee, Acceptance Fee, Sales Commission and relevant portion of the Race Levy (if any), as if the sale had not been cancelled; and
- 9.14.2 neither CTS nor the Auctioneer shall be liable for any failure to disclose any of the conditions specified in clause 9.4, clause 9.9, clause 9.10 and clause 9.12, or for any damages suffered by a Vendor or a Buyer pursuant to any cancellation arising from such failure to disclose.
- 9.15 The completion and signature by a Vendor of a Vendor entry form shall be deemed an express acknowledgement and undertaking by that Vendor :-
- 9.15.1 that the Vendor is aware of and will honour the Vendor's duties pertaining to the physical condition and surgical history of any horse(s) entered for the Auction (including the Vendor's duty to disclose) in accordance with this clause 9; and
- 9.15.2 that neither CTS nor the Auctioneer shall be liable for any failure by the Vendor to disclose any of the conditions which the Vendor is obliged to disclose in terms of this clause 9, or for any damages suffered by a Vendor or a Buyer pursuant to any cancellation arising from the Vendor's failure to disclose.
- 9.16 **Except as provided for in this clause 9 or any other express provisions of these Conditions, no other condition, fact or defect, whether patent or latent shall constitute grounds for the cancellation of the sale or for a claim for damages, save where CTS will be liable in terms of the CPA.**
- 9.17 Any disputes of whatsoever nature which arise between the Vendor and the Buyer in relation to a horse, shall be resolved between them only and independently from CTS. For the avoidance of doubt CTS shall have no responsibility in relation to such dispute and will not become involved in such dispute.
- 9.18 No horse shall be returned to CTS or the venue without CTS's prior written consent.

## 10 GENERAL RIGHTS AND OBLIGATIONS OF VENDOR

- 10.1 The NHRA registration and cost of registration of all lots remain the responsibility of the Vendor who completes and signs the Vendor entry form in respect of lots entered for the Auction.
- 10.2 In the event of any covering fees of mares and/or the NHRA registration fees of foals sold at foot and weanlings being outstanding in respect of any horses sold at the Auction, CTS will only pay out the sales proceeds of such sales to the Vendor once the outstanding matters have been resolved.
- 10.3 All in-foal mares not subject to a live foal guarantee must be accompanied by the relevant covering certificate to the venue. The Vendor is to deliver such certificates to CTS on arrival at the venue.
- 10.4 CTS reserves the right to withhold payment from the sales proceeds of the Vendor of live foal fees due until such time as the relevant covering certificates are submitted to CTS.
- 10.5 Live foal fees, stallion covering fees and/or any other relevant fees/charges remain the responsibility of the Vendor and may not be transferred to the Buyer.

## 11 STABLING AFTER THE AUCTION

- 11.1 To the extent that any horse which is sold at the Auction is returned to the Vendor's care pending settlement by the Buyer of the debt, **the Vendor acknowledges and accepts CTS's rights pertaining to such horse as set out in the Conditions and in the Vendor entry form.**
- 11.2 **The Vendor expressly undertakes to refrain from releasing control of any such horse to the Buyer or any other person without the express written consent of CTS.**
- 11.3 **The Vendor acknowledges and agrees that, in the event of the Vendor failing to adhere to this clause 11, CTS will (in addition to any other legal remedies which may be available to CTS) be released from its obligation to make guaranteed payment of the sales proceeds within the 30 day period as contemplated in 6.1.**

## 12 REGISTRATION AS A BUYER

- 12.1 Subject to 12.3 below every prospective Buyer who intends to bid in his/her own name must register for the Auction by completing and signing an application for a Buyer's Card and submitting such document to CTS, together with any documents which may be required to meet the requirements of the FICA in respect of the establishment and verification of identity of the prospective Buyer, in accordance with the Rules of Auction.
- 12.2 Subject to 12.3 below every prospective Buyer who wishes to appoint an agent to bid on his/her/its behalf at the Auction must register for the Auction by completing and signing an application for a Buyer's Card (alternatively by procuring that such agent completes and signs an application for a Buyer's Card) and an authorisation of agent form and submitting such documents to CTS, together with a letter of authority expressly authorising his/her/its chosen agent to bid on his/her/its behalf (which letter of authority must, in the event that the prospective Buyer is a company or a closed corporation, appear on the letterhead of the company or closed corporation and must be accompanied by a certified copy of the resolution authorising him or her to do so) and any documents which may be required for the prospective Buyer and his/her/its agent to meet the requirements of the FICA.
- 12.3 Any Prospective Buyer and his/her/its agent/s who have previously duly registered to participate in auctions presented by CTS and who is in possession of a valid Buyer's Card issued in his/her/its name (or, in the case of an agent, authorising such agent to act on behalf of the prospective Buyer in whose name the relevant Buyer's Card was issued) shall be entitled to participate in the Auction without having to register in terms of 12.1 and/or 12.2 above (provided that the Buyer's Card is valid for the full duration of the Auction).
- 12.4 CTS shall enter the details of a registered bidder in the Bidders' Record and shall, upon such successful registration :-
- 12.4.1 issue a Buyer's Card to the registered bidder; and
- 12.4.2 furnish the registered bidder with a bidder number and a physical device to which that number is attached for bidding purposes.
- 12.5 For the avoidance of doubt, if any Vendor or the Auctioneer, or any person on either of their behalves, intends to bid at the Auction on a horse entered by that Vendor, that Vendor or the Auctioneer or other person must be duly registered as a Buyer in terms of this clause 12.
- 12.6 No person shall be authorised to bid at the Auction unless and until he is in possession of a valid and current Buyer's Card issued by CTS, in its sole and unfettered discretion, in respect of the Auction.
- 12.7 A bid taken from an unregistered person (i.e. a person without a valid and current Buyer's Card) is invalid.
- 12.8 CTS shall in its sole and unfettered discretion be entitled to, at any time and for whatever reason, withdraw any Buyer's Card issued by it and instruct the Auctioneer to refuse to take any bids from the holder of such Buyer's Card.
- 12.9 Any registered bidder to whom CTS issues a Buyer's Card shall be obliged to strictly observe the conditions upon which CTS has issued it to him.
- 12.10 A registered bidder shall be obliged to limit the aggregate of his or her purchases at the Auction to the amount of the purchase facility granted by CTS

(if any) upon the issue of the registered bidder's Buyer's Card.

- 12.11 Once the purchase facility limit specified therein has been reached, the Buyer's Card shall be withdrawn unless and until CTS approves or ratifies, in writing, an increased purchase facility and causes the increased purchase facility to be endorsed on the Buyer's Card.
- 12.12 Should a registered bidder exceed the purchase facility, CTS shall be entitled, in its sole discretion, to declare the resulting sale/s null and void whereupon the horse/s may be re-auctioned.
- 12.13 In respect of any successful bid, only the registered bidder to whom the relevant Buyer's Card was issued and whose signature appears on the card shall be allowed to sign the acknowledgement of purchase form in respect of such bid and the Vendors' roll. Where the signature is that of another person, CTS shall be entitled to regard the sale as null and void in which event the horse shall be re-entered into the sales ring for re-auction.
- 12.14 CTS reserves the right to refuse to issue a Buyer's Card to, or to retract a Buyer's Card already issued to, a person who has materially breached any term of these Conditions, or who has any debts outstanding from a previous auction conducted by CTS.

### 13 DEPOSIT BY BUYER

- 13.1 CTS may, prior to issuing any Buyer's Card, require a prospective Buyer to pay a refundable deposit, the amount of which will be determined by CTS in its sole discretion.
- 13.2 CTS shall deal with a deposit in the following manner:
  - 13.2.1 in the event of a registered bidder failing to purchase any horse at the Auction, the deposit shall be refunded to the registered bidder as soon as possible after the registered bidder returns his Buyer's Card to CTS;
  - 13.2.2 should the purchase price/s in respect of the total sales made by any Buyer be less than the amount of the deposit paid by such Buyer, the amount owing in respect of the sales will immediately be deducted from the deposit and the balance refunded to the Buyer as soon as possible;
  - 13.2.3 should the purchase price/s in respect of the total sales made to any Buyer exceed the amount of the deposit paid by such Buyer, then the deposit will be offset pro rata against the purchase price/s of the horse/s bought, and the outstanding balance of the purchase price/s shall be payable by the Buyer in accordance with the sales invoice.

### 14 PAYMENTS BY BUYER TO CTS

- 14.1 The Buyer undertakes to pay the debt in respect of any horse sold at the Auction directly to CTS. For the avoidance of doubt no portion of the debt shall, without CTS' express written instructions, be paid directly to a Vendor by the Buyer.
- 14.2 Every sales invoice issued to a Buyer must be settled in full within 21 days from date of the sale, failing which any amount outstanding on a sales invoice shall attract interest at 2% per month from the date upon which the debt falls due to date of actual payment, in accordance with clause 14.8. For the avoidance of doubt no interest shall be payable on an outstanding debt for the first 21 days following the sale to which it relates.
- 14.3 Buyers shall be obliged to make payment of any amount due to CTS, whether in respect of a deposit or debt or otherwise, by way of bank-guaranteed cheque or electronic funds transfer.
- 14.4 Payment of any amount due by a Buyer to CTS shall be made without set-off, deduction or withholding of any nature whatsoever.
- 14.5 Any cheque tendered must be made payable to Cape Thoroughbred Sales Proprietary Limited and crossed "not transferable".
- 14.6 Payment by a Buyer to CTS by electronic funds transfer shall be made to the following trust account of CTS:

|                        |   |
|------------------------|---|
| <b>Account holder:</b> | Cape Thoroughbred Sales Proprietary Limited |
| <b>Bank:</b>           | FIRST NATIONAL BANK                         |
| <b>Branch:</b>         | ROBERTSON                                   |
| <b>Account No:</b>     | 62260514825                                 |
| <b>Branch No:</b>      | 200413                                      |

Written proof of any payment made in terms of clause 14.6 above must be furnished to CTS at the following fax number or email address:

- 14.6.1 CTS fax number: +27 (0) 86 663 7084;
- 14.6.2 CTS email address: accounts@cths.com.

- 14.7 VAT shall be payable in respect of any sale.
- 14.8 Save as may otherwise have been agreed upon in writing between CTS and a Buyer, any amounts due to CTS in respect of a sale and not paid in full within the agreed terms shall attract interest at 2% per month, from the date upon which the debt falls due to date of actual payment.
- 14.9 Any prospective Buyer who requires credit terms from CTS for the purpose of payment of horses bought at the Auction must apply for such credit terms in writing to CTS at least 14 days prior to the date of the Auction. CTS shall have the right in its sole and unfettered discretion to approve or reject all such credit applications and to determine the conditions and period of payment. In the absence of a credit agreement being concluded the sale shall be deemed to have been for cash.
- 14.10 In the event of a Buyer failing to fully settle the debt within the agreed terms such Buyer shall be deemed to be a defaulter and CTS shall, in addition to any of its other rights and remedies contained in the Conditions or as may otherwise be available to it in law, be entitled to re-enter the horse for sale at an auction to be conducted by CTS if practicable, with the prior attempted sale being void. Any shortfall on resale and all costs, interest, insurance, damages, legal and other fees and disbursements associated with the prior attempted sale and the re-sale of the horse, including care, keep and transport of the horse, shall be for the defaulter's account and shall be paid by him on demand from CTS.
- 14.11 CTS shall in its sole and unfettered discretion apply any payment received from a Buyer to extinguish such Buyer's oldest debt in the books of CTS in the order in which such Buyer bought the lot(s) acquired by him/her/it at the Auction.

### 15 AUCTIONEER AGREEMENT

CTS will enter into an agreement with one or more Auctioneers who will conduct the bidding on all lots at the Auction (the "Auctioneer Agreement"), salient terms of which will include inter alia that :-

- 15.1 the Auctioneer must conduct the bidding at the Auction strictly in accordance with the Vendors' instructions, which instructions must be furnished to him/her directly by the relevant Vendor prior to commencement of bidding on any lot, and which instructions must include the amount of the reserve

price which must be applied in respect of such lot;

- 15.2 the Auctioneer will be obliged to ensure that the Vendor of each lot is satisfied with the price prior to the fall of the hammer, irrespective whether the Vendor's reserve price will have been attained or not.

## 16 BIDDING AT THE AUCTION

- 16.1 **The parties acknowledge that announcements may be made from the Auctioneer's rostrum before the commencement of the Auction and from time to time during and after the Auction. Neither CTS nor the Auctioneer shall be liable for any claims or damages suffered by any person on account of not having heard such announcements.**
- 16.2 Every bid made at the Auction constitutes an offer to purchase the lot on offer for the amount of the bid.
- 16.3 Any registered bidder making a bid at the Auction shall be permitted, in terms of section 45(3) of the CPA, to retract his bid before the fall of the hammer.
- 16.4 The highest registered bidder at the fall of the hammer shall be the Buyer of the lot on auction.
- 16.5 In the event of a dispute in regard to the bidding between two or more registered bidders in respect of the sale of any horse, the Auctioneer may, prior to the conclusion of the sale, and in his sole and absolute discretion:
- 16.5.1 declare who the successful Buyer of the horse is; or
- 16.5.2 re-auction the horse in question.
- 16.6 The decision of the Auctioneer shall, in the circumstances specified in clause 16.5 above, be absolute, final and binding on all parties.
- 16.7 **As declared in the Rules of Auction, all of the lots at the Auction will be sold subject to –**
- 16.7.1 **a reserved or upset price; and**
- 16.7.2 **a right to bid by or on behalf of the Vendor or the Auctioneer.**
- 16.8 No Buyer shall be entitled to cancel any sale at the Auction by virtue of a Vendor or the Auctioneer exercising their entitlement to bid at the Auction as provided for in clause 16.7.
- 16.9 **Buyers acknowledge that each lot is to be regarded as the subject of a separate transaction.**
- 16.10 The Auctioneer shall determine and regulate the advance of the bidding and shall be entitled, in his sole discretion, to ignore or reject any bid, without giving any reasons for such action.
- 16.11 The amount of a bid shall not include VAT.
- 16.12 If, following the conclusion of a sale, it transpires that the person to whom a horse was sold was not, at the time of such sale, in possession of a valid Buyer's Card, that sale shall be null and void and the horse may immediately be re-auctioned.
- 16.13 Upon the fall of the hammer in respect of any horse offered for sale at the Auction :-
- 16.13.1 the Buyer shall be required to complete and sign an acknowledgement of purchase form and to sign the Vendors' roll; and
- 16.13.2 CTS shall issue a sales invoice to the Buyer.
- 16.14 CTS and the Auctioneer may withdraw any horse from the Auction without giving reasons for doing so and instruct the Vendor to remove such horse from the venue.

## 17 RISK, OWNERSHIP AND MAINTENANCE COSTS

- 17.1 All risk (but not ownership) in respect of a horse sold at the Auction shall pass to the Buyer on the fall of the hammer, at which time the Buyer shall, save as expressly provided for in the Conditions, forthwith be responsible for the care, keep, custody, control, insurance and security for the horse and for all expenses relating thereto and bear the risk of injury to, sickness or death of, the horse.
- 17.2 **The Buyer agrees to release, defend, indemnify and hold CTS, its officers, employees, agents and representatives (including the Auctioneer) and the owners or operators of facilities in use by CTS, harmless from all losses, damages, liabilities, expenses, claims, causes of action or legal fees arising out of or related to the possession, care, keep, custody, control or maintenance of any horse bought by him at the Auction, including any claims arising out of injuries, sickness, death or damage caused by or to the horse after the fall of the hammer, save where CTS is held liable in terms of section 61 of the CPA.**
- 17.3 The Buyer shall not allow or cause any horse bought at an Auction to become subject to any lien, hypothec or other form of security until such time as the sales invoice in respect of such horse has been settled in full. In the event of such lien, hypothec or other form of security arising, CTS shall be entitled to act in accordance with clause 19.4.
- 17.4 Save as provided in these Conditions or unless other prior arrangements in writing have been made with CTS, a Buyer shall be obliged to remove any horse purchased at the Auction promptly from the venue after the Auction. Should a Buyer fail to remove the horse promptly, CTS may remove the horse from the venue at the Buyer's risk and expense or, alternatively, charge the Buyer for stable space and keep, which charge the Buyer agrees to pay to CTS on demand.
- 17.5 No horse may be removed from the venue before a release permit in respect of that horse has been issued by CTS.
- 17.6 **Ownership in a horse shall only pass to the Buyer upon settlement in full to CTS of the debt (notwithstanding that a horse may be delivered to or removed by the Buyer prior to the Buyer's settlement of the debt). The Buyer accordingly acknowledges that his/her/its possession of any horse prior to the transfer of ownership of that horse in accordance with this 17.6 shall be deemed to be on behalf of CTS or the Vendor, as the case may be.**
- 17.7 CTS reserves the right not to release a horse to a Buyer, and to keep it stabled at the cost and sole risk of the Buyer, until settlement in full by the Buyer of the debt payable in respect of the horse, during which time the Buyer shall have no right to –
- 17.7.1 demand or enforce delivery of the horse; or
- 17.7.2 have the horse registered in his name or that of his nominee.
- 17.8 The Buyer agrees and undertakes not to export any horse purchased at the Auction out of South Africa until such time as the debt payable in respect of that horse has been settled in full.

## 18 INSURANCE

- 18.1 The Buyer shall comprehensively insure the respective interests of CTS and himself in all horses bought by him at the Auction for a period commencing at the fall of the hammer and enduring for a period of not less than that of the payment terms applicable to the sale.



- 18.2 The Buyer shall ensure that CTS's interest is endorsed on the insurance policy until payment of the amount owing in terms of the insurance policy is settled in full by the Buyer, provided that:
- 18.2.1 if the purchase price of any horse remains unpaid after the period stipulated in the terms of payment applicable to the sale, for any reason whatsoever, then CTS shall be entitled, at the cost of the Buyer, to extend such aforesaid period of insurance until such time as the purchase price is actually settled by the Buyer;
- 18.2.2 where the purchase price is settled before the period stipulated in the terms of payment applicable to the sale has elapsed, the Buyer shall be entitled to cancel the policy of insurance with effect from such date and to apply for a credit for the unused portion of insurance.
- 18.3 The cost of the insurance contemplated 18.1 will be added by CTS to the sales invoice.

## **19 LEGAL REMEDIES, REPOSSESSION AND COSTS FOR ATTENTION OF THE BUYER**

- 19.1 **The Buyer agrees and acknowledges that in the event of:**
- 19.1.1 **the Buyer materially breaching any term contained in these Conditions or any of the sale documents;**
- 19.1.2 **the Buyer failing to pay the debt in full in accordance with the provisions of any credit arrangement entered into with CTS;**
- 19.1.3 **the Buyer passing away;**
- 19.1.4 **the Buyer's estate being placed under any order of provisional or final sequestration or the Buyer's deregistration, winding up, liquidation, business rescue or administration, whether provisional or final,**
- then and in that event CTS shall, without notice and without detracting from any other remedies which may be available to it:**
- 19.1.5 **be entitled to summarily and without prior notification cancel the sale of any horse (in respect of which monies are owing by the Buyer) and to repossess such horse from anyone in possession of it ("the repossessed horse"); or**
- 19.1.6 **to claim specific performance of all the Buyer's obligations whether or not such obligations would otherwise then have fallen due for performance,**
- in either event without prejudice to CTS's right to claim and recover damages for breach of contract.**
- 19.2 In the event of repossession of a horse, CTS may take all necessary steps, and enter upon any land or premises, to recover possession of the horse. The Buyer agrees to voluntarily hand over the horse to CTS or its agents or to instruct his employees, servants, trainer(s) or whoever is in possession of the horse to do so. All costs and expenses occasioned by such repossession shall be recoverable by CTS from the Buyer.
- 19.3 **The Buyer acknowledges and agrees that if he for whatever reason refuses to voluntarily hand over the horse in the circumstances described in 19.1, CTS shall be entitled to immediately apply for and obtain a repossession order from a court of competent jurisdiction and that opposition to such application shall not be justified and shall attract an adverse costs order.**
- 19.4 Where any person claims to have a lien over any horse in respect of which the purchase price has not been paid, CTS, in its sole discretion, has the right to settle such lien as it deems fit to recover possession of the horse. Any monies so paid in discharge of any lien shall form part of the debt which CTS shall be entitled to recover from the Buyer in addition to any other amounts which may be outstanding by the Buyer.
- 19.5 Notwithstanding the cancellation of a sale by CTS, CTS shall be entitled to retain:
- 19.5.1 any sums paid by the Buyer in respect of the debt; and/or
- 19.5.2 the deposit or any portion thereof which was offset against the purchase price, in reduction of damages, if any, which may be suffered by CTS and/or the Vendor by reason of the breach by the Buyer and the resultant cancellation of the sale.
- 19.6 Should CTS elect to cancel the sale and repossess the horse sold, CTS shall be entitled, but not obliged, to attempt to re-sell the repossessed horse at any future auction. If the repossessed horse is sold, then the purchase price, if and when paid in full, shall be used in reduction of the shortfall, if any, which may have resulted by reason of the breach by the Buyer and the resultant cancellation of the sale. CTS shall also be entitled to re-sell, in absence of the Buyer, any horse in respect of which removal or repossession has been omitted or refused.
- 19.7 If a sale is cancelled, whether the horse is re-sold or not, the defaulting Buyer agrees to pay inter alia transport and keep costs, veterinary fees, insurance, loss of interest and loss of income (e.g. Sales Commission), on the purchase price in respect of such horse.
- 19.8 Any shortfall remaining after the resale of such lot shall be made good by the defaulting Buyer on demand from CTS.
- 19.9 If a sale is cancelled and a horse repossessed in terms of this clause 19 and sold at a future sale of CTS, the levies payable by the Vendor in respect of the original sale will be cancelled and claimed from the defaulting Buyer. New levies will be raised on the future sale.

## **20 EXPORT AND IMPORT REQUIREMENTS**

- 20.1 Any Buyer who is not a South African citizen shall lodge an acceptable letter of credit from his bankers with CTS prior to the Auction, alternatively apply for credit from CTS.
- 20.2 The Buyer of any horse that will be exported shall be responsible for ensuring that all requirements necessary for the export or import of such horse are fulfilled.
- 20.3 No Buyer shall not be absolved from complying with his obligations, in particular his payment obligation, in terms of the Rules of Auction, the Conditions or any sales document, by virtue of an allegation of impossibility of performance or force majeure in regard to compliance with the necessary exportation requirements.

## **21 CTS TO ACT AS AGENT**

- 21.1 **The Buyer and the Vendor acknowledge and agree that, save as is otherwise provided for in the Conditions, CTS shall at all times act as an agent only. Accordingly, any remedy which the Buyer may have in law shall lie against the Vendor and any remedy which the Vendor may have in law shall lie against the Buyer; provided that nothing contained in this clause shall affect any of CTS's rights in terms of the Conditions and the relevant sales documents.**
- 21.2 For purposes of enabling and permitting CTS to give full force and effect to its rights and powers in terms of the Conditions each of the Vendor and the Buyer hereby irrevocably appoint CTS to be their attorney, with full power to CTS to take any steps and to execute any documents and to give all necessary instructions on their behalf, and to do all such other acts and things as may be necessary.
- 21.3 No Vendor or Buyer shall be entitled to cede any of its rights or delegate any of its obligations under the Conditions without the prior written consent of CTS.



- 21.4 CTS shall be entitled, on prior written notice to the Vendor or the Buyer (as the case may be), to cede, delegate or assign all or any of its rights and/or obligations under the Conditions either absolutely or as collateral security to any other person or persons and on any such cession or assignment taking place, the Vendor or the Buyer (as the case may be) shall, if so required by any such cessionary, make all payments due to CTS (the right to receive which has been ceded to such cessionary) directly to such cessionary.

## **22 AGENTS ON BEHALF OF VENDOR OR BUYER**

- 22.1 Any person acting as an agent on behalf of a principal, whether in the capacity of a Vendor or a Buyer ("agent"), shall be required, prior to his participation in the Auction, to establish to the satisfaction of CTS, his authority to so act.
- 22.2 Any agent acting on behalf of a Vendor shall disclose the name and address of his principal on the Vendor entry form.
- 22.3 Any agent acting on behalf of a Buyer shall disclose the name and address of his principal on the application for a Buyer's Card and furnish CTS with an authorisation of agent form duly completed and signed by his principal, together with a letter of authority as required in terms of the Rules of Auction. For the avoidance of doubt, any Buyer's Card shall be issued in the name of the principal, not the agent.
- 22.4 Any agent shall be jointly and severally liable for the timeous fulfilment of all the obligations of his principal in terms of the Conditions, the Rules of Auction and any relevant sales document, renouncing the benefits of division and excussion. An agent shall be so liable even if he fails to disclose the information as required by clauses 22.1, 22.2 and 22.3.
- 22.5 No person acting as an agent and buying in his own name on behalf of a principal will be released from his responsibility to pay the debt owing to CTS on account of his inability to secure payment from his principal or his principal defaulting in making payment.
- 22.6 In the event that an agent applies for a Buyer's Card in his own name and discloses his principal only after purchasing a horse at the Auction, there shall be no obligation whatsoever on CTS to invoice his principal and collect the debt from such principal. If the invoice is sent to the principal and the principal defaults in settling the debt, the responsibility for settlement of the debt remains with the agent who has purchased the horse in the sales ring and whose Buyer's Card was used and who signed the acknowledgement of purchase form.
- 22.7 No registered bidder shall allow another person who is not in terms of these Conditions and/or the relevant sales documents specifically authorised to act on his behalf, to use his Buyer's Card to purchase horses at the Auction. In the event that any registered bidder does so allow an unauthorised person to act on his behalf, the registered bidder shall be responsible for the settlement of any debt that may arise as a result of such unauthorised person's participation in the Auction.
- 22.8 Notwithstanding anything to the contrary contained in the Conditions or the Rules of Auction or any sales document, any person acting on behalf of another shall be deemed to have full legal capacity to do so.

## **23 CTS NOT LIABLE FOR ANY LOSS OR DAMAGE**

- 23.1 **No Vendor, Buyer or any person who attends the Auction shall have any claim of any nature whatsoever and howsoever arising, now or in the future (including inter alia any claims for damage, whether direct, indirect, special, incidental, or consequential, to, or loss or destruction of any horse or other property or death or injury to such person) against CTS, the Auctioneer or any of their directors or associates.**
- 23.2 **For the avoidance of doubt neither CTS nor the Auctioneer shall be responsible for any damage, loss or injury caused by or to any horse entered for the Auction, while such horse is under the control or supervision of CTS or the Auctioneer.**
- 23.3 **Nothing in these Conditions will be construed as a limitation of liability on any party for any loss or harm arising from their fraudulent conduct or gross negligence.**

## **24 RIGHT OF ADMISSION**

- 24.1 CTS reserves the right of admission to the Auction and shall be entitled at any stage before, during or after the Auction to require any person to vacate with immediate effect the venue or any premises under CTS' control.
- 24.2 All persons enter the venue at own risk.
- 24.3 Only horses registered in the General Stud Book of South Africa at the time of the Auction or in respect of which an up to date passport, as provided for in the rules of the NHRA, has been lodged with CTS, will be eligible for sale at the Auction.
- 24.4 CTS reserves the right to refuse entry to the venue of any horse which does not comply with 24.3 above. CTS retains the right to prohibit the entry to the venue of any horse which is suspected to be suffering from an infectious or contagious disease and/or does not have the necessary veterinary proof of inoculation/vaccination that may be required at any time by law, CTS and/or the NHRA.
- 24.5 CTS reserves the right, but is not obliged, to examine and/or re-inspect any or all horses entering or stabled at the venue and to withdraw any horse from the Auction and/or remove any horse from the venue before or during the Auction in its sole and absolute discretion, without giving any reason for such withdrawal and/or removal.
- 24.6 CTS shall be entitled, in its absolute discretion and at the expense of the Vendor or the Buyer (as the case may be), to engage a veterinary surgeon to inspect and/or treat any horse whilst such horse is at the venue and if deemed necessary, to have such horse forthwith removed from the venue.
- 24.7 CTS reserves the right to refuse entry into the sales ring of any horse in respect of which the Entry Fee has not been timeously paid as prescribed by CTS in the Vendor entry form.

## **25 COPYRIGHT AND SALES CATALOGUE**

- 25.1 CTS will compile all the pedigrees of the horses to be sold at the Auction in the sales catalogue, the costs of which is included in the Entry Fee.
- 25.2 The accuracy of all information in the sales catalogue pertaining to the horses entered for sale at the Auction is the sole responsibility of the Vendor, who shall have the duty to examine the sales catalogue in respect of horses consigned by him prior to Auction and to report any mistakes and inaccuracies to the Auctioneer to enable the Auctioneer to make an appropriate correction by announcement at the time of the Auction.
- 25.3 The content of the sales catalogue as far as it relates to the horses entered for sale is represented by the Vendor to CTS. In the event of errors or omissions in the content of the sales catalogue, the Buyer's redress shall lie against the Vendor of the relevant horse. Any such errors or omissions must be reported by the Buyer to the Vendor in writing within 14 days from date of the sale of the Auction to be of any force and/or effect.
- 25.4 The copyright to all information pertaining to pedigrees and performance of horses contained in the sales catalogue vests solely in CTS. No part of the work covered by this copyright may be reproduced in any form or by any means whatsoever without the written permission of CTS.

## 26 REPOSITORY FOR RADIOGRAPHIC IMAGES

- 26.1 The repository exists for the purpose of facilitating inspection by prospective Buyers of bloodstock horses for sale at the Auction.
- 26.2 The repository may only be used by Vendors and Buyers in accordance with the Repository Terms, Conditions and Procedures, a copy of which is available at CTS' offices.
- 26.3 Vendors and Buyers hereby agree to be bound by the Repository Terms, Conditions and Procedures in all respects.
- 26.4 Where the Vendor has lodged material or information relating to a lot in the repository, the Vendor warrants to CTS that such material and information is in all respects valid, complete (as to compliance with the specifications and requirements set out in the Repository Terms, Conditions and Procedures), accurate and authentic as at the date on which it is lodged.
- 26.5 In the event that CTS determines, in its sole and unfettered discretion, that a Vendor has deliberately and knowingly either placed incorrect information in, or omitted material information from, the repository, which is deemed to be materially misleading regarding the condition of the horse, CTS may elect, in its sole discretion, to impose sanctions against such Vendor which may include inter alia prohibiting such Vendor from selling horses at future auctions conducted by CTS.
- 26.6 Buyers who, for whatsoever reason, fail to inspect any material or information placed in the repository in respect of any lot, do so at their own risk.
- 26.7 Subject to clause 26.4, the repository and its operation does not create any additional express or implied warranties or assurances and shall not change any of the Conditions or the provisions set out in the sales documents, which shall continue to be binding on all parties.
- 26.8 In the event of any inconsistency between the Repository Terms, Conditions and Procedures and these Conditions, these Conditions shall prevail.
- 26.9 **CTS does not review the material or information in the repository and gives no warranty, guarantee or assurance of any kind in respect of the validity, completeness, accuracy or authenticity of such material or information, all of which is the sole responsibility of the Vendor. Accordingly, knowledge of the repository information shall not be imputed to CTS and/or the Auctioneer.**
- 26.10 In the event that a dispute arises between the Buyer and the Vendor as a result of an alleged breach by the Vendor of clause 26.4, then the Vendor and the Buyer must resolve such dispute amongst themselves and independently from CTS. For the avoidance of doubt CTS shall have no responsibility in relation to such dispute and will not become involved in such dispute.
- 26.11 Subject to 26.12 all items and information placed in the repository by the Vendor is and shall remain the sole property of the Vendor and the Vendor shall have the right to receive all such material back after the end of the Auction to which it relates.
- 26.12 CTS reserves the right to retain any items and/or information placed in the repository by the Vendor in the event that a dispute arises in respect of a horse or a sale to which it relates, in which event CTS will return such items and/or information to the Vendor only upon the resolution of the dispute.
- 26.13 **In the event of the Vendor failing to collect any of its items or information contained in the repository within 30 days after the end of the Auction, CTS shall be entitled to destroy or dispose of the same in its sole discretion and CTS shall be held harmless by the Vendor for any losses, expenses or liabilities incurred by the Vendor and/or any other person as a result of the disposition of the said items or information.**

## 27 NO WARRANTIES OR REPRESENTATIONS

- 27.1 Except as specifically provided for in the Conditions and in terms of existing legislation the sale of all horses at the Auction shall be "voetstoots", on an "as is" basis, with all faults and defects, patent or latent and the Buyers do not enjoy the protection of sections 55 and 56 of the CPA.
- 27.2 Neither CTS nor the Auctioneer makes or gives any representation, warranty or guarantee, express or implied, whatsoever:
- 27.2.1 in respect of a Vendor's title to a horse offered for sale;
- 27.2.2 in respect of the correctness of any statement or information whatsoever pertaining to a horse including any statement or information contained in any sales document and neither CTS nor the Auctioneer shall be liable for any error in any such statement or information;
- 27.2.3 as to the merchantability, fitness for any particular purpose, soundness, condition or quality of any horse offered for sale.
- 27.3 Save if held liable in terms of section 61 of the CPA, neither CTS nor the Auctioneer shall be liable nor do they accept any responsibility for:
- 27.3.1 any defects or errors in relation to the pedigree, description, condition or other particulars relating to a horse, including, without limitation, the performance of a horse; or
- 27.3.2 any loss or damage suffered by any Vendor as a result of the accidental omission by CTS of any details of or reference to a horse entered by such Vendor.
- 27.4 The Vendor or owner may have made oral or written statements or published brochures or advertisements concerning the soundness, physical conditions or the racing abilities of the horses contained in the sales catalogue or being offered and/or sold on the Auction generally. Such statements or advertisements do not constitute warranties, do not form part of the Conditions and neither the Auctioneer nor CTS shall be liable for any breach thereof or any misstatement.
- 27.5 If a Vendor, in respect of a particular horse, gives a warranty which is inaccurate or misleading in any material respect, the Buyer's remedy, if any, shall lie against the Vendor and not against CTS or the Auctioneer.
- 27.6 It is specifically recorded that terms such as "in foal", "believed in foal", "tested in foal", "certified in foal", "believed definitely in foal", "pregnancy certificates available", shall not constitute a warranty by CTS or the Auctioneer that any particular mare entered for sale at the Auction, is in fact in foal at the time of the Auction. The Buyer, if he so wishes, shall be entitled to verify the claim of pregnancy before the horse leaves the venue.
- 27.7 It is the sole responsibility of a prospective Buyer to verify in advance the inoculation and/or the vaccination status of any horse which he may be interested in buying and to satisfy himself that they meet all the legal and his own requirements.
- 27.8 Any prospective Buyer shall be entitled at no fee to inspect the horses on offer prior to the commencement of the Auction in accordance with Regulation 28(5).
- 27.9 The Buyer acknowledges that :-
- 27.9.1 any bid made by him at the Auction shall be taken as proof that the Buyer has inspected the relevant horse and/or satisfied himself with the condition of the relevant horse; and
- 27.9.2 any purchase to be made by him at the Auction shall be in reliance on his own enquiries and inspection, and that he shall not rely on any statement or representation made by or on behalf of the Vendor, CTS or the Auctioneer and that no compensation shall be

payable by CTS or the Auctioneer for any faults, imperfections, conditions or other defects, save if held liable in terms of section 61 of the CPA.

- 27.10 The Vendor and the Buyer indemnify and hold CTS and the Auctioneer harmless against any claims arising from any cause whatsoever relating to the sale of any horse to the Buyer by CTS on behalf of the Vendor, save if held liable in terms of sections 51 or 61 of the CPA.
- 27.11 CTS and the Auctioneer shall not be held responsible in the event of the incorrect horse being auctioned at any particular time, it not being the duty of CTS or the Auctioneer to verify the identity of the horse being auctioned.
- 27.12 Under no circumstances whatsoever shall CTS or the Auctioneer be liable for any consequential losses of either the Vendor or the Buyer relating to the sale and purchase of horses at the Auction, save if CTS is held liable in terms of the CPA.

## 28 NO VICARIOUS LIABILITY

Neither CTS, nor the Auctioneer, shall have any vicarious liability to either the Vendor or the Buyer in consequence of any breach or default on the part of either or both of them.

## 29 DOMICILIUM

The parties choose *domicilium citandi et executandi* (chosen address) for all purposes relating to the Auction and/or any sale, including the giving of any notice, the payment of any sum and the serving of any process, as follows :

- 29.1 the Auctioneer chooses his physical address as set out in the Rules of Auction;
- 29.2 CTS chooses its physical address as set out in the Rules of Auction;
- 29.3 the Buyer chooses his physical address as set out in in his application for a Buyer's Card; and
- 29.4 the Vendor chooses his physical address as set out in in his Vendor entry form.

## 30 GOVERNING LAW

The law that will govern all matters relating to, and the resolution of any dispute arising from, the conduct of the Auction and/or the construction or implementation of the Conditions or any sales document, shall, irrespective of the residence, domicilium, nationality or citizenship of the person with whom CTS becomes involved in such matter or dispute, be the law of South Africa.

## 31 DISPUTES

- 31.1 Save as expressly otherwise provided for in the Conditions, any dispute arising out of or in connection with the Auction, the Rules of Auction, the Conditions or any sales document, including any dispute as to the existence, validity, enforceability or termination of any document or agreement, and the recovery of debt, shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa or its successor-in-title ("AFSA") by an arbitrator appointed by CTS.
- 31.2 The arbitrator appointed by CTS shall be a practicing senior counsel of not less than 10 (ten) years' standing as such.
- 31.3 There shall be no right of appeal as provided for in article 22 of AFSA's rules.
- 31.4 Any arbitration shall be held in Cape Town.
- 31.5 Each of CTS, any Vendor and any Buyer :
  - 31.5.1 expressly consents to any arbitration in terms of this provision being conducted as a matter of urgency, in accordance with AFSA's expedited rules;
  - 31.5.2 expressly agrees, in accordance with clause 10 of AFSA's expedited rules, that the arbitrators' award must be made within 48 hours after the finalisation of the arbitration proceedings;
  - 31.5.3 irrevocably authorises any other party to apply, on behalf of all the parties involved in the dispute, for such arbitration to be conducted on an urgent basis; and
  - 31.5.4 consents to any order of the arbitrator being made an order of court.
- 31.6 The arbitration proceedings shall be confidential and no party shall disclose to any third party any information regarding the proceedings, the award and/or settlement terms without the prior written consent of the other party/ies.
- 31.7 Notwithstanding anything to the contrary contained in this 31, any party shall be entitled to obtain interim relief on an urgent basis from any competent court having jurisdiction.
- 31.8 For the purposes of 31.7 and for the purposes of having any award made by the arbitrator being made an order of court, each of CTS, any Vendor and any Buyer hereby submits itself exclusively to the courts of Cape Town, South Africa.
- 31.9 The Buyer and the Vendor consent to the jurisdiction of the Magistrate's Court in terms of section 45 of the Magistrate's Court Act No. 32 of 1944 (as amended) having jurisdiction under section 45 of the said act, notwithstanding that the claim by CTS may exceed the normal jurisdiction of the Magistrate's Court as to amount.
- 31.10 Notwithstanding clauses 31.8 and 31.9 CTS shall, in its discretion, be entitled to proceed against the Buyer and/or the Vendor in any other court of competent jurisdiction.
- 31.11 This 31 is severable from the rest of the Conditions and shall remain in full force and effect notwithstanding any termination or cancellation of the Conditions, or any part thereof.

## 32 OTHER LEGAL MATTERS

- 32.1 In the event of CTS instructing attorneys for whatever reason including inter alia to collect any amount owing to CTS, obtain a repossession order and/or draft any agreement to secure CTS's rights, the Buyer and the Vendor (as the case may be) agrees to pay all the costs of CTS on the scale as between attorney and own client, whether or not summons is actually issued.
- 32.2 No relaxation or indulgence granted to the Buyer or the Vendor by CTS at any time shall be deemed to be a waiver of any of CTS's rights in terms hereof, and such relaxation or indulgence shall not be deemed a novation of any of the terms and conditions set out herein or create any estoppel against CTS.
- 32.3 Should a dispute arise regarding the sale of a horse, the Buyer shall be obliged, if required to do so by CTS, to return the horse at his own expense to a party nominated by CTS. The nominated party shall maintain the horse until the dispute has been resolved on condition that the Buyer shall be liable for

the costs of stabling and maintaining the horse, which amounts he shall pay to the nominated party on demand.

- 32.4 No right of set-off between a Buyer and a Vendor shall be valid or recognised by CTS. CTS shall be entitled to set-off against any money due by CTS to any Buyer or Vendor, any amount due to CTS or payable to CTS by such Vendor or Buyer, irrespective of whether or not the amount is disputed by the Buyer or the Vendor.
- 32.5 CTS shall be entitled to appropriate and deduct from any monies held or received by it from any source on behalf of a Vendor, such amounts as may be necessary to cover any levies, fees, costs, repayment or other monies owing to it by the Vendor.
- 32.6 No Buyer who has materially breached any condition contained in these Conditions or any sales document shall be entitled to a Buyer's Card at future auction to be conducted by CTS or be entitled to rely upon the provisions of clause 9.
- 32.7 A certificate under the hand of any director of CTS (whose title or appointment need not be proved) as to any amounts due and owing by the Buyer or the Vendor in terms of these Conditions or any sales document shall constitute prima facie proof of the matters therein stated for all purposes including, without limitation, summary judgement and provisional sentence proceedings.
- 32.8 Without prejudice to any other provision contained in the Conditions or any sales document, any successor in title, including any executor, heir, liquidator, business rescue practitioner, curator or trustee, of any party shall be bound by the Conditions and the relevant sales documents.
- 32.9 Each provision of these Conditions is, notwithstanding the grammatical relationship between that provision and the other provisions of Conditions, severable from the other provisions of the Conditions. Any provision of these Conditions which is or becomes invalid, unenforceable or unlawful in any jurisdiction shall, in such jurisdiction only, be treated as pro non scripto to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the remaining provisions of these Conditions which shall remain of full force and effect.
- 32.10 The Conditions, as amended by CTS from time to time, shall apply to all sales conducted by CTS and the Auctioneer. No variation, alteration or cancellation, not contained in the sales catalogue, shall be of any force and effect unless reduced to writing and signed by the managing director of CTS.

## **NOTICE in terms of Section 45 of the consumer Protection Act 68 of 2008 (“the CPA”)**

### **Notice is hereby given and it is stated by CTS that -**

- horses will be sold subject to reserve prices; and
- vendors and the auctioneer (or person acting on their behalf) are entitled to participate in the bidding on any lot.

Advance notice will be furnished of lot numbers to be sold subject to reserve prices as well as lot numbers that will be sold subject to vendor and/or auctioneer participating in the bidding on them.

### **Attention is also drawn to the following provisions of the CPA:**

Section 45 (4) and (5) of the CPA provides as follows -

“(4) Notice must be given in advance that a sale by auction is subject to-

- (a) a reserved or upset price; or
- (b) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction.

(5) Unless notice is given in advance that a sale by auction is subject to a right to bid by or on behalf of the owner or auctioneer-

- (a) the owner or auctioneer must not bid or employ any person to bid at the sale;
- (b) the auctioneer must not knowingly accept any bid from a person contemplated in paragraph (a); and
- (c) the consumer may approach a court to declare the transaction fraudulent, if this subsection has been violated.”