



AUCTION OF THE STARS 2009
(to be conducted by AUCTION OF THE STARS PTY LTD
ACN 094 361 234; ABN 30 094 361 234)

CONDITIONS OF SALE

Binding Conditions

1.
 - 1.1 These Conditions apply to all persons attending the Auction of the Stars ("the Auction"), to the sale and purchase of Lots entered in the Auction, and to all matters connected with the Auction.
 - 1.2 All persons attending or participating in the Auction, including the Seller, Buyer and/or Bidder of Lots entered in the auction agree to be bound by these Conditions.
 - 1.3 All Lots entered in the Auction are sold and purchased subject to these Conditions.
 - 1.4 Any further or different conditions relating to any sale or any lot or any purchaser must be recorded in writing and signed to the auction by or on behalf of the vendor, the purchaser and the auctioneer, and if not so recorded shall be of no effect.

Engagement and Authority of the Auctioneer

2.
 - 2.1 The Seller (as defined in these Conditions) engages the Auctioneer (as defined in these Conditions) to sell the Seller's Lot at the Auction. The Auctioneer acts solely as the Seller's Agent in all matters connected with the Auction.



2.2 The Auctioneer is the sole arbitrator of all disputes in connection with the Auction and the Auctioneer's decision is final.

2.3 The Auctioneer may, in its sole discretion:-

2.3.1. require any person intending to bid at the Auction to complete and sign a registration form and provide identification;

2.3.2 reject or cancel any bid made at the Auction;

2.3.3 advance the bidding at the Auction in increments determined by it;

2.3.4 in the case of a dispute relating to any bid, re-offer the Lot for sale;

2.3.5 withdraw any Lot from sale.

Bidding at the Auction

3.

3.1 The Seller may set a reserve price in respect of any Lot but must inform the Auctioneer of it in writing. Save as aforesaid, each Lot is sold without reserve;

3.2 Subject to any reserve price, the highest bidder for any Lot will be the Purchaser;

3.3 A bidder is taken to be a principal unless, before bidding, the Organizer (as defined in these Conditions) agrees in writing to accept bids from a person for and on behalf of a specified principal;

- 3.4 The Seller of any Lot has the right to bid one or more times for a Lot, either through the Auctioneer or any other authorized Agent, and may buy the Lot.

Service Fees

- 4.
- 4.1 Where a Lot consists of service fees, it shall comprise 3 service fees.
- 4.2 A Lot consisting of service fees shall be offered for sale with a reserve price equal to 60% of the current list price applicable to 3 services fees for the stallion in question;
- 4.3 Where a Lot consists of services fees, the Lot will exclude semen transport costs and any related charges;
- 4.4 A buyer of a Lot consisting of service fees may relinquish 1 or 2 of those service fees comprising the Lot, in which case the Auctioneer may re-offer those relinquished service fees for sale at the Auction.

Payment

- 5.
- 5.1 On the fall of the Auctioneer's hammer, the Buyer must:-
- 5.1.1 provide to the Auctioneer his or her name, address and such other information that the Auctioneer may reasonably request.
- 5.1.2 pay the Auctioneer or the Organizer a deposit of 10% of the purchase price inclusive of GST (or such other lesser amount as agreed to by the Auctioneer or Organizer) by way of cash or by bank cheque, Visa, Mastercard or Bankcard. The Organizer may, at its sole discretion, accept a personal cheque;



- 5.1.3 sign a Sale Document confirming the purchase of the Lot;
- 5.2 The buyer must, not later than 4:00pm on the Tuesday following the Auction, pay the Auctioneer or the Organizer the balance of the purchase price (together with applicable GST), by way of cash, bank cheque, EFTPOS facility, Visa, Mastercard or Bankcard. The Organizer may, at its sole discretion, accept a personal cheque.
- 5.3 In the event that the purchase price or any part thereof is paid by means of Visa, Bankcard or Mastercard, the Purchaser agrees to pay an additional 3% surcharge on such payment.
- 5.4 In the event of any payment or part payment being overdue, the Buyer agrees to pay interest on such overdue amount, such interest to be calculated at the rate prescribed from time to time under the *Penalty Interest Rates Act 1983 (Vic)*.
- 5.5 The Auctioneer and the Organizer are under no obligation to account to the Seller for the purchase price until it has been paid in full to the Auctioneer or to the Organizer and all debts and liabilities owing to the Auctioneer or Organizer by the Seller in respect of the Lot are fully paid.
- 5.6 If the purchaser defaults in the due payment of the purchase price or any part thereon or any other moneys payable by the purchaser under these conditions of sale then the vendor, or if the auctioneer has already accounted to the vendor for the purchase price then the auctioneer, shall have the following rights:
- (a) to sue the purchaser for damages for breach of contract (b) to resell the lot as owner, and recover from the purchaser as liquidated damages the deficiency (if any) arising on the resale plus

all costs and expenses associated with the resale of otherwise arising out of the purchaser's default and (c) to retain any monies paid by the purchaser as security for any damages or other moneys payable by the purchaser to the vendor and/or the auctioneer under these Conditions of Sale.

5.7 If the vendor agrees to extend any credit terms to the purchaser, then the auctioneer 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 payment to the auctioneer of the commission and all other money owing to the auctioneer in connection with the auction and sale of the lot, whether or not the vendor is paid by the purchaser.

Passing of Ownership and Risk

6.

6.1 The Lot remains wholly at the Seller's risk until the fall of the Auctioneer's hammer;

6.2 On the fall of the Auctioneer's hammer:-

6.2.1. risk in the Lot wholly passes from the Seller to the Buyer;

6.2.2. the Auctioneer, Organizer and Seller are free of and disclaim all responsibility for, the safety and welfare of the Lot whether or not the Auctioneer, Organizer or Seller is or is taken to be a bailee of the Lot;



6.2.3. the Buyer is responsible for obtaining and paying for insurance cover in respect of the Lot. FALL OF HAMMER insurance is available through Wallace Livestock Insurance Agency Pty Ltd (WLIA), see section 16 for terms and conditions.

6.3 Subject to Clause 7.2, ownership of the Lot passes to the Buyer on the fall of the Auctioneer's hammer.

Delivery of Lot

7.

7.1 Subject to Clause 7.2, the Buyer shall collect the Lot from the Auctioneer's stables not later than 4:00pm on the Wednesday following the Auction;

7.2 Notwithstanding Clauses 6.3 and 7.1, no Lot may be collected from the Auctioneer's stables and no Buyer may take possession of any purchased Lot until the Buyer has paid to the Auctioneer or Organizer the full purchase price together with GST and until the Auctioneer has expressly and in writing authorized the collection of the horse by the Buyer. Following the clearance of those funds.

Default

8.

8.1 Should the Buyer default in effect of obligations under Clauses 5.1., 5.2., 7.1. or 7.2;

8.1.1. the Buyer shall forfeit any deposit paid by him without the need for any form of notice from the Seller, the Auctioneer or Organizer;

8.1.2 the Seller may, at his or her option:

(a) terminate the sale to the Buyer without the need for any service of notice by the Seller, the Auctioneer

or the Organizer, without prejudice to the Seller's accrued rights under these Conditions;

(b) re-sell the Lot by public or private sale without fixing a reserve price in which event, the Buyer is liable to the Seller for any deficiency between the original selling price of the Lot at the Auction and the price for which the Lot was re-sold together with all costs and expenses of and incidental to the Buyer's default including agistment, costs of re-sale, and any legal expenses (such legal expenses to be calculated on a solicitor and own client basis);

(c) confirm the sale to the Buyer.

8.2 A certificate signed by the Seller stating any act, matter, circumstance or thing arising out of or connected with the sale or re-sale of a Lot is prima facie evidence of that act, matter, circumstance or thing.

Seller's Promises

9.

9.1 The Seller acknowledges and warrants that:-

9.1.1 the Seller has the right to sell the Lot and to give a good and sufficient receipt for the purchase price;

9.1.2 the Seller has completed and signed an Owner's Declaration concerning the Lot, and that the information provided therein is true and correct and not misleading;

9.1.3 to the best of the Seller's belief and knowledge, the Lot is not affected by any substances currently prohibited



under the rules of the Equestrian Federation of Australia.

9.1.4 to the belief and knowledge of the Seller, the Lot is not a windsucker or a wobbler or a headshaker.

9.2 The Seller must sign all documents relating to the registration and ownership of the Lot, including the Sale Document and take all steps necessary to transfer ownership of the Lot to the Buyer.

9.3 The Seller shall pay a sales commission of 10% of the purchase price (exclusive of GST) to the Auctioneer, together with 10% of GST in respect of such commission in each and any of the following circumstances, which first occurs:-

9.3.1 on the fall of the Auctioneer's hammer;

9.3.2 if the Lot is sold within 45 days after the Auction, regardless of the sale price; or during the next three months providing it is to a bidder from the auction in which the horse was offered or through Auction of the Stars.

9.3.3 if the sale of a Lot is terminated for any reason by the Seller;

9.3.4 if an offer to purchase a Lot is made within 45 days after the auction, in which case the amount of the offer is deemed to be the sale price for the purpose of calculating commission due.

9.4 The Seller agrees to provide the Auctioneer immediately with full details of any offer to sell or purchase a Lot.

ONCE ACCEPTED, NO HORSE MAY BE SOLD PRIOR TO AUCTION. The auction is not to be a collection of equestrian leftovers but an elite presentation on performance horses!

Auctioneer's Enforcement Rights

10.

10.1 To secure the Seller's obligations under these Conditions, the Seller unconditionally and irrevocably:-

10.1.1 authorizes the Auctioneer to act as agent for the Seller and in the Seller's name or otherwise on the Seller's behalf to do all acts and things and sign any document necessary for or incidental to the Auction, sale of the Lot, disposal or dealing with the Lot;

10.1.2 **grants the Auctioneer a general lien over, and right to detain the Lot in its possession (together with all title or registration papers relating to the Lot), as security for payment of all money including commission owing by the Seller to the Auctioneer or to the Organizer or any liability to indemnify the Auctioneer or Organizer;**

10.2 To secure the Buyer's obligations under these Conditions, the Buyer unconditionally and irrevocably:-

10.2.1 authorizes the Auctioneer as agent for the Buyer and in the Buyer's name or otherwise on the Buyer's behalf, to do all acts and things and to sign all documents necessary for or incidental to the Auction, any sale of a Lot or the disposal of any Lot;



- 10.2.2 grants to the Auctioneer a general lien over, and right to detain the Lot (together with all title and registration papers relating to the Lot) effective from the fall of the Auctioneer's hammer, as security for payment of all moneys owed by the Buyer to the Auctioneer or Organizer including the purchase price, GST and any liability to indemnify the Auctioneer or Organizer.
- 10.2.3 Agrees to pay to the Organizer agistment fees at the rate of \$30 plus GST per day for each day (or part thereof) that the Lot remains in the possession of the Organizer pursuant to these Conditions after 4pm on the Tuesday following the Auction.
- 10.2.4 If any sale is cancelled for any reason, the auctioneer shall remain entitled to receive its commission on the sale, and to be paid or reimbursed for all money owing to it by either the seller or the purchaser, for any charges, dues (including stabling and dues, fees, vet costs and entry fees) interest and any other money owing to the auctioneer.
- 10.2.5 The auctioneer shall be entitled to appropriate, and deduct from any money held or received by it from any source, such amounts as may be necessary to cover any commission or other money owing to it by the vendor. If the auctioneer does not hold any money on behalf of the sellerr, then any amounts owing to the auctioneer by the seller shall by paid by the vendor to the auctioneer on demand.



10.2.6 The auctioneer shall not have any liability to either the vendor or the purchaser in consequence of any breach or default on the part of either of them. The auctioneer's liability to both the vendor and the purchaser for any negligent act or omission, breach or default on the part of the auctioneer, shall, to the extent that any such liability exists and is not effectively excluded by the Conditions of Sale, be limited to the lesser of the party's actual direct loss or the sale price of the lot. Under no circumstances may the auctioneer be liable for any consequential loss.

Limitation of Liability

11.

11.1 The provisions of this clause operate subject to any law that restricts or prohibits the exclusion of liability, including the *Trade Practices Act 19784 (Cth)* and the *Goods Act 1958 (Vic)*.

11.2 The Auctioneer, the Organizer, and their officers, employees, agents and independent contractors are not liable to the Seller, the Buyer, any bidder or any person attending the auction, for any claims, losses, damages, costs or causes of action as a consequence of, relating to, caused by or in any way arising out of:-

11.2.1 the death of, or injury to a Lot;

11.2.2 the death of, or injury to the Seller, the Buyer or any person attending the auction in person or otherwise;

11.2.3 the sale or purchase of a Lot;



- 11.2.4 any error, omission, misstatement or mis-description in the auction sale catalogue;
- 11.2.5 any statement made publicly at the auction relating to any Lot; and
- 11.2.6 any act or omission, including any negligence or default of the Auctioneer or any of its officers, employees, agents or independent contractors.

GST

12.

- 12.1 All bids are made on a GST exclusive basis and the Auction price is subject to 10% GST unless the catalogue expressly states that the seller of a particular Lot is not registered for GST.
- 12.2 The Seller must pay 10% GST on the Auctioneer's sales commission and other fees or charges incurred.
- 12.3 The auctioneer is entitled to rely on all representations made to it by the vendor regarding the vendor's GST registration status.
- 12.4 Where the lot is to be exported, a refund of GST may be available on application to the Australian Taxation Office if its criteria for a refund have been satisfied. Prospective exporters should make and rely upon their own inquiries in relation to GST issues. The auctioneer shall not have any responsibility or liability to a vendor or a purchaser in relation to export/GST issues.

Indemnity

- 13.
- 13.1 The Seller will indemnify and hold the Auctioneer, the Organizer, and their officers, employees, agents and independent contractors harmless against all and any claims, debts, liabilities, losses, damages (whether direct or consequential, pecuniary or non-pecuniary), costs (including legal costs on a solicitor and own client basis) and causes of action arising out of or in connection with:-
- 13.1.1 the Auction;
- 13.1.2 any act or omission of the Auctioneer while acting as the Seller's agent under these conditions;
- 13.1.2 any breach by the Seller of any acknowledgment, duty, warranty or obligation of the Seller expressed in these conditions;
- 13.1.3 any breach by the Seller of any condition or warranty implied into the sale of the Lot by the *Trade Practices Act 1974 (Cth)* or the *Goods Act 1958 (Vic)*; and
- 13.1.4 the sale or purchase of the Lot.

Understanding and Acknowledgments

- 14.
- 14.1 To the fullest extent legally permissible, all conditions or warranties implied by Statute or the general law as to quality and fitness for purpose of the Lot are expressly negated.
- 14.2 The Buyer acknowledges that:
- (a) the Lot was available for inspection prior to the auction;



- (b) the Buyer had the opportunity to have the Lot examined by a Veterinary Surgeon of his or her choice prior to bidding at the Auction;
 - (c) the purchase was made solely in reliance on the Buyer's own enquiries, examination and judgement.
- 14.3 Any prior representations, statements or promises in relation to any Lot (if any) are merged in and superseded by these Conditions and the Seller, Buyer, bidder and all persons attending or participating in the auction expressly acknowledge they have not relied on them.

General

15.

- 15.1 The following words have the meanings set out alongside them:
- 15.1.1 `auction premises' – the venue at which the Auction of the Stars event is held
 - 15.1.2 `Auctioneer' – Andrew Hearn, NSW
 - 15.1.3 `Auctioneer's stables' - the stables at the auction premises occupied by Lots entered in the auction;
 - 15.1.4 `Buyer' - a person who buys a Lot entered in the auction;
 - 15.1.5 `Owners' Declaration' - a declaration made by the Seller relating to the Lot;
 - 15.1.6 `Organizer' - Auction of the Stars Pty Ltd (ACN 094 361 234);
 - 15.1.7 `Lot' - a foal, colt, filly, mare, stallion or service fee entered in the auction;
 - 15.1.8 `Sale Document' - a written record or acknowledgment of the sale and purchase of a Lot on these Sale Conditions;



15.1.9 `Seller' - a person whose Lot is entered in the auction.

15.2 If any condition is or becomes void or unenforceable for any reason, it will not affect the remainder of them.

16 Insurance

16.1 Mortality Insurance is offered through Wallace Livestock Insurance Agency Pty Ltd (WLIA), this covers the animal for death due to an accident, sickness or disease, theft and road transit Australia wide.

16.1.1 The rate for 12 months cover EXCLUDING jumping is 4.5% plus GST and Stamp Duty. The rate for 12 months cover INCLUDING jumping is 5.5% plus GST and Stamp Duty. (These rates are exclusive to this sale)

16.2 Under section 5.1.3 the Buyer must complete and sign a Sale Document confirming the purchase of the Lot; in doing so they need to CHOOSE the option to take out the insurance cover by acknowledging that question on the Sale Document.

16.3 When the Buyer accepts the Fall of Hammer insurance they are bound by the following;

16.3.1 Must provide Credit Card Authority to enable WLIA to accept the Policy.

16.3.2 Completion of all required documentation within 30 days

16.3.3 Failure to PIF or provide the required documents within the 30 days will cancel the insurance. Payment of \$100.00 plus GST and Stamp Duty will be liable to the Insurer (WLIA) to cover the period that the animal has been on risk with the insurer