

CONDITIONS OF SALE

IMPORTANT: PLEASE READ

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

1. INTERPRETATION

- 1.1 In these Conditions of Sale:
- 'Auctioneer' means Magic Millions Sales Pty Limited (ABN 54 078 396 317) and having Auctioneer's and Agent's Licence No. 2005419 and includes its officers and agents;
- 'Lot' or 'horse' includes gelding, colt and filly. The expression 'colt' includes rig or crypt orchid, namely male animals in which one or both testes have not descended into the scrotum from the abdomen;
- 'Promoter' means Magic Millions Promotions Pty Limited (ABN 41 088 197 200) or any other party, identified in the Sale catalogue or other documentation issued in respect of the Sale as the promoter or sponsor of the Sale or of a closed race series or incentive race series in association with which the Sale is conducted;
- 'Purchaser' means the person or corporation to whom any Lot is sold as referred to in Condition 2;
- 'Series Race' means the closed race series or incentive race series (if any) identified in the Sale catalogue or other documentation issued in respect of the Sale;
- 'Vendor' means the person or corporation on whose behalf any Lot is sold by the Auctioneer and where more than one shall mean each severally and any two or more jointly.
- 1.2 Where the Purchaser of any Lot comprises more than one person or corporation these Conditions of Sale shall bind each such person or corporation severally and any two or more of such persons or corporations jointly.
- 1.3 A bidder is taken to be a principal unless, before bidding, the bidder has given to the Auctioneer a copy of a written authority from a third party principal to bid for or on behalf of that third party principal.

2. CONDUCT OF SALE

- 2.1 The Vendor shall have the right to bid personally or through an agent.
- 2.2 All bidders must have registered their names and addresses with the Auctioneer prior to the commencement of the Sale.
- 2.3 The highest bidder shall be the Purchaser, subject to any Reserve Price. Should any dispute arise concerning bidding, the Lot shall be immediately put up for Sale at the last undisputed bid or the dispute may be determined by the Auctioneer, whose decision shall be final and binding.
- 2.4 The Auctioneer shall have the right, in its absolute discretion to:
- 2.4.1 Determine who is the Purchaser;
- 2.4.2 Settle any dispute in such manner as it thinks fit;
- 2.4.3 Withdraw any Lot before or during the Sale without giving a reason therefore;
- 2.4.4 Advance the bidding as it thinks fit;
- 2.4.5 Exclude any person from the Sale venue;
- 2.4.6 Refuse to acknowledge any bid without giving any reason therefore, and the Auctioneer's decision shall be final and binding upon all persons;
- 2.4.7 Determine an upset price on each Lot entering the ring. If an opening bid of the appropriate figure is not forthcoming to the Auctioneer's call within thirty (30) seconds, a Lot may be passed out of the ring. The Vendor shall be entitled to instruct the Auctioneer to re-offer that Lot on completion of the Auction and the horse shall be re-offered without reserve; or
- 2.4.8 Bid as an Agent on behalf of a principal.
- 2.5 Subject to any Reserve Price, all Lots are sold at the final bid accepted by the Auctioneer in Australian currency dollars. (Any other bids or currencies displayed on the Indicator Board are displayed as a guide only.)
- 2.6 As soon as practical after the fall of the hammer the Purchaser will sign an agreement (if any), for the sale/acknowledgement of purchase form in a form requested by the Selling Agent.
- 2.7 Any Auctioneer's announcements on the day of the Sale which are announcements from the Auctioneer's stand will take precedence over:
- 2.7.1 These Conditions of Sale;
- 2.7.2 Any statements in the Sale Catalogue; or
- 2.7.3 Any other written or oral statement, particular or representation previously published or made.
- 2.8 Any further or different conditions relating to any Sale or any Lot or any Purchaser must be recorded in writing and signed prior 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.

CONDITIONS OF SALE

3. RESERVED SALE

- 3.1 Where the Sale is conducted as a Reserved Sale, the following provisions will apply.
- 3.2 Reserve cards will be mandatory. The Vendor must advise the Auctioneer in writing of the reserve price for each Lot before the Lot is offered for Sale. Where no reserve card is provided the Vendor or his representative must attend in the Auctioneer's rostrum to advise the Auctioneer and will be required to sign a reserve card before leaving the rostrum if the Lot is passed in. Should there be no reserve card, no Vendor or Vendor's representative in the Auctioneer's rostrum at the time that the Lot is offered for Sale, then the Lot shall be sold to the highest bidder and the Vendor shall pay the full commission and any other amounts payable.
- 3.3 The last bidder shall have the option to buy at the reserve price of a passed in Lot. This option must be exercised prior to the Lot leaving the Sale ring. The Auctioneer shall be entitled to commission on any Lot so sold, as if it were sold under the hammer.

4. RISK AND EXPENSE

- 4.1 Upon the fall of the hammer each Lot shall be at the risk and expense in all respects of the Purchaser and the Purchaser shall indemnify the Auctioneer in respect of and pay to the Auctioneer on demand all loss, damage, costs and expenses incurred or suffered by the Auctioneer in respect of the Lot while the Lot is at the Purchaser's risk and expense. In particular, the Purchaser will be liable for livery, agistment and transport charges for Lots not removed on the day of the Sale and they may be moved to alternate stables or agistment at the Auctioneer's discretion. Payment for Lots shall not be regarded as made until such charges have been paid. The Purchaser will comply strictly with Conditions 6.9, 9.4 and 12 of these Conditions of Sale with respect to insurance for each Lot purchased.
- 4.2 Prior to the fall of the hammer each Lot shall be at the risk and expense in all respects of the Vendor, and the Vendor shall indemnify the Auctioneer in respect of and pay to the Auctioneer on demand all loss, damage, costs and expenses incurred or suffered by the Auctioneer in respect of the Lot while the Lot is at the Vendor's risk and expense.
- 4.3 Notwithstanding any other provisions hereof, the Auctioneer shall not be liable for any damage, loss or injury occurring to any Lot or to any person or property caused by any Lot, whether caused by disease, accident, the negligence of the Auctioneer or otherwise and whether the Lot shall be in the custody, control or possession of the Auctioneer or otherwise.
- 4.4 The Auctioneer may upon receipt of written instructions so to do or where the Auctioneer in its absolute discretion considers it desirable to do so, make arrangements on the Purchaser's or Vendor's behalf for the stabling, feeding, transportation or general attendance to Lots while at the Sales venue provided that the Auctioneer accepts no responsibility for any act or omission whether negligent or otherwise in respect of the stabling, feeding, transportation or general attendance of any Lot.
- 4.5 Any Lot not sold or in respect of which any Sale is subsequently terminated shall remain at or revert to the risk and expense in all respects of the Vendor who shall arrange for the removal of the Lot immediately following the Sale.

5. INSPECTION AND EXAMINATION

- 5.1 All Lots may be inspected at reasonable times prior to Sale. Prior to Sale, a prospective Purchaser may arrange for a veterinary examination of a Lot with the Vendor. Such examination shall be carried out in the privacy of a stable and may not be carried out in the Sale ring or within the public view. The cost of this examination shall be paid for by the prospective Purchaser, solely to whom the veterinarian should make his report. The Auctioneer or Vendor may refuse examination.
- 5.2 The Purchaser assumes all consequences and risk arising from failure to carry out an inspection or to seek an inspection or to seek an examination of a Lot.

6. PURCHASE AND PAYMENT

- 6.1 On the fall of the hammer the Purchaser shall give his name and address and the name and address of the principal for whom he bids (if applicable) to the Auctioneer and shall immediately complete, sign and hand to the Auctioneer an acknowledgement of his purchase in such form as shall be required by the Auctioneer and provide to the Auctioneer any such other information in respect of the purchase as the Auctioneer may reasonably require.
- 6.2 If the Purchaser fails to comply with the requirements of Condition 6.1, then the Auctioneer may elect to declare the Purchaser in default and cancel the Sale and re-sell the Lot. If, on resale of the Lot, a lower price is obtained, then the difference in price plus any expenses of the resale shall be a debt owing by the Purchaser to the Vendor payable on demand, with interest at the rate of 1.25% per month from the date of resale until payment.



CONDITIONS OF SALE

- 6.3 Horses are sold with all engagements, if any.
- 6.4 Subject to Condition 9, the full purchase price shall be due and payable to the Auctioneer in Australian currency within one hour of purchase or within such other period of time as the Auctioneer or Vendor may permit pursuant to Condition 9 below, time being of the essence, notwithstanding that delivery may not have been made.
- 6.5 The Auctioneer may in its absolute discretion reject payment otherwise than in cash or an unendorsed bank cheque.
- 6.6 The Purchaser shall pay the Auctioneer on demand all collection costs and expenses (including legal costs on a Solicitor & own client basis) incurred in recovering any payment from the Purchaser.
- 6.7 The Purchaser authorises the Auctioneer to disclose information relating to the Purchaser's credit-worthiness or default in payment to a credit reporting agency if the Purchaser is in arrears in making payments relating to credit provided (1) sixty (60) days have elapsed since the day on which payment was due and payable by the Purchaser, and, (2) the Auctioneer has sent written notice to the last known address of the Purchaser advising the Purchaser of the overdue payment and requesting payment of the amount outstanding.
- 6.8 Any dispute arising between the Vendor and the Purchaser in relation to a Lot must be resolved between the Vendor and the Purchaser and neither the Vendor nor the Purchaser may return to the Auctioneer or the Auctioneer's stables any Lot the subject of a dispute or otherwise.
- 6.9 So long as any part of the Purchase Price, any interest payable thereon or any other charges are payable pursuant to these Conditions of Sale and for so long as the Lot is the subject of any credit or terms agreement with the Auctioneer, the Vendor or any other party, the Purchaser must insure the Lot at the Purchaser's cost and expense (in an amount not less than the purchase price of the Lot) against all risks including mortality with the interests of the Vendor and the Auctioneer noted thereon, keep the Lot in a safe and secure place and in good health and condition, and, at all times advise the Vendor and the Auctioneer of the location of the Lot (and allow them or their agents access or arrange for them access without notice), and, not perform (or allow any other person to perform) surgery on the Lot (without the prior approval of the Vendor and the Auctioneer), and not remove the Lot outside Australia, and, not grant, or purport to grant, or take, or purport to take, any security interest envisaged by Condition 32 of these Conditions of Sale or otherwise over the Lot that would be adverse to the interests of the Vendor and / or the Auctioneer.
- 6.10 The Purchaser shall not, until the full purchase price is paid and all other obligations to the Vendor and the Auctioneer are fulfilled, register or attempt to register any security interest in the Lot.
- 6.11 If the person signing the Purchaser's Acknowledgement or bidding on behalf of the Purchaser is not the Purchaser (whether the person is a director, agent, attorney or otherwise), such person guarantees to the Vendor and to the Auctioneer the performance of the Purchaser under these Conditions of Sale, and indemnifies the Vendor and the Auctioneer for any loss and damage arising from any default or breach by the Purchaser. This guarantee and indemnity may only be waived in writing by a director of the Auctioneer or by the acceptance by the Auctioneer of a duly completed Appointment of Agent form.
- 6.12 The Vendor acknowledges and accepts that the Auctioneer will only be required to issue one cheque to the Vendor of a Lot where the Vendor comprises a syndicate of members. The Vendor accepts and acknowledges that the person nominating the Lot for Sale on behalf of the Vendor is the person to whom the payment is to be made. In the event that there is a dispute among syndicate members as to payment or otherwise or a syndicate member requires a separate cheque, the Auctioneer has a right to hold the payment in trust pending a decision by the syndicate members in accordance with their syndicate agreement / partnership agreement as to whom the cheque in payment will be made. The Vendor indemnifies the Auctioneer against all claims made by syndicate members.
- 6.13 The Purchaser will, if a corporation or a trustee of a trust, if requested by the Auctioneer, provide guarantees for the performance of its obligations pursuant to these Conditions of Sale and procure the guarantors of such performance to execute a deed of guarantee in a form required by the Auctioneer on or before registration of the Purchaser for the Sale.
- 6.14 The Vendor irrevocably authorises and directs the Auctioneer to deduct from the purchase price for any Lot sold on behalf of the Vendor any moneys due and owing to the Auctioneer or the Promoter, past, present or future, prior to accounting to the Vendor for the balance of the purchase price (if any).
- 6.15 The Vendor assigns fully to the Auctioneer all its interest, beneficial and legal, in any authority that the Vendor may have signed in favour of any party with respect to the allocation of the purchase price for any Lot sold on behalf of the Vendor by the Auctioneer and irrevocably appoints the Auctioneer his attorney to do all things necessary and execute all documents to give effect to this clause and to amend or withdraw any such authority in its absolute discretion.



CONDITIONS OF SALE

7. GOODS AND SERVICES TAX (GST)

- 7.1 All lots are offered on a GST exclusive basis.
- 7.2 Goods and Services Tax ("GST") is payable on the auction price of thoroughbreds where the Vendor is registered for GST.
- 7.3 The GST registration status of Vendors is noted on the catalogue page for each lot offered.
- 7.4 Where a Vendor is fully registered, GST of 10% will be added to the final bid price.
- 7.5 Where a Vendor is not registered no GST is added to the final bid price.
- 7.6 The Vendor and the Purchaser undertake to do all things necessary to ensure that the provisions of the GST Act are met in relation to Sales that do not, or claim not to attract GST.
- 7.7 Magic Millions Sales Pty Limited accepts (and it is agreed by the Vendor and Purchaser) no liability for any GST liability arising as between the Purchaser and the Vendor and the ATO in respect of bloodstock sold through Magic Millions Sales Pty Limited either at auction or by private treaty.
- 7.8 Vendors who are not residents of Australia agree that they will offer their horse/s for Sale on the basis that the Sale/s will be made in Australia.
- 7.9 GST is payable on all services provided by or through Magic Millions Sales Pty Limited.

8. GST & EXPORT

- 8.1 In accordance with GST Legislation the Auctioneer is required to charge GST on all Lots sold (subject to Conditions 7.4 and 7.5).
- 8.2 The Purchaser must pay to the Auctioneer all GST invoiced.
- 8.3 The Vendor and the Purchaser acknowledge that it is their responsibility to acquaint themselves with and comply with the requirements of the GST Act at their cost.
- 8.4 The Vendor acknowledges that the Auctioneer has no responsibility to pay the GST to the Vendor until such time as it is paid by the Purchaser.
- 8.5 If a Lot is purchased for the purpose of export the following shall apply:
 - 8.5.1 If a Purchaser, who is not registered or required to be registered for GST desires to export a Lot and signs and gives to the Auctioneer a properly completed and signed Magic Millions Export Declaration Form (such form being prescribed by and available upon request from the Auctioneer), then the Auctioneer will not add GST to the price of the Lot sold, except in the circumstances set forth in the Magic Millions Export Declaration Form where the Purchaser of the Lot acknowledges and accepts that GST is payable in respect of the Lot;
 - 8.5.1.1 If a purchaser is registered or required to be registered for GST, then GST is payable regardless of export status (subject to Conditions 7.4 and 7.5).
 - 8.5.2 It is the responsibility of the Purchaser to ensure that the Lot is exported within sixty (60) days;
 - 8.5.2.1 If export is expected to take longer than 60 days, the purchaser must contact Magic Millions to apply for an extension to export, for up to 12 months, with the Australian Taxation Office.
 - 8.5.3 The Auctioneer will give the Vendor of a Lot referred to in Condition 8.5.1, a copy of the relevant Magic Millions Export Declaration Form within 7 days after it is requested by the Vendor;
 - 8.5.4 The Purchaser will comply with all obligations imposed upon the Purchaser in the Magic Millions Export Declaration Form;
 - 8.5.5 The Purchaser of a Lot referred to in Condition 8.5.1 must notify the Auctioneer and the Vendor in writing:
 - 8.5.5.1 Within 14 days after the Lot has been exported from Australia that the export has taken place;
 - 8.5.5.2 At least 4 weeks prior to the expiration of the period of time permitted or approved by the Australian Taxation Office for the export of the Lot from Australia as to whether or not the Lot has been exported and what is intended in relation to its exportation;
 - 8.5.6 The Purchaser acknowledges that it is liable for GST of 10% of the purchase price of the Lot if it is not exported within the period allowed by the Australian Taxation Office to export the Lot. If GST is payable in respect of that Lot and is not paid within 30 days of the Purchaser receiving notification that payment is due, the Purchaser agrees that the amount of the GST is a liquidated debt and will consent to entry of judgement against it for the amount of the GST and it agrees that an Affidavit sworn by the Vendor or his solicitor shall be prima facie evidence of the amount of GST payable by the Purchaser.
 - 8.6.7 The Purchaser acknowledges that it is liable for GST on the Lot if it is used in anyway considered by the Australian Taxation Office to be commercial in nature or unnecessary to prepare them for export. This includes (but is not limited to) racing for prizemoney, using for commercial breeding or reselling prior to export. Breaking In, Training & Barrier-Trials are acceptable and will not deny GST-Free status