

**NEW YORK BREEDERS SALES COMPANY, INC.**

**ALL PARTIES TAKE NOTICE THIS SALE CONDUCTED IN ACCORDANCE WITH AND ALL ACTS OF INTERESTED PARTIES AND/ OR CLAIMS BY THEM SHALL BE GOVERNED BY THE FOLLOWING:**

**CONDITIONS OF SALE - All Hip Numbers Selling**

**FIRST - APPLICABLE LAW:** All matters relating to the sale and purchase of horses in this Sale and any disputes arising there from shall be governed by the laws of the State of New York. Venue and jurisdiction involving the dispute resolution of these Conditions of Sale or affecting the sale of horses in this Sale shall be solely and exclusively lodged in the County of Saratoga, State of New York.

**SECOND - DUTY OF BUYERS TO INSPECT:** It shall be the duty of Buyer to inspect the horse they propose to purchase, as well as to familiarize themselves with all information available to them concerning the horse. Buyers will be solely responsible to make such inspection as they wish.

**THIRD - LIMITATION OF WARRANTIES: THERE IS NO WARRANTY, EXPRESS OR IMPLIED, BY AUCTIONEER, OWNER, CONSIGNOR OR THEIR REPRESENTATIVES, AS TO THE RACING SOUNDNESS, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY HORSE OFFERED IN THIS SALE. ALL HORSES ARE SOLD "AS IS", WITH ALL EXISTING CONDITIONS AND DEFECTS, EXCEPT AS PROVIDED IN CONDITIONS FOURTH, FIFTH, AND SIXTH.**

**FOURTH - LIMITED WARRANTIES AS TO DESCRIPTION: UNLESS OTHERWISE ANNOUNCED OR DESCRIBED BY AUCTIONEER, THERE IS NO REPRESENTATION OR WARRANTY AS TO THE BREEDING QUALITIES OF ANY HORSE, WHICH AT THE TIME OF SALE IS OFFERED IN ITS YEAR OF FOALING OR ITS YEARLING, OR TWO-YEAR-OLD YEAR, OR IS DESCRIBED AT TIME OF SALE AS A HORSE OF RACING AGE.** Any horse sold on or after July 1 of its yearling year, which is catalogued as a colt or horse, and which does not have two testes palpable in their entirety below the external inguinal ring, shall be subject to return to Consignor as provided in conditions Thirteenth. There is no representation or warranty as to the size or function of testes. When one or both testes is or are not palpable in its or their entirety below the external inguinal ring, such horse will be announced as a ridgling. When both testes have been removed surgically, such horse will be described as a gelding. Any horse which is described incorrectly at time of sale as to its gender classification shall be subject to return to Consignor as provided in condition Thirteenth. Warranties with respect to certain conditions of soundness of wind and bone as provided in Condition Fifth, shall not apply to any horse described at time of sale as a broodmare, broodmare prospect, stallion, or stallion prospect. Any horse described as a racing prospect or horse of racing age, which at the time of sale is on a state's licensed racetrack's or official "breeder's list", or is nerved, or is on a starter's, stewards', or veterinarian's list, must be so announced.

**FIFTH - LIMITED WARRANTIES AS TO SOUNDNESS: THERE IS ABSOLUTELY NO WARRANTY OR GUARANTEE OF ANY SORT REGARDING ANY HORSE IN THE SALE AS TO THE SOUNDNESS OR CONDITION OR OTHER QUALITY OF ANY HORSE SOLD HEREIN EXCEPT THAT A) HORSES WITH ANY DEVIATION FROM THE NORMAL LIMITS IN THE EYES MUST BE ANNOUNCED; B) HORSES WHICH ARE "CRIBBERS" (AEROPHAGIA) MUST BE ANNOUNCED; C) HORSES WHICH HAVE HAD ABDOMINAL SURGERY WITHIN TWO (2) YEARS OF THIS SALE (EXCEPT TO REPAIR A RUPTURED BLADDER IN A NEW BORN FOAL) OR THE RESECTION OF ANY ABDOMINAL ORGAN AT ANY TIME MUST BE ANNOUNCED D) HORSES SUFFERING FROM "WOBBLER'S SYNDROME" (LOCOMOTOR ATAXIA) ARE SUBJECT TO RETURN AS PURSUANT TO CONDITION THIRTEENTH BELOW; E) HORSES WHICH HAVE AN INJURY TO OR DISEASE OF THE BONE**

**STRUCTURE WHICH IN THE OPINION OF THE EXAMINING VETERINARIAN WILL HAVE AN ADVERSE, CHRONIC AND MATERIAL AFFECT ON ITS SUITABILITY FOR RACING, MUST BE SO ANNOUNCED OR BE SUBJECT TO RETURN TO CONSIGNOR PURSUANT TO CONDITION THIRTEENTH BELOW F) HORSES DIAGNOSED WITH ACUTE LAMINITIS WITHIN TWENTY (24) HOURS FROM THE FALL OF THE HAMMER AND PRIOR TO THE REMOVAL OF THE HORSE FROM THE SALES GROUNDS, SHALL BE SUBJECT TO RETURN TO THE CONSIGNOR PURSUANT TO CONDITION THIRTEENTH BELOW; G) HORSES SOLD AFTER JULY 1 OF ITS YEARLING YEAR WHICH ON ENDOSCOPIC EXAMINATION REVEALS TO HAVE ONE OR MORE OF THE FOLLOWING CONDITION MUST BE ANNOUNCED AT THE TIME OF SALE OR BE SUBJECT TO RETURN TO CONSIGNOR PURSUANT TO CONDITION THIRTEENTH BELOW: 1) EPIGLOTIC ENTRAPMENT; 2) LARYNGEAL HEMIPLEGIA (INABILITY TO FULLY ABDUCT THE ARYTENIOD CARTILAGE); 3) SEVERE ARYTENIOD CHONDRITIS OR DEFORMATION OF THE ARYTENOID CAUSED BY PREVIOUS CHONDRITIS; 4) SUBEPIGLOTTIC CYST; 5) PERSISTENT DORSAL DISPLACEMENT OF THE SOFT PALATE; 6) ROSTRAL DISPLACEMENT OF THE PALANTOPHARYNGEAL ARCH 7) CLEFT PALATE 8) ANY OTHER ANATOMICAL AND/OR FUNCTIONAL LESION WHICH OBSTRUCTS AIR FLOW (FOR THE PURPOSE OF THIS CONDITION, A LESION IS ANY PATHOLOGICAL OR TRAUMATIC DISCONTINUITY OF TISSUE OR LOSS OF FUNCTION OF A PART. ANY OTHER CONDITIONS, DAMAGE, IMPAIRMENT, LIMITATION AND/OR DEFECT NOT SPECIFIED ABOVE IS EXPRESSLY NOT WARRANTED OR SUBJECT TO THE RIGHT OF RETURN.**

**SIXTH - LIMITED WARRANTIES AS TO BROODMARES:** All broodmares offered at auction are required to have a veterinary certificate within 14 days of the sale stating their condition: (1.) in foal (pregnant) with a valid stallion service certificate. (2.) Not in foal (not pregnant), but suitable for mating. All broodmares shall be examined within 24 hours of sale and before they leave the sale grounds at which point the auction house will no longer be responsible in any manner.

**SEVENTH - CATALOGUE AND ANNOUNCEMENTS:** Horses catalogued in this sale are offered with information as represented by Consignor. The accuracy of such information is the responsibility and duty of Consignor and not Auctioneer. While certain information may have been procured by Auctioneer from third parties on behalf of Consignor, it remains solely the responsibility and duty of Consignor to verify the accuracy of such information and to notify Auctioneer of any corrections. With respect to produce records of broodmares, the term "not pregnant" shall be construed to mean that the mare was bred, was not found to have slipped, and failed to produce a foal. So that an appropriate announcement can be made prior to sale, notices of corrections must be delivered in writing to Auctioneer at its sales office not less than thirty (30) minutes prior to sale. In case of any error or omission, Buyer shall seek redress only from Consignor.

**EIGHTH - BIDDING PROCEDURE:** Unless waived by Announcement, there shall be an upset price on any horse offered of One Thousand (\$1,000.00) U.S. Dollars. If an opening bid of the upset price is not immediately forthcoming to Auctioneer's call, the horse shall be led out unsold. Minimum acceptable increases in bidding are to be at the discretion of Auctioneer. Only the persons registered with the Auctioneer may have their bid recognized. The person making the highest bid recognized by Auctioneer shall be Buyer. Auctioneer shall immediately present Buyer with a document entitled Acknowledgment of Purchase for Buyer's signature. Should such presentation not be made prior to commencement of bidding on the next lot offered, Buyer shall forthwith identify himself or herself to Auctioneer as Buyer and sign the Acknowledgment of Purchase. In the event that a person other than the recognized Buyer signs the Acknowledgment of Purchase, such action shall not give such other person any right or title to the horse immediately upon such erroneous signing of an Acknowledgment of Purchase becoming known to Auctioneer. An Acknowledgment of Purchase shall be presented to the recognized buyer for signature.

**NINTH - BIDDING DISPUTES:** Should any dispute arise between or among two or more bidders, Auctioneer shall forthwith adjudicate the dispute, and Auctioneer's decision shall be absolute, final, and binding on all parties. Bids tendered after fall of the hammer are not valid grounds for a dispute. Bids received by personnel employed by Auctioneer have the same stature as bids received by Auctioneer in the stand. In case of dispute, the bidding shall be reopened for advance bids, and if there be no advance bid, the horse is sold to the person from whom Auctioneer recognized the last bid. Advance bidding shall be restricted to disputing parties, unless the bid is reduced below the level of the recognized bid at commencement of the dispute, in which case bidding is reopened to all. Auctioneer reserves the right to reject any or all bids.

**TENTH - TITLE AND DELIVERY:** Title passes to Buyer at the fall of the hammer, at which time all risk and responsibility pertaining to the horse passes to Buyer. The horse will be held for Buyer by Consignor until Buyer makes settlement as provided in condition Twelfth, and Auctioneer shall have no responsibility whatsoever with respect to the horse. Buyer shall immediately present himself to make settlement upon fall of the hammer. Upon settlement of Buyer, the horse will be delivered by issuance of a "stable release" to Buyer or Buyer's designee, authorizing the removal of the horse from the sales premises. In any case, taking possession of the horse by Buyer or Buyer's representative shall constitute delivery and acceptance. Buyer shall cause the horse to be removed promptly from the sales premises, or be subject to stable charges determined by Auctioneer. In addition, should Buyer fail to cause the horse to be removed promptly, Auctioneer may cause the horse to be removed, and then stable at Buyer's risk and expense.

**ELEVENTH - CREDIT AND SETTLEMENT:** Buyer shall make settlement with Auctioneer immediately upon fall of hammer, unless credit shall have been extended in advance by Auctioneer to Buyer. If Buyer's account is not paid in full within fifteen days of sale, Buyer shall pay to Auctioneer a service charge of two percent per month on the unpaid balance of the account, from the date of sale until paid. Payments to others, including Consignor or their representatives, do not constitute settlement. Buyer shall make settlement as provided above for the full purchase price and applicable sales tax, in U.S. currency or bank check, certified check, or equivalent acceptable to Auctioneer. Bidders and other persons signing for or buying on behalf of or in the name of a corporation, partnership, trust or other entity – including purchases through an authorized agent – agree to be personally responsible for payment of all sums owed to Auctioneer. Buyer grants to Auctioneer a security interest in each horse purchased, its Jockey Club Certificate of Foal Registration, any applicable stallion service certificate, and any proceeds or products thereof, to secure payment of the amount of unpaid purchase price, sales tax, and other indebtedness owed by Buyer to Auctioneer or Auctioneer's affiliates. Buyer appoints Auctioneer as Buyer's attorney-in-fact to prepare, execute, and file any Financing Statements or other documents necessary to perfect, enforce and give notice of the security interest created herein. Buyer agrees that Auctioneer shall have all rights and remedies of a Secured Party pursuant to the Conditions of Sale and the Uniform Commercial Code, or other applicable law.

**TWELFTH - DEFAULTERS:** Should Buyer fail to comply in any respect with conditions Ninth and Tenth above, Auctioneer may, in its absolute discretion pursue any remedy available to it against the defaulting Buyer, including, but not limited to, taking possession of the horse or reselling the horse at public auction or by private treaty for account of defaulter. In any case, Buyer shall be liable for any deficiency after charging to Buyer's account all costs of maintenance and resale, including, but not limited to, service charges, attorney's fees, costs of litigation, and damages available at law to Auctioneer.

**THIRTEENTH - RIGHT OF RETURN:** Any horse sold in this Sale which has a condition that must be announced as provided for in conditions Fourth and Fifth, and is not so announced, shall be subject to return to Consignor, with refund of purchase price if already paid, provided that, within twenty-four (24) hours after the time of sale, the Auctioneer receives written notice from Buyer and a written veterinary certificate, based on examination by the certifying veterinarian, stating that such a condition exists, and the same existed at the time of sale as to any horse sold. If applicable, the veterinary certificate must also state that the injury to or disease of the bone

structure materially affects the horse's suitability for racing. All warranties terminate upon the earlier of (1) expiration of twenty-four (24) hours from fall of the hammer, or (2) removal of the horse from the sales grounds, after which there shall be no right of return hereunder; provided, however, buyer shall have seven days from the time of sale to provide Auctioneer with the requirements of condition Fourteenth, to establish any right of return as to cribbers, and fifteen days from the time of sale to provide Auctioneer with the requirements of horses on an official "bleeder's list". Any right of return as set forth in this condition Fourteenth is contingent upon the horse being in materially in the same condition as it was at the time of sale. Upon the determination by the sales company that a Buyer's claim to a right of return is valid, the sales company should notify the Consignor of the return, and, upon receipt of such notice, all risks of loss, injury, sickness, disease, and any and all other risks pertaining to the horse pass to Consignor and/or owner. Upon return of a horse to Consignor in accordance with these Conditions of Sale, Consignor shall be responsible for reasonable expenses for keep, maintenance, and transportation of the horse from the time of sale until return.

**FOURTEENTH – RESOLUTION OF DISPUTES:** (a) In the event of a dispute arising under the Fourth, Fifth, Seventh or Thirteenth conditions of sale, a panel of three (3) veterinarians shall be assembled to arbitrate such dispute. The panel shall make a final and binding determination of the dispute by the majority opinion and determine whether to uphold or rescind the sale. The panel shall be selected as follows: NYBSC shall provide a list of at least six (6) veterinarians specializing in the field of equine medicine. The buyer or his veterinarian shall be first to review the list and may, at their choosing, strike one veterinarian from the list. The consignor or his veterinarian shall next be able to review the list and may, at their choosing, strike one veterinarian from the list. Thereafter, NYBSC shall randomly choose three (3) veterinarians remaining on the list to form the panel to determine the resolution of the dispute. These veterinarians shall conduct any tests, investigations, or examinations which they deem necessary, and except as requested by the panel, Buyer and Consignor shall not be heard, present evidence, or cross-examine witnesses. The consignor and buyer agree that this selection process is fair and reasonable to each party. All expenses incurred by the panel shall be reimbursed by the party whose property the panel determines the horse to be. (Subsection (b) remains the same as above.)

**FIFTEENTH - BREEDING CONTRACTS:** Any contractual agreements between the owners of broodmares in the Sale and the owners of stallions to which these broodmares have been bred, do not follow the broodmares unless so announced at the time of sale. Auctioneer will not be responsible for enforcing any such agreement if one exists. The possible return to any stallion or possible refund of any stud fee does not follow the broodmare unless so announced at time of sale.

**SIXTEENTH - AGENTS:** Any Agent for Buyer must file with the Auctioneer a completed, notarized Authorization on a form approved by the Auctioneer or in a notarized letter of authorization from Buyer stating that the Agent is authorized to purchase at this Sale for the account of Buyer, and that such Buyer agrees to be bound by all actions of the Agent in connection with this Sale. Any person failing to comply with this condition shall be held personally liable as Buyer.

**SEVENTEENTH - LIMITATION OF ACTIONS:** Any cause of action arising out of or relating to this Sale shall be commenced not more than one year after the date of this Sale; provided, however, this limitation of action shall not apply to any action against Buyer for recovery of the purchase price, including interest and expenses, or repossession of any horse purchased at this Sale.

**EIGHTEENTH - SEVERABILITY:** If a Court of competent jurisdiction shall determine that any of these conditions of sale shall be invalid, such determination shall not prevent the remainder of the conditions of sale from being enforced.

NINETEENTH - TIME OF ESSENCE: Time is of the essence as to all matters set forth in these Conditions of Sale.

TWENTIETH: The entire agreement regarding the sale and purchase of a horse at this Sale is contained in these Conditions of Sale and in the Acknowledgment of Purchase. No agreement between Buyer and Consignor or any other party shall be binding upon or affect Auctioneer unless Auctioneer agrees to be bound by that agreement, in writing.

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