

## Online Auction Conditions Grand Prix Sales International B.V. - 2020

### General

- 1 Grand Prix Sales International B.V. (in the following: 'GPS') organizes an online foal/embryo auction (in the following: 'The Auction') on 3 July and 4 July 2020 and on 3 August and 4 August for jumping foals, dressage foals and/or embryos.
- 2 These auction conditions are applicable to all sales agreements concluded during The Auction with regard to foals or embryos offered through GPS, as well as to all agreements that flow therefrom.
- 3 To the agreements intended sub 2 and to these auction conditions, Netherlands legislation is applicable, to the total exclusion of the Vienna Commercial Convention (CISG).
- 4 The relationship between GPS and the Seller is an assignment agreement whereby Seller as client grants an assignment to GPS as contractor to auction the foal(s)/embryo(s) offered by Seller against the highest bid.
- 5 Wherever reference is made in these auction conditions to embryos must always, where necessary, be understood the pregnant mare.
- 6 A sales agreement is exclusively adopted between Seller and Buyer/Bidder. Under no circumstance can GPS be considered Seller or Bidder/Buyer.
- 7 These auction conditions have also been drawn up for the benefit of all who are or were operative for GPS. These (legal) persons can appeal to these auction conditions directly.
- 8 Participation in The Auction is considered as constituting acceptance of these auction conditions. Any such conditions as may be applied by a Seller or Bidder/Buyer are hereby expressly rejected.
- 9 All rates and prices in these auction conditions are exclusive of sales tax (VAT), unless expressly stated otherwise.

### The Auction

- 10 GPS or (a) selector(s) designated by GPS examines and selects the foals/embryos that are eligible to participate in The Auction. A decision of GPS/the selector(s) in the matter is binding. The GPS/ the selector(s) is authorized to obtain advice from third parties though they have the right at all times to reject a foal/embryo or

foals/embryos without providing explanations on grounds of (physical) defects, as well as on account of such other grounds as are to be established by GPS/the selector(s), also in the event the foal/embryo or foals/embryos were selected by The Auction already. The GPS/the selector(s) is/are never obligated, on any grounds whatsoever, to pay the costs incurred by seller.

- 11 GPS determines the order and sequence of The Auction. GPS has the right, without providing any explanations, to deny anyone access to or participation in The Auction, or to set (further) conditions for participation in The Auction.
- 12 The foals/embryos offered for Auction are auctioned/sold at the purchaser's risk without any proceedings or recompense, in the state they are in upon granting, without any liability of GPS related to the value, the state and/or condition of auctioned foals/embryos.
- 13 Bidder/Buyer bids for own account and risk until a higher bid is accepted. A Bidder/Buyer will be held to his/her bid.
- 14 In order to bid online or digitally in The Auction, a potential Buyer/Bidder may be asked to deposit a security upon request of GPS on the bank account of GPS. The potential Buyer/Bidder must in this case comply with the request for the lodging of a security before the potential Buyer/Bidder is approved for participation.
- 15 By issuing a bid online or telephonically, the Buyer/Bidder also grants authorization to each of the collaborators who at the time of the exercise of the authorization are operative for GPS to sign, on behalf of the Buyer/Bidder, the process regarding The Auction and the concluding sales process with regard to the relevant auction object. The authorized representative can on grounds of this authorization sign the sales process and do everything in the matter that he deems required and useful. The authorized representative has the power of substitution so that he can substitute another person for himself under his responsibility.
- 16 GPS is never liable for damage that is incurred as a result of: actions and/or omissions by third parties, delays occurring upon use of The Auction Website, outage or the being unavailable of The Auction Website for other reasons. Thereby is also intended the being unavailable of a specific auction. Such delays or outage can be caused, among other reasons, by the improper functioning or availability of internet connections, or the improper functioning or availability of (computer) devices.
- 17 Bidder/buyer is considered to be fully endowed with legal capacity and with sound mental judgment. Every Bidder/Buyer is considered to have bid for himself. A Seller who buys his foal/embryo back, is considered a Bidder/Buyer and for the Seller intended here thus all provisions in these auction conditions also apply that regard the Bidder/Buyer.

- 18 GPS offers the possibility to the Buyer/Bidder through publishing information of the foals on its website prior to The Auction to form his own opinion on the foal/embryo and the degree to which the foal/embryo corresponds with her/his wishes considering the specific purposes of use intended by the Buyer. The Buyer/Bidder must if necessary or desirable obtain the independent advice from experts.
- 19 Only the commission agent recognized by GPS who have indicated in writing two days prior to the start of The Auction to GPS that they act for one or more of the Buyers and have indicated what foals/embryos they want to bid on can claim entitlement to a commission from a sales amount of € 15,000 (fifteen thousand euros) excl. VAT. This commission amounts to 2% excl. VAT on the Hammer Price. The commission agent will be equivalent to Buyer/Bidder and be held to the obligations mentioned in these auction conditions and be responsible for the correct (financial) processing. After Buyer/Bidder has fully complied with his (payment) obligations and the foal has been delivered to Buyer, GPS owes, no sooner than two weeks after delivery, the commission.
- 20 GPS cannot guarantee that Seller can transfer the property of an auctioned foal/embryo freely and unencumbered to Bidder/Buyer and GPS is not liable for any possible damage that is related thereto.
- 21 Seller guarantees to be able to transfer the full property of the foal/embryo freely and unencumbered to Buyer. Seller is obligated to safeguard GPS against claims of Buyer and/or third parties related to non-compliance with this guarantee by Seller.
- 22 Seller guarantees that the parentage information of the foal/embryo is correct.
- 23 The risk in the matter of the embryos, also including though not limited to damage to and caused by embryos, at the moment of granting instantly passes from the Seller to the Bidder/Buyer. As long as GPS has not received full payment from the Bidder/Buyer, the Seller remains the owner of the embryo. Immediately after granting, the Bidder/Buyer is responsible for the care for and is liable for the damage both to the embryo and of such as has arisen through it.

#### **Information**

- 24 GPS composes The Auction Collection on its website as carefully as possible. The information on the website is directed at providing an impression of the quality of the foals/embryos offered at the Auction, without GPS thereby observing completeness and without possibility of deriving rights therefrom.

- 25 Seller commits himself to check the information to be included on the website for accuracy and to inform GPS no later than 7 days before The Auction in writing and with the greatest possible detail of inaccuracies.
- 26 The Seller of an embryo is obligated at least 7 days prior to The Auction to determine the pregnancy and to provide a veterinary report regarding the pregnancy to GPS, prepared by a certified veterinarian designated by himself. On the day of The Auction, a copy of this veterinary report can be perused. GPS does not hold veterinary inspection and/or examination at or after conclusion of The Auction.
- 27 On the photo and video-days, each foal is clinically tested by a certified veterinarian designated to such effect by GPS. Any possible comments are added to the veterinary report as intended sub 28.
- 28 The Seller of a foal is obliged prior to The Auction, though no later than 10 days before The Auction, to provide at his own expense a veterinary report, in accordance with model GPS, to GPS deriving from a certified veterinarian designated by Seller. This veterinary report must be in the possession of GPS no later than two days before The Auction.
- 29 The content of said veterinary report mentioned sub 28 is binding for GPS, for Seller and for Bidder/Buyer. This report can be perused of two days prior to The Auction by sending a request by mail to the administration of GPS.
- 30 By offering the foal for auction, Seller declares that he/she is unaware of facts or circumstances that render the foal unsuitable for a normal use for breeding. Seller furthermore guarantees that the foal is free from such prohibited substances as are listed on the most recent list of substances of the Fédération Equestre Internationale (FEI).
- 31 In case of a foal with a known defect for which a veterinarian designated by GPS has declared in writing that recovery (healing) is possible, then the Buyer is obligated in conformity with the conditions sub 32, 33, and 37 through 40, to fulfill his obligations.  
In case of the death or rejection of a foal by the afore-intended veterinarian, who decides in a binding manner regarding the health conditions of the foal, before expiry of the term within which delivery by the Seller to the Buyer should have occurred, the sales agreement is considered rescinded and the Hammer Amount, including such VAT as may be owed on it, is refunded by GPS.  
The registration Fee, The Auction Commission and/or the Premium are not refunded by GPS to the Seller or respectively the Buyer and/or remain owed to GPS. As regards the term(s) within which delivery of the afore-intended foal must take place, reference is made to what is established sub 44 through 52.

## Costs and Payment

- 32 Buyer must pay the purchase sum within fourteen days after The Auction in Euros to GPS through bank transfer to the bank account number payable to GPS, without any discounts or setoffs.

The purchase sum for foals is calculated as follows:

Hammer Price increased by Premium, being an amount equal to 10% of the Hammer Price, all amounts to be increased by the applicable VAT rate.

The VAT rate may depend on the capacity/nationality of Seller, Buyer and on applicable regulations.

The purchase sum for embryos is calculated as follows:

Hammer Price increased by Premium, being an amount equal to 10% of the Hammer Price, increased by the costs of the pregnant mare, all sums to be increased by the applicable VAT rate.

The VAT rate may depend on the capacity/nationality of Seller, Buyer and on applicable regulations.

The invoice amount is payable immediately. Payment exclusively occurs by bank. The setting off of any possible counterclaims is excluded.

- 33 Only following the previously obtained permission of GPS, Buyer has the right to pay by credit card, whereby the amount owed must be credited to the account number of GPS within fourteen days after The Auction. The bank fees associated with a credit card payment are borne by Buyer.
- 34 Buyer has the option to immediately after conclusion of The Auction take out an insurance for the foal/embryo purchased through the administration of GPS. Such an insurance is not taken out by GPS.
- 35 The bids and payments take place exclusively in euros.
- 36 It is permitted to GPS to obtain information regarding the financial standing of a relevant Bidder/Buyer and to render participation in The Auction by and the conclusion of an agreement with the relevant Bidder/Buyer dependent on the information obtained.
- 37 If GPS has not received full payment from the seller/buyer within fourteen days after The Auction, the seller/buyer falls legally into default and he owes a fee in the amount of 10% on the Hammer Price, increased by an interest of 1.5% per month over the total amount owed, to be calculated from The Auction until the moment of full settlement. All matters without prejudice to the right of GPS to compliance and/or compensation of damages.

- 38 If GPS has not received full payment within fourteen days after The Auction from Seller/Buyer, GPS furthermore has the right to consider the purchase, without any default notice on behalf of Seller and without his permission, as rescinded. Seller and Buyer in such case remain obligated towards GPS to fulfill all their payment obligations that are mentioned in these auction conditions, to the extent these regard a compensation for the benefit of GPS.
- 39 If Buyer/Seller does not fulfill his (payment) obligations towards GPS, all (extra) judicial costs that GPS incurs as a result are borne by the buyer or the seller, with a minimum amount of € 1,000 (one thousand euros).
- 40 Payment to any other party than GPS does not liberate Seller or Buyer from their payment obligations towards GPS. As long as GPS has not received full payment from Bidder/Buyer, also pursuant to any possible other sales agreements, Seller remains owner of the foal.
- 41 The Auction Commission to be paid by Seller is established on the basis of the rate scales listed on and established on grounds of the form 'assignment agreement for sale'.
- 42 GPS pays the Hammer Price, after it has received such from Buyer, after deduction of the Auction Commission and VAT owed to GPS, to a bank account number indicated by Seller.  
Seller receives an invoice for the registration fee of € 400 (four hundred euros) excl. VAT shortly after definitive selection. This invoice must be settled within the indicated payment term. If Seller remains negligent, GPS has the right to reject the foal/embryo for the photo and video-day and/or The Auction.

In order to let the financial processing occur smoothly, Seller commits himself, before delivering his/her foal, to ascertain from GPS that:

- a. Buyer has fully complied his/her payment obligations, and
- b. If not, not to deliver the foal before those obligations are fulfilled still.

- 43 If and only after all (payment) obligations towards GPS have been fulfilled by both Seller and Buyer, GPS will no later than 10 days after delivery notice by Seller, pay the Hammer Price, after deduction of the Auction Commission and VAT owed to GPS, to the Seller. If Buyer in accordance with what is stipulated sub 57 through 59 reports to GPS a defect or stable vice and a dispute arises concerning, GPS nevertheless is not bound to pay Seller, nor to refund to Buyer. GPS is only bound to effectuate the intended payment to Seller or the intended refund to Buyer, if and as soon as the afore-intended dispute is settled in accordance with (among others) the provisions sub 57 through 59 to the benefit of the seller or the buyer respectively.

## **Delivery**

- 44 After Buyer has fulfilled his payment obligations (in accordance with what is established sub 32, i.e., payment to GPS) GPS reports the payment by Buyer as soon as possible to Seller.  
Seller must deliver the foal/embryo within fourteen days after the payment is reported by GPS to Seller to Buyer, unless parties establish otherwise, and Seller reports the subsequent delivery as soon as possible in writing to GPS by way of returning a proof of delivery signed by Buyer/Seller in accordance with the model of GPS, to GPS.  
Exception thereto are the foals intended sub 48 and sub 49. Delivery takes place in the manner as established sub 48 and sub 49, whereby the afore-intended report of delivery by Seller is fully applicable. Every delivery otherwise than stated in the preceding and than otherwise established in these auction conditions is entirely at the risk of Seller.
- 45 Until actual delivery, the risk and costs of the foal are borne by Seller. Immediately after delivery by Seller to Buyer, the risk and costs in the matter of the foal are transferred to Buyer.
- 46 Until actual delivery, the costs of the embryo remain at the expense of Seller. Immediately after delivery by Seller to Buyer, costs in the matter of the embryo are transferred to Buyer.
- 47 Seller assumes the obligation to leave the foal younger than 4.5 months with the mare, until the foal has reached the age of at least 4.5 months, without compensation being owed for this to Buyer. The stay is at the expense and risk of Seller.
- 48 Delivery to Buyer of a foal younger than 4.5 months on the risk-transfer date indicated sub 47 must take place within 1 month after the moment that the foal has reached that age. Delivery of a foal with a known defect as intended sub 31 to Buyer must in the event of the recovery intended sub 31 and sub 57, to be determined by the veterinarian intended sub 31 and sub 57, must take place within 1 month after recovery though no later than within 6 months after The Auction.
- 49 If a foal has not been delivered within 3 months after The Auction to Buyer, due to facts/circumstances that lie within the sphere of risk of Buyer, the foal is at the expense and risk of Buyer as from the next day. The delivery term indicated in this section can only be deviated from in exceptional cases and following the intervention of GPS. A foal with a known defect as intended sub 31 remains at the expense and risk of Seller until the moment of delivery to Buyer, with due regard for what is established sub 48.

- 50 In case Seller sells the foal at The Auction that considering his age (generally older than 4.5 months) can be delivered by Seller to Buyer immediately, the foal is delivered by Seller to Buyer after Buyer/Seller has fulfilled all his/her financial obligations mutually and towards GPS.
- 51 The foal/embryo is delivered by Seller at the address of Buyer if Buyer/Seller reside(s) in the Netherlands. If Buyer/Seller reside(s) outside the Netherlands, the place of Delivery lies within the Netherlands, unless parties establish otherwise.
- 52 The foal/embryo is delivered by Seller at the address of Buyer if Buyer resides in the Netherlands. If the foal was bought by a foreign Buyer, Buyer will, barring the situation in which Buyer has the intention to exploit the foal in the Netherlands, and with due regard for a reasonable term that is required to arrange the transport formalities abroad, take care of direct transport of the purchased foal abroad.
- 53 Buyer will only be able to dispose of the foal/embryo in any case after he has fulfilled his (payment) obligations entirely, also including those towards GPS.

#### **Non-participation in auction**

- 54 A selected foal/embryo must participate in The Auction, failing which, Seller must pay to GPS the costs incurred by the latter, with a minimum of the registration fees of € 400 (four hundred euros) excl. VAT, as well as a compensation to the amount of € 15,000 (fifteen thousand euros), increased by an interest of 1.5% per month on the total amount owed, to be calculated from the date of the auction until the moment of full settlement. All matters without prejudice to the right of GPS to compliance and/or compensation of damages.
- 55 If a foal/embryo in the opinion of Seller due to health reasons will not be able to participate in The Auction, this will have to be communicated timely, in writing, and including a description of the disorder to GPS, after which GPS has the right to have the nature of the disorder determined by a veterinarian designated by it. The determination of such veterinarian in the matter is binding. If Seller does not provide sufficient opportunity to and in the binding opinion of such veterinarian to (timely) examine the foal, or in the event the foal has been approved by such veterinarian and nevertheless does not participate in The Auction, then Seller owes the compensation mentioned sub 54 to GPS.
- 56 Sellers are obliged to deliver their foal/embryo and (pregnant) mare at a time to be indicated by GPS in proper Auction Condition at the auction premises.

#### **Stable vices and defects**

- 57 Sellers are obligated to transport, have auctioned, and deliver their foal and/or their pregnant mare free from defects and stable vices, and provide a guarantee

accordingly. Not covered by this guarantee is the absence of OC and OCD in the foal and the presence of the WFFS-gene. If the law and/or jurisprudence establish otherwise concerning guarantee and/or the duration thereof in a mandatory manner, the intended mandatory alternative payment applies. If a foal is offered for sale with a defect known beforehand to both Seller and Buyer of which a veterinarian designated by GPS declares in writing that recovery (healing) is possible, as intended sub 31, Seller takes upon himself the obligation to keep the foal monitored and to take care of recovery (healing), without such entailing additional costs for Buyer. The foal remains at the expense and risk of Seller until the moment of delivery.

58 If Buyer identifies stable vices in the purchased foal and/or their pregnant mare, being crib-biting, weaving or windsucking, not being a known defect as intended sub 31, Buyer must within 7 days after delivery to the new owner inform GPS accordingly in writing with a description of the nature of the stable vices.

In such case, GPS will accommodate the foal/pregnant mare at a location to be determined by them, in order to have the foal/pregnant mare examined by a veterinarian to be designated by them for the stable vices described by Buyer. The intended veterinarian determines the nature and gravity of the stable vices in a binding manner. If in the opinion of such veterinarian the stable vices described by Buyer exist, then Seller must pay the costs incurred in the matter, also including such incurred for accommodation, transport, and the veterinarian to GPS. Buyer must pay the intended costs to GPS if in the opinion of that veterinarian the stable vices described by Buyer do not pertain.

59 What is stipulated sub 58 also applies if Buyer identifies defects in the purchased foal other than a defect known sub 31 and other than the intended stable vices. Seller must take back the foal directly and at own expense, against the refunding of the hammer price and VAT, if the purchase is rescinded or annulled in a legally valid manner.

60 If Buyer does not report within the term of 7 days after delivery in the aforementioned manner the intended stable vices or (other) defects and/or if the before mentioned veterinarian does not establish the stable vices or (other) defects, the right of Buyer to rescind the purchase or to appeal to vitiated consent lapses, unless the law and/or jurisprudence establish otherwise concerning in a mandatory manner.

#### **Exclusion and limitation liability GPS**

61 GPS is not liable for damage caused by the provision of incorrect and/or incomplete information, regardless of the nature and scope of such damage and such information and regardless of the origins of such information.

62 GPS is not liable for damage that has occurred prior to, during and/or after conclusion of the photo and video days and The Auction caused by or to persons and/or by or to matters and/or by or to foals/embryos and (pregnant) mares.

- 63 GPS is not liable for damage, direct or indirect, and regardless of the nature and scope, as a result of a shortcoming in compliance with an undertaking by third parties.
- 64 Bidder/Buyer is liable for all damage caused by himself and safeguards GPS against any third-party claim, also including, though not limited to, Sellers and/or other Bidders/Buyers, related to such damage, regardless of nature and scope.
- 65 Exclusions of liability of GPS are not effective in the event of willful intent or gross fault of GPS that is attributable to GPS.
- 66 Any liability of GPS is limited at all times to an amount of a maximum of € 10,000 (ten thousand euros). The right to compensation of damages lapses in any event 12 months after the event the damage has flowed from and for which GPS is liable, without prejudice to what is stipulated in art. 6:89 BW (Civil Code).

#### **Sales tax (VAT)**

- 67 GPS is an enterprise for sales tax purposes. Changed regarding the applicable VAT rate may be grounds for a corresponding modification of the VAT rates to be applied.
- 68 If in the matter of the transfer of the auctioned foals/embryos to another member state of the European Union upon request of Bidder/Buyer invoicing is done with the VAT nil-rate, Buyer/Bidder commits himself to meet all conditions required to such effect in order to realize a legally valid intra-community transaction.
- 69 If application of the VAT nil-rate turns out to be impossible (afterwards) due to any circumstance whatsoever, Bidder/Buyer at such time still owes an amount equal to the sum that would have been owed in the event of a national delivery of the relevant foal/embryo. Upon request of GPS, Bidder/Buyer is obligated however to pay the afore-intended amount immediately to GPS. In such case, a refund will only take place at such time as Bidder/Buyer, to the satisfaction of GPS, has complied with the conditions sub 68. Bidder/Buyer indemnified GPS in any case for all damage that flows from non-compliance with the conditions sub 68. Buyer thereby is liable for all (extra-)judicial costs incurred by GPS, with a minimum amount of € 1,000 (one thousand euros).

#### **Disputes**

- 70 GPS will always, in the event of a lasting dispute and if no legal proceedings have been started (yet), on own title initiate mediation between buyer and seller, in the first instance at the expense of Buyer and Seller whereby the costs will be borne equally.

71 Disputes other than those subjected to the opinion of GPS and that have not been resolved following the mediation mentioned sub 71 will be settled by the court of law in The Hague. The legal relations between GPS and Seller, between GPS and Buyer and between Seller and Buyer are exclusively governed by Netherlands legislation, to the total exclusion of the Vienna Commercial Convention (CISG).

72 The Dutch text of these Auction conditions are binding.