

These terms and conditions of sale shall apply to all sales of thoroughbred bloodstock ("lot") effected by William Inglis & Son Limited ("Inglis") at auctions and other sales to which they are stated to apply. A bidder at any auction and any vendor who submits a lot for sale is taken to have agreed to these terms and conditions before making a bid or before the auction commences as applicable.

## **1. AUCTION CONDITIONS**

- 1.1 Inglis may appoint a person or persons as auctioneers to carry on sales under these terms and conditions and that person or persons must carry out the functions set out in these terms and conditions and holds the authority which is contained in this document.
- 1.2 All auctions shall be conducted subject to the following conditions:
  - (a) Subject to any reserve price, the highest bidder shall be the purchaser.
  - (b) The auctioneer is the sole arbiter of any dispute arising in respect of a sale of a lot, and shall, at the auctioneers sole discretion settle any dispute on such terms as the auctioneer thinks fit and the auctioneers decision shall be final and binding.
  - (c) The auctioneer may, in case of a dispute or any other problem with a sale, elect to re-offer the lot for sale.
  - (d) The auctioneer can refuse to accept any bid which in the auctioneers opinion is not in the best interests of the vendor. No bid is valid unless it is acknowledged by a bid spotter or the auctioneer. It is the responsibility of the bidder to ensure any bid is so acknowledged and the failure by a bid spotter or the auctioneer to acknowledge a bid does not, under any circumstances, constitute a dispute arising in respect of a sale.
  - (e) A bidder is taken to be a principal and shall be personally liable as such unless, prior to the bidding, the bidder has given the auctioneer a written authority, in a form acceptable to the auctioneer, whereby the bidder is authorised to bid for and on behalf of another party as principal, and the auctioneer agrees to accept bids on that basis.
  - (f) The vendor has the right, subject to compliance with any statutory requirements, to bid and to buy the lot if the highest bidder.
  - (g) If a vendor wishes to impose a reserve price, a written instruction from the vendor must be given to the auctioneer specifying the reserve price prior to commencement of the auction. In the absence of such instructions, the auctioneer may sell without any reserve price.
  - (h) The auctioneer shall have the right to bid as agent of the vendor on any lot on which a reserve price has been placed up to that reserve price, subject to compliance with any statutory requirements,
  - (i) The auctioneer has the right to determine an upset price for each lot, and if no bid at or above the upset price is made within 30 seconds then the auctioneer may pass in the lot.
  - (j) The last bidder on a passed-in lot has the option to purchase at the reserve price provided this right is exercised before the lot leaves the sale ring.
  - (k) The auctioneer may withdraw any lot from sale without being obliged to give a reason for doing so.
  - (l) Any auctioneer's announcements on the day of the sale which are announcements from the auctioneer's stand will take precedence over:
    - i. These conditions of sale;
    - ii. Any statements in the sale catalogue; or
    - iii. Any other written or oral statement, particular or representation previously published or made.
    - iv. The auctioneer, in its absolute discretion, reserves the right to exclude any person/s from the sale venue.
  - (m) A vendor must have provided any Personal Information (including any documents evidencing such Personal Information) reasonably requested, or as required by Inglis so that Inglis may comply with any legal or regulatory obligation, including complying with the RNSW Code of Practice.
- 1.3 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.

## **2. OUTSIDE SALES**

A lot entered for sale at the auction may be sold outside the auction only in accordance with the following provisions:

- (a) No lot shall be sold privately prior to the auction or for 30 days after the auction without the prior written consent of Inglis.
- (b) In the event of any private sale, Inglis shall be entitled to commission as if the lot was sold under the hammer, and the vendor shall provide full details of any such sale. If full details of the sale are not supplied Inglis may charge commission and other fees at the median selling price of the session in which the lot was listed to have been sold.
- (c) Any lot passed in at the auction shall, unless Inglis waives this condition, remain on sale at the reserve price for a period of 30 days. Inglis shall be entitled to commission on any lot so sold, as if it were sold under the hammer. Any person wishing to make an offer on a passed in lot should contact the designated Inglis staff member for private sales who will make the offer to the vendor. If the offer is accepted by the vendor the sale can be completed at the Sales Day Office by way of the purchaser signing the Acknowledgement of Purchase document and the Sales Day Office staff receiving verbal confirmation of the sale by the vendor.
- (d) The sale of passed in lots must be referred to the vendor for approval.

### **3. FALL OF THE HAMMER**

- 3.1 Upon the fall of the hammer the purchaser shall give his name and address, and such other information as may reasonably be required, to Inglis.
- 3.2 As soon as is practicable after the fall of the hammer, the purchaser must sign a contract or such other memorandum or acknowledgement of the purchase, as Inglis requires.
- 3.3 If the purchaser (hereinafter referred to in this sub condition as the initial purchaser) fails to comply with the requirements of condition 3.1 and/or condition 3.2, Inglis may elect to declare the initial purchaser in default and cancel the sale and resell the lot. If on resale of the lot a lower price is obtained, the difference in price plus any expenses of the resale shall be a debt owing by the initial purchaser to the vendor payable on demand, with interest at the rate of 16% per annum from the date of demand until payment.
- 3.4 The auctioneer is authorised to execute a contract, memorandum, sale book, or other acknowledgement of a sale on behalf of both the vendor and the purchaser, and any such action by the auctioneer shall be binding on the parties.

### **4. VENDOR'S RIGHTS AND OBLIGATIONS**

- 4.1 The vendor authorises Inglis to take the lot on consignment and sell by auction or private treaty.
- 4.2 Inglis must pay the proceeds of sale to the vendor within forty two (42) days of the sale unless other arrangements have been agreed to in writing between the vendor and Inglis or the sale is validly cancelled under these terms.
- 4.3 Prior to paying the proceeds of sale to the vendor, Inglis may deduct all of its fees as set out on the entry form or otherwise agreed in writing.
- 4.4 Inglis does not need to pay the vendor unless:
  - (a) The vendor has executed all documents and done all other things necessary to permit registration of a transfer of the title to the lot in the name of the purchaser;
  - (b) If the vendor is not identical with the registered owner, the vendor has produced to Inglis such evidence as Inglis reasonably requires of the vendor's identity and authority to receive the purchase price;
  - (c) The vendor has provided Inglis with evidence of the discharge of any Security Interest or other encumbrance affecting the lot; and
  - (d) Inglis is satisfied that it will receive payment of the purchase price from the purchaser.
- 4.5 Inglis will only be required to issue one cheque (or make one payment) to the vendor of a lot. If the vendor comprises of more than one person then the vendor authorises Inglis to issue the cheque or payment to the person nominating the lot for sale on behalf of the vendor. Inglis has the right (but is under no obligation) to hold the payment on trust pending the receipt of written notice by all vendors of a lot as to whom the payment will be made. All vendors jointly and separately indemnify Inglis against any claim for loss made by any person against Inglis as result of it complying with the provisions of this clause.
- 4.6 The net proceeds of sale is a debt owing by Inglis to the vendor, however Inglis is authorised to pay any part of the proceeds of sale to any Secured Party with a Security Interest affecting the lot in order to obtain clear title to the lot and such payment will discharge any obligation by Inglis to the Vendor with respect to such amount.
- 4.7 Upon the payment of the net proceeds of sale from Inglis to the vendor, title to the lot passes to Inglis.

- 4.8 If the vendor agrees to extend any credit terms to the purchaser, then Inglis 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 due payment to Inglis of the commission and all other moneys owing to Inglis in connection with the auction and sale of the lot, whether or not the vendor is paid by the purchaser.
- 4.9 Any arrangements under clause 4.7 must be in writing and executed by the vendor, purchaser and Inglis.
- 4.10 The vendor and the purchaser must disclose to Inglis the terms of payment of any purchase at any time upon request by Inglis.
- 4.11 Clauses 4.1-4.11 may be varied at any time provided Inglis gives written notice of the change of terms and conditions prior to the commencement of the auction; and
- 4.12 The vendor acknowledges that it has read and accepted Inglis's Privacy Statement contained within these auction terms, and agreed to any collection, use or disclosure of the vendor's Personal Information by Inglis, including the disclosure of such Personal Information by Inglis to a third party such as Racing New South Wales.
- 4.13 The entry fee will become due and payable when a lot number is assigned to the lot. In the event a lot is withdrawn prior to the auction the entry fee will remain due and payable to Inglis unless a signed veterinary certificate is received by Inglis no later than 30 days after the date of the sale, stating the lot has sustained injuries that would deem it unsaleable at the time of the sale. Upon receipt of this signed certificate the entry fee due to Inglis will be reduced by 50%. If a lot dies prior to the sale the entry fee will be waived on receipt of such notification from the vendor.

## **5. PAYMENT BY THE PURCHASER**

- 5.1 Upon the fall of the hammer the full purchase price shall become due and payable and shall be paid by the purchaser to Inglis in cash in Australian currency within sixty (60) minutes of purchase for each lot purchased by that purchaser, unless other arrangements have been agreed to in writing by Inglis.
- 5.2 If the purchase price or any part is not paid in accordance with condition 5.1, the purchaser is liable to pay interest on the outstanding balance at the rate of 16% per annum calculated daily in arrears from the date of sale up to and including the date of payment.
- 5.3 If the purchaser (hereinafter referred to in this sub condition as the initial purchaser) defaults in the due payment of the purchase price or any part or any interest thereon or any other moneys payable by the initial purchaser under these conditions of sale then:
  - (a) The vendor or Inglis may elect to cancel the sale. In such a circumstance the vendor, or if Inglis has already paid the vendor the net proceeds then Inglis, shall have the following rights:
    - i. To treat as forfeited all moneys paid by the initial purchaser except so much as exceeds 25% of the purchase price, or such lesser sum as the vendor may at law be permitted to treat as forfeited;
    - ii. To sue the initial purchaser for damages for breach of contract;
    - iii. To resell the lot as owner, and recover from the initial purchaser as liquidated damages the deficiency (if any) arising on the resale plus all costs and expenses associated with the resale or otherwise arising out of the initial purchaser's default; and
    - iv. To retain any moneys paid by the initial purchaser, over and above moneys forfeited pursuant to condition 5.3(a) (i) as security for any damages or other moneys payable by the initial purchaser to the vendor and/or Inglis under the conditions of sale.
  - (b) Alternatively, the vendor, or if Inglis has already accounted to the vendor for the purchase price then Inglis, may elect to affirm the sale and sue the initial purchaser for the purchase price and interest and other moneys payable by the initial purchaser under the conditions of sale, or such part or parts of such moneys as may be outstanding at any time.
- 5.4 Any potential bidder seeking credit or finance from Inglis must enter into a credit or finance arrangement with Inglis prior to the sale. Any such arrangement shall be between Inglis and the bidder as principals, and shall not involve the vendor nor form part of any sale whether made by auction or private treaty. The extension of credit or finance by Inglis to a bidder at a prior sale shall not automatically apply at this sale, and it is a bidder's responsibility to reaffirm credit arrangements with Inglis prior to bidding.
- 5.5 The purchaser must pay the purchase price to Inglis in accordance with the credit contract.
- 5.6 Any purchaser who seeks to purchase a lot on credit authorises Inglis to seek from third parties and be provided with personal information, including financial information, about the creditworthiness of the purchaser for the purpose of allowing Inglis to assess a request for credit submitted by the purchaser.

- 5.7 Where a Purchaser purchases two or more lots at the sale, the Auctioneer may, in the absence of written directions from the purchaser directing that any monies received for purchases at the sale be directed to a specific lot, allocate such payment as it sees fit and may allocate these monies in relation to the purchase price of any such lot or lots, in the Auctioneer's absolute discretion.

## **6. PASSING OF RISK**

- 6.1 The vendor shall bear the sole risk and responsibility for a lot until risk in the lot passes to the purchaser pursuant to condition 6.2.
- 6.2 Despite condition 7, upon the fall of the hammer, the sole risk and responsibility for a lot shall be borne by the purchaser, who shall thereafter be responsible for all expenses incurred in respect of the lot, including care of the lot. The purchaser will be liable for stabling, agistment and transport charges for any lot not removed from Inglis' stables on the day of the sale and they may be moved to alternate stables or agistment at Inglis' discretion.
- 6.3 Such risk and responsibility shall include any loss, expenses, injury or damage caused by intentional act or omission, negligence (whether caused by any act or omission on the part of Inglis or its servants or agents), accident, disease, illness, act of God, or otherwise.
- 6.4 The purchaser indemnifies and holds harmless Inglis, the auctioneer and the vendor for any loss, expense, injury or damage contemplated by condition 6.3.
- 6.5 Any lot not sold, or for which any sale is subsequently cancelled, shall remain at, or revert to, the risk of the vendor, who shall be responsible for all expenses pertaining to the lot and for removal of the lot from the premises of Inglis.
- 6.6 Inglis shall be entitled, in its absolute discretion and at the expense of the vendor or the purchaser (as Inglis determines) to engage a veterinary surgeon to inspect and/or treat any lot.

## **7. PASSING OF TITLE**

- 7.1 Prior to the delivery of the lot to Inglis, the vendor must execute and deliver to Inglis all such documents as may be necessary to confirm registration of the lot with Racing Australia Limited and to permit registration of the transfer of title to the lot from the vendor to the purchaser, plus evidence of payment of all stud book and registration fees payable for the lot up to the date of the sale.
- 7.2 Title in a lot shall not pass to the purchaser until the full purchase price and all other costs and expenses owed by the purchaser to Inglis or the vendor for the lot have been paid by the purchaser to Inglis, notwithstanding that the purchaser may have taken delivery of the lot.
- 7.3 After the fall of the hammer, the auctioneer shall be authorised on behalf of the vendor to complete the registration and transfer documentation in the name of the purchaser, and to do all such other acts and things as may be necessary to affect the transfer of title to the lot. Both the vendor and the purchaser must execute such other documents and do such other acts and things as are necessary to give effect to these conditions and to complete the sale and transfer of title to the lot.
- 7.4 Inglis is entitled, but without being under any obligation to do so, to retain the title documents for a lot until the full purchase price and all other moneys owing by a purchaser to the vendor or Inglis have been paid. Where the vendor buys back a lot, Inglis may retain the registration documents until all commissions and other moneys owing by the vendor have been paid.

## **8. DELIVERY**

- 8.1 The purchaser shall, in the absence of other arrangements with Inglis, take delivery of the lot within twenty four (24) hours of the sale of the lot, and shall remove the lot from the Inglis stables. Inglis may in its discretion refuse to release the lot until the full purchase price and all other moneys owing to either the vendor or Inglis have been paid.
- 8.2 If the purchaser takes delivery of the lot prior to payment of the purchase price and the sale is cancelled pursuant to condition 5.3(a), the vendor and/or Inglis may, without any prior notice to the purchaser, take all necessary steps and use any reasonable force, either by themselves or through servants and agents, to recover possession of the lot. For this purpose they may enter upon any land or premises and repossess the lot. All costs and expenses of any such repossession activity shall be a debt owing by the purchaser to the vendor or Inglis (as the case may be). Until payment of the purchase price in full, the purchaser shall at all times inform Inglis of the address of the premises at which the lot is for the time being located.
- 8.3 If after a purchaser has taken delivery of a lot the sale is cancelled by the purchaser:
- (a) In consequence of a breach of a vendor warranty under condition 10; or
  - (b) In a circumstance permitted by condition 13, the lot shall be returned to the vendor at the vendor's expense. Any transportation, agistment and veterinary costs incurred by the purchaser from the date of purchase up to cancellation of the sale shall be to the purchaser's account.

- 8.4 In the circumstances where the purchaser exercises its rights pursuant to conditions 8.3, 10 or 13, the debt owing by Inglis to the vendor under 4.5 is void and where Inglis has already paid the vendor the proceeds of sale, the vendor must repay those monies to Inglis on demand.

## **9. PPS ACT**

- 9.1 These terms and conditions, together with the terms and conditions of any credit or financing arrangement for value extended by Inglis, at its discretion, to the purchaser as a pre-condition to permitting the purchaser to take possession of the lot prior to payment of the full amount of the purchase price, will constitute a security agreement under the PPS Act.
- 9.2 The purchaser grants to Inglis a PMSI being a charge over the lot and any proceeds of the lot including but not limited to any foals of the lot and any proceeds of such foals to secure the purchaser's obligations under these terms and conditions (including the terms and conditions of any credit or financing arrangement for value extended by Inglis) and payment of the full amount of the purchase price and all other fees and charges payable by the purchaser in accordance therewith.
- 9.3 Inglis may at its discretion register the Security Interest created under condition 9.2, on the PPSR and amend such registration as may be required from time to time.
- 9.4 The purchaser agrees to execute any and all documents, provide all necessary information and do anything else required to ensure that Inglis obtains and maintains a perfected security interest as required by the PPS Act, which will have priority over all other Security Interests or encumbrances over or affecting the lot and all fees and costs associated therewith, plus any fees and costs incurred by or on behalf of Inglis in relation to the maintenance, enforcement and/or discharge of such security interest are to be reimbursed by the purchaser.
- 9.5 If in Inglis' opinion Inglis' security position or obligations under or in connection with these conditions of sale and any credit or financing arrangement between the parties have been or will be materially adversely affected, Inglis may by notice to the purchaser cancel any credit or financing arrangement between the parties and the purchaser must immediately pay to Inglis all monies owing by the purchaser to Inglis within 15 business days of that cancellation.
- 9.6 The purchaser undertakes not to dispose of any of rights in the lot or grant any Security Interest, or other encumbrance to any other person in the lot without first obtaining the consent in writing of Inglis which consent will be entirely at Inglis' discretion and may be subject to any terms imposed by Inglis.
- 9.7 To the extent permitted under the PPS Act the purchaser agrees that Sections 142 and 143 of the PPS Act will not apply to this contract or the Security Interest granted to Inglis under these terms and conditions and agrees to waive all rights to any of the following provided for in the PPS Act:
- (a) Receive notice of an intention to seize collateral under Section 123;
  - (b) Receive notice of disposal of collateral under Section 130;
  - (c) Receive information under a statement of account under section 132 (3) (d),
  - (d) Receive a statement of account if there is no disposal under Section 132(4);
  - (e) Receive a notice of retention of collateral under Section 135; and/or
  - (f) Receive a notice of verification statement under Section 157.
- 9.8 Inglis will discharge its Security Interest when it is satisfied that all the purchaser's obligations under these terms and conditions and those of any credit or financing arrangements between Inglis and the purchaser have been fulfilled.

## **10. VENDOR'S WARRANTIES**

- 10.1 The vendor warrants that:
- (a) The description, pedigree and other information for the lot as specified in the Entry Details and otherwise provided to Inglis is true and correct in all respects;
  - (b) The vendor has the right to sell the lot and can give good title to the lot and in the case where there is more than one owner of the lot, has the authority of every owner to sell the lot;
  - (c) Where the lot is two years old or less, full and complete disclosure has been made to Inglis through lodgement of a surgical report to the repository or in writing to the Auctioneer, as to whether the lot has undergone invasive joint surgery (as defined as if there has been an arthroscope used to assess or treat a joint or a surgical manipulation of the joint has been performed including insertion of a needle to inject beneath the cartilage into a cyst) surgery to repair a fracture or surgical intervention of the upper respiratory tract or has undergone abdominal surgery of any type (with the exception of the surgical repair of a non-strangulating umbilical hernia), or any other surgical procedure that may, in the opinion of a sophisticated purchaser, acting reasonably, affect the suitability of racing of the lot (and the vendor is solely responsible for ensuring the complete accuracy of the disclosure to Inglis); and

- (d) The lot is not and has not previously been subject to any bans, embargoes or other restriction (for bleeding, barrier behaviour or any other reasons) imposed by any horseracing authority, other than as notified by the vendor to Inglis and disclosed by Inglis at the sale (and it is the responsibility of the vendor to see that such disclosure is made). Fillies and mares that are entered in the broodmare section of a catalogue are excluded from this condition unless catalogued as a "racing and breeding prospect".
  - (e) Where the lot has been notified to Racing Australia as being officially "retired " as per Racing Australia Rule AR.64JA, then this is advised to Inglis prior to the sale who will make the disclosure at the time of the sale of the lot (and the vendor is solely responsible for ensuring the complete accuracy of the disclosure to Inglis)
  - (f) The Vendor agrees to disclose to Inglis, upon request, the name and contact details of the true owner of the lot nominated for sale. The vendor authorises Inglis to disclose the true owner's details to any person at Inglis' absolute discretion.
- 10.2 The details of any Security Interest or other encumbrance over the lot has been disclosed to Inglis
- 10.3 The vendor is solely responsible for the accuracy of any statement, description or particular relating to the lot contained in the Entry Details and must notify Inglis of any error, omission or inaccuracy prior to the sale of the lot. Inglis have no responsibility for any such error, omission or inaccuracy.
- 10.4 Each lot is sold with the benefit of any current engagements.
- 10.5 In the event of a breach by the vendor of any of the warranties in this condition 10, the purchaser may elect to cancel the sale by notice in writing to Inglis within 28 days of the date of the sale and will be entitled to the return in full of the purchase price if paid and acknowledges that it shall have no other claims against the vendor or Inglis.

## **11. PURCHASER'S ACKNOWLEDGMENTS AND OBLIGATIONS**

- 11.1 The purchaser acknowledges that:
- (a) He has had the opportunity to inspect the lot prior to the sale;
  - (b) If the vendor has lodged material relating to the lot in the X-ray Repository, the purchaser has had the opportunity to inspect such material prior to the sale;
  - (c) He makes the purchase solely in reliance on his own enquiries and inspections;
  - (d) He has not relied on any statement or representation made by or on behalf of the vendor or Inglis, other than the vendor's warranties expressed in condition 10 and any auctioneer's announcements made under condition 1.1(l);
  - (e) All lots are sold in their present condition, subject to all faults, imperfections or other defects whether latent or patent; and
  - (f) No compensation is payable by either the vendor, Inglis and the auctioneer for any faults, imperfections or other defects save as required by law.
  - (g) The purchaser has read and accepted the Privacy Statement contained within these auction terms, and agreed to any collection, use or disclosure of the purchaser's Personal Information by Inglis, including the disclosure of such Personal Information by Inglis to a third party such as Racing New South Wales.
- 11.2 Any dispute arising between the vendor and the purchaser in relation to a lot must be resolved between them only, and a lot cannot be returned to Inglis or its stables.
- 11.3 Without limiting any other obligations or liabilities of the purchaser under these conditions of sale, until the purchase price and any interest payable thereon and any other moneys payable by the purchaser under these conditions of sale have been paid in full the purchaser must:
- (a) Keep the lot in good health and condition and protect it from injury and damage;
  - (b) At his cost insure the lot jointly, with Inglis, for its full insurable value against all risks and provide a copy of the certificate of insurance to Inglis;
  - (c) Notify Inglis of the location of the lot;
  - (d) Not sell, lease, assign or create any security interest in the lot;
  - (e) Not move the lot outside Australia;
  - (f) Not submit the lot to any surgical procedure; and
  - (g) Not do any act or thing prejudicial to the respective interests of the vendor and Inglis in the lot.

## **12. X-RAY REPOSITORY**

- 12.1 The Repository exists to facilitate the inspection of bloodstock for intending purchasers. The Repository and its operation shall not otherwise change any of these conditions of sale, which shall continue to be binding on all parties and the terms, conditions and procedure for use of the X-ray Repository are as set out in this condition 12.
- 12.2 A vendor may elect to place in the Repository X-rays, surgical reports and/or veterinary treatment reports of their horse(s) being offered for sale. All sets of X-rays must contain no less than 36 views as specified by Inglis.
- 12.3 Where the vendor has lodged material relating to a lot in Inglis' X-ray Repository, the vendor warrants to Inglis and the purchaser that the material is complete (including compliance with the X-ray specifications), accurate and authentic at the date on which the X-rays, surgical reports and/or veterinary treatment reports were made.
- 12.4 Purchasers should make such further enquiries and inspections of a lot that they consider necessary or desirable, given the limited warranty in condition 12.3 and these conditions of sale. Purchasers who refuse or fail to inspect for any reason information or material placed in the Repository in respect of any lot, purchases such lot at their own risk.
- 12.5 X-rays must clearly identify the lot by endorsement on the X-ray of the veterinarian or Practice, the date that the X-rays are taken, lot number, microchip number, sex, dam, brands and year of birth.
- 12.6 X-rays are to be taken no earlier than 42 days prior to the commencement of the sale.
- 12.7 Each veterinarian wishing to examine Repository information must register with Inglis as a "Registered Veterinarian" in the State in which the sale is being conducted and sign a registration and agreement form.
- 12.8 The Repository is intended for use by Registered Veterinarians on behalf of their buyer/clients, and Inglis may restrict access accordingly. A vendor may place further restrictions on access to his/her information in the Repository, as Inglis considers reasonable. Restrictions which are considered arbitrary or discriminatory may be rejected and will not apply. A vendor may request that access be limited to a panel of veterinarians identified either by name or qualifications. If a vendor wishes to restrict access to Repository information, his/her requirements must be provided to Inglis in writing with the relevant X-rays.
- 12.9 Each Registered Veterinarian is to identify the lot or lots whose information he/she wishes to examine.
- 12.10 Registered Veterinarians may view Repository information for only one lot at a time.
- 12.11 Registered Veterinarians reviewing the Repository information must not provide advice on their evaluation of the information to anyone other than their client/buyer or when seeking a professional opinion from another veterinarian.
- 12.12 Each vendor who elects to place material in the Repository warrants to Inglis and the buyer of the lot, the complete accuracy and authenticity of that material.
- 12.13 Inglis is not obligated to review the repository information and gives no warranty or assurance of any kind to the completeness, accuracy or authenticity of any repository information, and no knowledge of the contents of the repository is to be imputed to the auctioneer in any circumstances.
- 12.14 In any case where lots, for which X-rays are submitted, have undergone invasive joint or abdominal surgery, veterinary reports in respect of such surgery must be submitted with the X-rays. The vendor warrants the completeness and accuracy of any such reports.
- 12.15 All material lodged in the Repository remains the property of the veterinarian or Practice but must be left in the Repository for such a period as Inglis considers necessary. X-rays are not available for viewing once the lot has been sold except on the express written approval of both the veterinarian of the practice which took the X-rays and the vendor of the horse.
- 12.16 If the purchaser alleges a breach of any of the vendor's warranties in condition 10.1, the vendor and the purchaser must resolve their respective rights and liabilities, and the provisions of condition 10.3 and condition 11.2 apply.
- 12.17 Save as contained in these Conditions of Sale, the vendor may elect to place in the Repository historical x-rays, surgical reports and/or veterinary treatment reports of any lot(s) being offered for sale.

## **13. SPECIAL CHARACTERISTICS**

- 13.1 Windsuckers and Wobblers
  - (a) The Vendor must disclose in writing to Inglis full details of any lot which shows symptoms of being a Wobbler or Windsucker prior to the sale. Inglis will disclose this before or at the time of the sale.

- (b) If the vendor or Inglis fails to make the disclosure required by condition 13.1(a), and if, but only if, a written diagnosis from a veterinary surgeon approved by Inglis is provided by the purchaser to Inglis within 7 days of the sale, certifying that the lot is, and was at the time of the sale, a Windsucker or Wobbler, then, subject to condition 13.4, the purchaser may, within 7 days of the sale, cancel the sale by notice in writing to Inglis.

### 13.2 Roarers and Respiratory Problems:

- (a) The vendor must disclose in writing to Inglis full details of any lot which shows symptoms of being a Roarer prior to the sale. Inglis will disclose this before or at the time of the sale.
- (b) Despite any other provision of these conditions of sale or any prior custom and usage of the trade, yearlings, two-year-olds, untried racehorses and tried racehorses which are sold in this sale may be subject to a post-sale upper respiratory laryngoscopic evaluation (excluding the trachea) by a veterinary surgeon approved by Inglis obtained at the purchaser's expense within twenty-four (24) hours of the fall of the hammer.
- (c) Any upper respiratory laryngoscopic evaluation under condition 13.2(b) must be conducted prior to the horse being removed from the premises of Inglis. Weanlings and broodmares are excluded from endoscopic examinations.
- (d) If a veterinary surgeon, approved under condition 13.2(b), is of the opinion that the horse has any of the following conditions:
- i. Laryngeal neuropathy (Grossly deficient abductor function of one or both Arytenoid cartilages, Grades 4 and 5 Lane Bain Fallon Proceedings 1993);
  - ii. Rostral displacement of the palatopharyngeal arch;
  - iii. Epiglottic entrapment;
  - iv. Persistent dorsal displacement of the soft palate;
  - v. Arytenoid chondritis or arytenoid chondropathy;
  - vi. Sub epiglottic cyst(s);
  - vii. Cleft palate; or
  - viii. Any airway condition or lesion causing significant airway obstruction resulting in exercise intolerance and this/these condition(s) has/have not been announced prior to the horse being offered for sale then, subject to condition 13.4, the purchaser may cancel the sale by notice in writing to Inglis within twenty-four (24) hours of the fall of the hammer.
- (e) A charge of \$250 plus GST will be invoiced to the purchaser or their agent should he or she request their purchase be scoped by so indicating on the acknowledgement of purchase form on the iPad following the fall of the hammer. This fee covers the veterinary laryngoscopic evaluation of one lot.
- (f) Should any horse prove unable to be subjected to an upper respiratory laryngoscopic evaluation in the twenty four hours following the fall of the hammer, the purchaser will have no rights under these conditions of sale to cancel the sale. The purchaser may, through consultation with the Auctioneer appoint another veterinary surgeon to attempt the upper respiratory laryngoscopic evaluation and will have a further 24 hours in which to have this procedure performed.

### 13.3 Impaired Vision

- (a) The vendor must, prior to the sale, disclose in writing to Inglis full details of any lot which shows symptoms of having impaired vision such that it could be deemed unfit to race. Inglis will disclose this before or at the time of the sale.
- (b) Excluding broodmares, if the vendor or Inglis fails to make the disclosure required by condition 13.3(a), and if, but only if, a written diagnosis from a veterinary surgeon approved by Inglis is provided by the purchaser to Inglis within 7 days of the sale, certifying that the lot is, and was at the time of the sale, showing symptoms of impaired vision such that it could be deemed unfit to race, then, subject to condition 13.4, the purchaser may cancel the sale, within 7 days of the sale, by notice in writing to Inglis.

13.4 Inglis reserves the right to obtain a confirmatory opinion by a panel of not more than three (3) veterinary surgeons appointed by Inglis before a notice of cancellation of sale under conditions 13.1, 13.2 or 13.3 is accepted by it, and if such panel by majority denies the existence of the defect in the horse then, in the absence of agreement to the contrary by Inglis, the purchaser shall not have any right to cancel the sale.

13.5 The vendor agrees to allow the purchaser of the lot to arrange for an endoscopic examination of the horse to be carried out in accordance with these conditions of sale.



- 13.6 In the Entry Details, the description "Colt" includes a "Rig" or "Crypt-orchid", which expressions mean a male horse in which one or both testes have not descended into the scrotum from the abdomen. Any dispute on this issue shall be determined by the auctioneer, who shall be entitled (at the expense of the vendor) to obtain such veterinary advice on the issue as they consider necessary.
- 13.7 In the absence of an opinion being sought under condition 13.4, the decision of the veterinarian(s) approved or appointed, or advice obtained from a veterinarian pursuant to this condition 13 shall be binding on the parties.
- 13.8 Age of Broodmare
- (a) Mares aged 20 years and over who are not in foal will not be accepted into the sale. Mares that are aged 22 years and over will not be accepted into the sale under any circumstances whether or not in foal.
- 13.9 When a broodmare is sold as being "in foal" purchasers should note there is no guarantee that the stallion owner will offer a free return should the mare subsequently fail to produce a live foal. Purchasers are encouraged to make their own enquires prior to the lot being offered with the covering stallion's stud master. Neither the vendor or Inglis will be liable for any loss resulting in the failure of a stud to offer a free return.

#### **14. BLOOD AND DRUG TESTING**

- 14.1 Testing for anabolic androgenic steroids and selective androgen receptor modulators (SARMs) (refer to AR.17, AR.248 and AR.253 of the Australian Rules of Racing):
- (a) Despite any other provision of these conditions of sale or any prior custom and usage of the trade, yearlings, 2yo's, untried racehorses and tried racehorses may be subject to a post-sale blood sampling test conducted by a veterinary surgeon approved by Inglis obtained at the purchaser's expense on the day of the sale.
- (b) The vendor warrants that no anabolic androgenic steroids or selective androgen receptor modulators (SARMs) anabolic agents have been administered to the lot.
- (c) The vendor irrevocably authorises the auctioneer, and/or its approved veterinary surgeon, to take a blood sample from any lot following the sale of the lot through the auction ring or privately on the day of the sale.
- (d) The auctioneer may, at the request and expense of the purchaser or the Principal Racing Authority Stewards following the fall of the hammer have the blood sample of the lot analysed by the appropriate body approved by the relevant principal racing authority. Should the sample prove positive to an anabolic androgenic steroid or SARM anabolic agent then the purchaser will have the right to cancel the sale within 24 hours of being notified by the auctioneer of the results of the analysis.
- (e) The purchaser agrees to pay to the auctioneer a fee of \$600 + GST to cover direct costs in regard to testing the blood sample. If in the event, however, that for whatever reason the analysis has not been carried out, or the sample results not conveyed in writing to the auctioneer within 7 days of the sale of the lot, the purchaser will not have any right to cancel the sale.
- (f) Should the sample prove positive to an anabolic androgenic steroid or a SARM anabolic agent the auctioneer is authorised to refer the results of the blood sample test of the lot to the stewards of the principal racing authority of the State in which the sale is conducted.
- 14.2 Disclosure of Drugs and Blood Testing for Ready2Race entries:
- (a) The vendor shall disclose to the auctioneer any medication/drug administered to the lot during the seven days prior to the official breeze up gallop and shall further disclose any medication/drug including Bronchodilators (Clenbuterol) and NSAIDs (Non-Steroidal anti-inflammatories) administered in the seven days prior to the lot being offered for sale at the Inglis Ready2Race Sale. This disclosure shall be in the form of a treatment sheet and lodged at the Repository no later than 72 hours prior to the horse being offered for sale and updated as required.
- (b) The vendor irrevocably authorises the auctioneer, and/or its veterinary surgeon, to take a blood sample from any lot at the time of the breeze up and/or following the sale of the horse through the ring on the day of the sale.
- (c) The auctioneer may, at the request and expense of the purchaser following the fall of the hammer have one or both of the blood samples of the lot analysed by the appropriate body. Should any sample prove positive to any substance that the veterinary surgeon approved by Inglis feels could mask any significant defect in the lot then the purchaser will have the right to cancel the sale within 24 hours of being notified by the auctioneer of the results of the analysis unless the substance in question was listed on the treatment sheet lodged in the repository prior to the sale.
- 14.3 Testing for Bisphosphonates (refer to AR. 17 of the Australian Rules of Racing)

- (a) Despite any other provision of these conditions of sale or any prior usage of the trade, yearlings and 2yo's may be subject to a post-sale blood sampling test conducted by a veterinary surgeon approved by Inglis obtained at the purchaser's expense on the day of the sale.
- (b) The vendor warrants that no Bisphosphonates have been administered to the lot.
- (c) The vendor irrevocably authorises the auctioneer, and/or its approved veterinary surgeon, to take a blood sample from any lot following the sale of the lot through the auction ring or privately on the day of the sale.
- (d) The auctioneer may, at the request and expense of the purchaser or the Principal Racing Authority stewards following the fall of the hammer have the blood sample of the lot analysed by the appropriate body approved by the relevant principal racing authority. Should the sample prove positive to Bisphosphonates then the purchaser will have the right to cancel the sale within 24 hours of being notified by the auctioneer of the results of the analysis.
- (e) The purchaser agrees to pay the auctioneer a fee of \$600 + GST to cover direct costs in regard to testing the blood sample. If in the event, however, that for whatever reason the analysis has not been carried out, or the sample results not conveyed in writing to the auctioneer within 7 days of the sale of the lot, the purchaser will not have any right to cancel the sale.
- (f) Should the sample prove positive to Bisphosphates the auctioneer is authorised to refer the results of the blood sample test of the lot to the stewards of the principal racing authority of the State in which the sale is conducted.

## **15. GOODS AND SERVICES TAX (GST)**

- 15.1 Bidding will be on a GST exclusive basis. Where the vendor of a lot is registered for GST and the lot is sold, then subject to condition 15.4 GST will be added to the final bid price.
- 15.2 The vendor will pay GST on all supplies provided by Inglis and on all supplies provided by the auctioneer as agent.
- 15.3 Inglis is entitled to rely on all representations made to it by the vendor regarding the vendor's GST registration status.
- 15.4 Where a purchaser advises the vendor and Inglis that the sale will be GST exempt (as a result of being an export sale within the meaning of section 38-185 A New Tax System (Goods and Services Tax) Act 1999) then the sale may, subject to the agreement of the vendor, purchaser and Inglis, proceed on a GST free basis. Any such purchaser must make their own enquiries as to GST exemption requirements, and in claiming an exemption the purchaser warrants to the vendor and Inglis that all requirements necessary for the sale of the lot to be GST exempt have been or will be met. The purchaser must execute and provide all such documents as the vendor or Inglis require.
- 15.5 The vendor and the purchaser must do all things necessary to ensure that the provisions of the GST legislation are complied with in relation to each sale.
- 15.6 Inglis shall not in any circumstances have any liability or obligation to the vendor or the purchaser in relation to GST, and specifically shall not be under any obligation to pay to the vendor any amount in respect of GST on a sale unless and until Inglis has been paid the relevant GST by the purchaser.

## **16. INGLIS' POSITION**

- 16.1 If any sale is cancelled for any reason, Inglis shall remain entitled to receive its commission on the sale, and to be paid or reimbursed for all moneys owing to it by either the vendor or the purchaser, for any charges, dues (including stabling and yard dues, fees, including veterinary and entry fees) interest and any other moneys owing to Inglis.
- 16.2 Inglis 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 moneys owing to it by the vendor or the purchaser. If Inglis does not hold any moneys on behalf of the vendor, then any amounts owing to Inglis by the vendor shall be paid by the vendor to Inglis on demand.
- 16.3 Inglis shall not have any liability either to the vendor in consequence of any breach or default on the part of the purchaser, or to the purchaser in consequence of any breach or default on the part of the vendor. Inglis' liability to both the vendor and the purchaser for any negligent act or omission, or any breach or default on the part of Inglis, shall, to the extent that any such liability exists and is not effectively excluded by these 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 shall Inglis be liable for any consequential loss.
- 16.4 The Vendor and the Purchaser indemnify and will keep indemnified the Auctioneer against any claim arising out of any telephone directions or instructions given by a vendor or their agent or the Purchaser or their agent to the Auctioneer or their agents, on or before the sale of any lot where, for any reason, such telephone instructions are misinterpreted or not acted upon, for whatever reason, by the Auctioneer or its agents.

## **17. POWER OF ATTORNEY**

- 17.1 Each of the vendor and the purchaser, for the purpose of enabling the auctioneer to give full force and effect to these terms and conditions of sale, hereby irrevocably appoint the auctioneer to be their attorney, with full powers to the auctioneer to execute on their behalf any necessary documents, to give all necessary instructions, and to do all such other acts and things as may be necessary to permit the auctioneer to give full force and effect to these conditions of sale.
- 17.2 In the event of default under these conditions of sale by either the vendor or the purchaser, the vendor or purchaser (whichever is applicable) hereby irrevocably appoints Inglis as its Power of Attorney to enforce any right under these conditions of sale, to take all action and do all things necessary (including to execute on their behalf any necessary documents) to protect Inglis' interest in the lot.

## **18. WORK HEALTH AND SAFETY**

- 18.1 To the extent that a vendor or a purchaser or their employees or agents may conduct any activities on Inglis' premises then that vendor or purchaser shall be responsible, to the exclusion of Inglis, for establishing and observing appropriate occupational health and safety procedures, and for complying with any relevant legislation provisions, in relation to those activities.
- 18.2 A vendor or purchaser conducting any activities on the premises of Inglis does so at his own risk in all respects and must indemnify Inglis in respect of any claims for personal injury or damage to property which may be made against Inglis arising out of any such activities.

## **19. PRIVACY STATEMENT**

- 19.1 Each vendor and each purchaser (each a Participant), by entering a lot into or purchasing a lot (as the case may be), agree to provide Inglis with the Personal Information reasonably requested by Inglis to fulfil Inglis's legal or regulatory obligations, including Inglis's obligations under the RNSW Code of Practice.
- 19.2 Each Participant agrees and acknowledges that Inglis may:
  - (a) Collect, use and disclose Personal Information of a Participant, in accordance with Inglis's Privacy Policy:
    - i. to facilitate the auction process (including the sale and purchase of lots and preparation of related documentation and invoices);
    - ii. to verify the identity of a vendor or purchaser;
    - iii. to verify the ownership or identity of a lot before an action;
    - iv. to report any welfare concerns (however described) to any regulatory body or Racing NSW;
    - v. in connection with publishing the details of auctions, including upcoming auctions and vendors, and winning bidders and the new owner of a lot;
    - vi. to any Court or law enforcement body upon receipt of a valid request for such information;
    - vii. to otherwise fulfil any of its obligations under the RNSW Code of Practice, including disclosing a Participants' Personal Information to Racing NSW; and
    - viii. any other purpose expressly authorised or required under the Privacy Act.
  - (b) Each Participant expressly acknowledges that in the event Inglis is required to disclose the Participant's Personal Information to Racing NSW in connection with the RNSW Code of Practice, Racing NSW may make further disclosures of that Participant's Personal Information including but not limited to disclosures to government and law enforcement authorities, and that Inglis has no control over such further use and disclosure.

## **20. GENERAL**

- 20.1 Any variation to these conditions of sale must be in writing and signed by or on behalf of the parties intended to be bound by the variation.
- 20.2 If any provision in these conditions of sale is or becomes unenforceable or invalid, the remaining provisions shall not be affected but shall remain in full force and effect to the fullest extent permitted by law.
- 20.3 All conditions, guarantees and warranties expressed or implied other than those expressly contained in these terms and conditions are excluded from the sale to the extent permissible by law.
- 20.4 To the extent that section 102 of the Australian Consumer Law ("ACL") may be applicable we advise that the ACL provides the following prescribed wording is to be included in these terms and conditions: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure".

20.5 The ACL guarantees as to acceptable quality and fitness for purpose do not apply to sales by auction.

#### 20.6 FOR SALES CONDUCTED IN THE STATE OF NEW SOUTH WALES

- (a) The provisions of the Property Stock and Business Agents Act 2002 (NSW), the Sale of Goods Act 1923 (NSW), the Crimes Act 1900 (NSW), the Fair Trading Act 1987 (NSW), any equivalent legislation in other States and Territories, the Competition and Consumer Act 2010 (Cth) and any regulations under this legislation shall apply to each sale, save to the extent that any provisions of these statutes are validly excluded from these conditions of sale
- (b) These terms and conditions of sale are to be construed and shall take effect in accordance with the laws of New South Wales. All parties agree to consent to the non-exclusive jurisdiction of the Courts of New South Wales. William Inglis & Son Limited Bloodstock Salesmen & Licensed Auctioneers | Riverside Stables, Warwick Farm.

#### 20.7 FOR SALES CONDUCTED IN THE STATE OF VICTORIA

- (a) The provisions of the Estate Agents Act 1980 (VIC), the Goods Act 1958 (VIC), the Crimes Act 1958 (VIC), the Fair Trading Act, 1985 (VIC), the Competition and Consumer Act 2010 (Cth) and any regulations under this legislation shall apply to each sale, save to the extent that any provisions of these Statutes are validly excluded by these conditions.
- (b) The terms and conditions of sale are to be construed and shall take effect in accordance with the laws of Victoria. All parties agree to consent to the non-exclusive jurisdiction of the Courts of Victoria. William Inglis & Son Limited Bloodstock Salesmen & Licensed Auctioneers | Oaklands Junction, Victoria

### 21. INTERPRETATION AND DEFINITIONS

In these conditions words have the following meaning:

"Conditions" and "conditions of sale" means these conditions of sale.

"Entry Details" means the details of a lot provided to the auctioneer by the vendor for inclusion in the sale catalogue as requested in the entry form for each sale.

"Personal Information" has the same meaning as defined in the Privacy Act.

"Privacy Act" means the Privacy Act 1988 (Cth).

"Privacy Policy" means, in relation to Inglis, its privacy policy available online at: <https://inglis.com.au/privacy/>

"PMSI" means a Purchase Money Security Interest as that term is defined in the PPS Act

"PPS Act" means the Personal Property Securities Act 2009 (Cth) as amended from time to time. "PPSR" means the Personal Property Securities Register.

"Practice" means the veterinarian practice to which a veterinarian who takes X-rays for inclusion in the repository belongs

"Roarer" means a lot demonstrating laryngeal neurophy (grossly deficient abductor function of one or both arytenoid cartilages as defined by grades 4 or 5 - Lane JG. Bain-Fallon Proceedings 1993) on laryngoscopic examination. "Repository" means, in the case of sales conducted in New South Wales, the X-ray repository maintained by the auctioneer and situated is located on the mezzanine level of William Inglis hotel and in the case of sales conducted by the auctioneer in Victoria, at the X-ray repository located in the auctioneers Oaklands office complex adjacent to the rear covered parade ring.

"Racing NSW" means Racing New South Wales ABN 86 281 604 417.

"RNSW Code of Practice" means the code of practice established by Racing NSW in respect of Thoroughbred Bloodstock Auctions, of which Inglis is a signatory to, as amended from time to time.

"Secured Party" means a party holding a Security Interest affecting a Lot. "Security Interest" means a security interest as that term is defined in the PPS Act

"Windsucker" means the vice of noisily drawing in and swallowing air by a contraction of the ventral neck muscles, arching of the neck and retraction of the larynx.

"Wobbler" means a lot exhibiting ataxia and proprioceptive defects as a result of cervical vertebral stenosis. References to "a gender shall include each other gender as appropriate in the circumstances.

A reference to:

- a document or agreement includes any variation or replacement of it; and
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).