

# Excel Equine Events B.V.

## GENERAL AUCTION CONDITIONS

of Excel Equine Events B.V., established at Nuenen (version 2020)

### Article 1. Definitions

1. In these General Terms and Conditions (the “**Auction Conditions**”) the following terms shall be defined as follows:

- a. **Arbitration rules:** the arbitration rules of VB;
- b. **Article:** an article in these Auction Conditions;
- c. **Bidder:** a person bidding on Foals as a potential Buyer during the Auction;
- d. **VAT:** sales tax;
- e. **Consumer:** A Buyer who is a natural person, not acting in the performance of a profession or business;
- f. **Veterinarian:** A Veterinarian, specialised in horses;
- g. **Embryo:** An unborn Foal. Unless stated otherwise, in these Auction Conditions the Foal referred to explicitly includes an unborn foal (Embryo);
- h. **Purchase agreement:** The agreement of the buying and selling of a Foal that comes about during the Auction between the Buyer and Seller.
- i. **Purchase price:** the sum for which the Foal is allotted by the Auctioneer to the Buyer during the Auction, excluding the Auction Costs and possible VAT;
- j. **Buyer:** A natural person, cooperation or legal entity acting as buyer under a Purchase Agreement.
- k. **Delivery:** The moment the Foal is in fact physically delivered to the Buyer;
- l. **Notary:** The by VB appointed notary in whose presence the Auction takes place;
- m. **Selection Committee:** The committee that is entrusted by VB with selecting the foals;
- n. **Allotment:** the declaration of the Auctioneer to the Buyer, containing the notice that the Foal, subject to the obligation of payment of the Purchase Price plus costs, is allotted to the Buyer;
- o. **VB:** “Veuleneveling Borculo” (Foal Auction Borculo), being the trade name of Excel Equine Events B.V., with its registered office in Nuenen and listed in the trade register of the Chambers of Commerce under the number 78557054;
- p. **Auction:** The auction, organised by VB;
- q. **Auction Catalogue:** The auction catalogue of the Auction;
- r. **Auction costs:** The costs the Buyer will be charged with by VB, being 10% of the Purchase Price excluding VAT.
- s. **Auctioneer:** The by VB appointed auctioneer who is conducting the Auction.
- t. **Auction Conditions:** these General Auction Conditions as established by VB;
- u. **Seller:** A natural person, cooperation or legal entity acting as seller under a Purchase Agreement;
- v. **Request to auction:** the by VB accepted request of the seller to auction the Foal at the Auction.
- w. **Foal:** A foal selected by the Selection Committee for the Auction or, unless explicitly stated otherwise, an Embryo;
- x. **Website:** The website of VB.

2. In these General Auction Conditions, the terms as defined in the previous article are to be interpreted in accordance with the subsequent description stipulated behind them. These terms shown in singular shall have the same meaning when used in plural or vice-versa.

### Article 2. General

1. These Auction Conditions apply to all Purchase Agreements concluded during the Auction as well as all ensuing Agreements.
2. VB shall ensure that visitors of the Auction can inform themselves on these Auction Conditions a sufficient amount of time before the start of the Auction.

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3. These Auction Conditions can be found on the Website and in the Auction Catalogue. These Auction Conditions are drawn up in Dutch language and this text is binding. If the Auction Conditions are also drawn up in another language, then, should any disputes arise as to the content or purport of these Auction Conditions, only the Dutch text and its meaning within the Dutch territorial jurisdiction will be binding.
4. Each visitor of the Auction indicates by participating in the Auction, to be familiar with the Auction Conditions and to accept its contents.

### **Article 3. Preparation, execution and supervision of the Auction**

1. The preparation and execution of the Auction will be exclusively determined by VB and the Auctioneer. VB and Auctioneer specify the course of action prior to and during the Auction and have the authority to, without stating reasons, refuse individuals to participate, not auction one or more of the Foals, change the auction sequence, not recognise a bid and/or declare it invalid and suspend, restart or cancel the Auction or take any other measures they deem necessary.
2. The Auction takes place in the presence of the Notary. The Notary supervises the Auction.
3. The Auction is conducted by the Auctioneer.
4. VB and/or the Auctioneer have the right to correct mistakes (both verbal and in writing) made by them or on their behalf, whether or not at the Auction.
5. The Notary states and if necessary, makes a record of issues that occur during the Auction. In case any disputes arise during the Auction, the Notary forms a binding decision based on his observations and recordings.
6. Anyone participating in the Auction is obliged to follow the instructions and directions given by, or on behalf of, VB and/or the Auctioneer.

### **Article 4. Auction procedure**

1. The Foals are sold by overbidding and in the state in which they were allotted. The auction order of the Foals is set prior to the auction and may deviate from to the sequence stated in the Auction Catalogue. VB and/or the Auctioneer have the right to deviate from this order.
2. Bidding takes place by raising a hand or by raising the auction catalogue.
3. Unless stated otherwise prior to the Auction, by the Auctioneer, the bidding procedure will be as follows. The opening bid for Foals is € 5000.- (in words: five thousand euros). From the sum of of € 5000.- (in words: five thousand euros) to of € 10.000.- (in words: ten thousand euros), the bidding steps equal € 500.- (in words: five hundred euros) for each bid. From a sum of € 10.000.- (in words: ten thousand euros) onwards, the bidding steps equal € 1.000.- (in words: one thousand euros) for each bid.
4. Every Bidder is expected to make a bid on his/her own behalf and is bound to this bid, which is deemed unconditional and irrevocable.
5. The Foal is allotted to the highest Bidder. In case the highest Bid is declared invalid or is not honoured, the Foal may be offered up for sale in the Auction again, to be assessed and determined by VB and after prior consultation with the Seller if he/she is present or represented at the Auction.

### **Article 5. Purchase Agreement**

1. The Agreement between the Buyer and Seller goes into effect from the moment of Allotment.
2. The Purchase Agreement comes about directly and exclusively between the Buyer and the Seller.
3. The Purchase Agreement is established in writing in the designated form, that is signed by the Seller and Buyer during the Auction. In case a Buyer or Seller acts in the name of a cooperation or legal entity, this mentioned in the Purchase Agreement. The Buyer will receive a copy of the Purchase Agreement during the Auction.

### **Article 6. Payment and Delivery**

1. After Allotment of a Foal, VB draws up an invoice and the Buyer must pay the Purchase Price, plus Auction Costs and – if applicable – VAT tax to VB, to an account specified by VB. Up to the moment of Delivery, VB will hold onto this Purchase sum on behalf of the Buyer and after Delivery, VB will hold onto this sum on behalf of the Seller.

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2. If the Purchase Price of a Foal is liable to VAT Tax, this will be mentioned in the Auction Catalogue and/or auction list and on the invoice drawn up by VB.
3. In case of transfer of a Foal to another Member State of the European Union, VB can, at request of the Buyer, draw up an invoice that includes a zero VAT rate. The Buyer must comply with the necessary conditions attached to a legal intra-community transaction and the Seller is obliged to provide full cooperation. The Buyer is bound to demonstrate that this purchase is in fact a lawful intra-community transaction within three (3) months after realization of the Purchase Agreement. If application of the VAT zero-rating tariff proves to be impossible, the Buyer is obliged to immediately repay the VAT tax to VB. The Buyer indemnifies VB for any possible costs or damages that follow from not complying with the conditions attached to a legal intra-community transaction.
4. VB will pay the Purchase Sum minus the Auction Costs to the Seller on a bank account provided by the Seller, after Buyer has transferred the sum and after the Foal is delivered to the satisfaction of both Seller and Buyer. VB has the right to deduct advances between Seller and Buyer but is not obliged to.
5. In the case the Seller sells a Foal at the Auction, that may be delivered by the Seller to the Buyer immediately given its age (older than four and a half (4.5) months), the Foal will actually be delivered by the Seller to the Buyer after the Buyer has fulfilled all his financial obligations towards the Seller and VB. As soon as the Buyer has fulfilled all financial obligations, on behalf of VB a permit is provided to the Buyer, that legalizes the Delivery of the Foal by the Seller to the Buyer on the Auction site.
6. The Seller is obliged to, if and for so long, let a Foal younger than four and a half (4.5) months stay with the mare, without the Buyer owing him/her any compensation.
7. The costs and the risk of the Foal will be for the Seller as long as the Foal up till actual delivery. A Foal that is sold during the Auction at an age of four and a half (4.5) months or older, should be accepted by and delivered to the Buyer within fourteen (14) days after the Auction. A Foal that is sold during the Auction at an age of less than four and a half (4.5) months, should be accepted by and delivered to the Buyer at an age of 5 month maximum. One may only deviate from this delivery period under exceptional conditions and solely after arbitration of VB. From the day the Foal reaches the age of five (5) months, while not being delivered yet, the costs and risks of the Foal will be for the Buyer. When the Seller or the Buyer does not meet this acceptance- or delivery obligations and in fact is in default, he/she can be charged with a immediately payable fine of euro €3.000,- (in words: three thousand euros) increased with an additional fine of euro €300,- (in words: three hundred euro) for each day the default continues.
8. The Foal will be delivered by the Seller on any by Buyer specified address located in the Netherlands, except for a different agreement between Seller and Buyer, such as delivery at the Auction itself. In case the Buyer and/or Seller reside(s) outside the Netherlands, Buyer and Seller can come to another arrangement.
9. The transfer of ownership of a Foal will not precede the Buyer's fulfilment of his/her financial obligations under the Purchase Agreement.
10. The registration form of the Foal handed over by the Seller to VB prior to the auction, will remain in possession of VB until the Buyer and Seller have fulfilled their financial obligations towards each other and VB, as well as until the Foal has not actually been delivered to the Buyer.
11. In case of the sale of an Embryo, the Buyer has the opportunity to buy the Embryo including the recipient mare. The Purchase Price of the Embryo will then be increased with the purchase price of the recipient mare. The total sum must be paid in accordance with sub 1 of Article 6.
12. Any delivery that deviates from the aforementioned stipulations, are entirely at the expense and risk of the Seller. VB cannot be held responsible for any consequences of the non-compliance with the regulations of this Article 6.

### Article 7. Default

1. In case the Buyer is of the opinion that the Foal, after actual delivery, does not comply with the terms of the Purchase Agreement, he must notify the Seller via a registered letter within three (3) days after it has been established the Foal does not satisfy the conditions of the Purchase Agreement. The Buyer must send a copy of this letter to VB.
2. The Seller guarantees that the Foal sold by him/her does suffer from one of the following stable vices: windsucking, systematic weaving or crib-biting for a period of two times twenty four (24) hours after actual delivery of the Foal by Seller to Buyer.

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3. In case a Veterinarian diagnoses one of the in sub 2 of this Article mentioned stable vices and he has provided a written statement in which he/she declares the stable vice has been present before the day of actual Delivery, the Buyer has the right to turn to the competent court in order to request a termination of the agreement. The written declaration of the Veterinarian will be sent by VB to the Buyer and Seller via a registered letter.
4. If the Seller is in breach with his/her obligation to auction the Foal, such as described in Request to Auction, he/she owes VB a immediately payable fine of €25.000,- (in words: twenty five thousand euros).

### Article 8. Liability

1. VB is not liable, to the fullest extent of the law possible, for any liability towards the Buyer, the Seller or any third party in particular, but not limited to, the following cases:
  - a. The health conditions of the auctioned Foals, including osteochondrotic dissecans;
  - b. When a Foal listed in the Auction Catalogue is not offered for sale in the Auction;
  - c. Any accident or any form of damage that incurred by anyone, in the buildings or on the site of the visiting hall, the auction or where the Foals/Embryos are delivered. Entering these sites and buildings will always be at one's own risk;
  - d. Consequential damages, such as loss of profit.
2. In case of liability of VB, the total compensation is limited to the sum for which the liability insurance entered into by VB is insured actually gives claim to payment, increased by the amount of the deductible which will not be borne by the insurer according to the policy conditions. If, in any case, the insurer does not proceed to pay or if the damages are not covered by the insurer, the liability of VB is limited to the Purchase Price.
3. VB is not responsible for the accuracy of the information in the Auction Catalogue, in respect to the pedigree of the Foal. The responsibility to verify the accuracy of this information rests on the Seller and the Buyer.

### Article 9. Applicable law and dispute resolution

1. All these Auction Conditions and all agreements to which these Auction Conditions apply and any disputes arising thereunder, are governed exclusively by Dutch law, with the exception of the applicability of the Vienna Trade Treaty (CISG).
2. Any disputes which may arise as a result of the Purchase Agreement and all ensuing agreements, will be settled by arbitration as stipulated in the Arbitration Regulations. A copy of the Arbitration Regulations is available upon request at the secretariat of VB.
3. If the Buyer is a Consumer, the Buyer has the right to opt, within one (1) month, for settlement of the dispute by competent court according to the law. This period of one (1) month shall begin on the date on which VB is notified by the Buyer of the dispute via registered letter. If the Buyer let this period expire, the dispute will be settled by arbitration as stipulated in the Arbitration Regulations.
4. After the arbiters are appointed in accordance with the Arbitration Regulations, the arbitrators shall determine the period of time within the proceedings are held and in which, with the exception of unforeseen circumstances, arbitrators will give their ruling as soon as possible. This task will not come to an end before they issue a final verdict.
5. At least one (1) of the arbitrators must be a Veterinarian, graduated at the Faculty of Veterinary Medicine of the University of Utrecht.