

Excel Equine Events B.V.

GENERAL AUCTION CONDITIONS ONLINE AUCTION 2021

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

Article 1. Definitions

1. In these General Terms and Conditions Online Auction 2020 (the “**Online Auction Conditions**”) the following terms shall be defined as follows:
 - a. **Arbitration rules:** the arbitration rules of VB;
 - b. **Article:** an article in these Online Auction Conditions;
 - c. **Bidder:** a person bidding on Foals as a potential Buyer during the Online 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 Online Auction between the Buyer and Seller, in accordance with the template in Annex 1;
 - i. **Purchase price:** the sum for which the Foal is allotted by the Auctioneer to the Buyer during the Online 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 at a by Buyer indicated address, being the moment the Foal in fact exits the transportation vehicle and sets foot on the delivery address;
 - l. **Online Auction:** The online auction, organised by VB;
 - m. **Online Auction Conditions:** these Online Auction Conditions 2020 as established by VB;
 - n. **Secretariat:** the secretariat of VB with the contact details Annelou de Man, Annie M.G. Schmidtlaan 10 4207 VC Gorinchem
 - o. **Selection Committee:** The committee that is entrusted by VB with selecting the foals;
 - p. **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;
 - q. **VB:** “Veuleneiling 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;
 - r. **Auction Catalogue:** The auction catalogue of the Online Auction, which will be published on the Auction Website prior to the Online Auction;
 - s. **Auction costs:** The costs the Buyer will be charged with by VB, being 10% of the Purchase Price excluding VAT.
 - t. **Auction Website:** the website of VB on which the Online Auction shall take place, with URL: www.veuleneilingborculo.nl/online-veuleneiling;
 - u. **Seller:** A natural person, cooperation or legal entity acting as seller under a Purchase Agreement;
 - v. **Request to auction:** the by VB accepted written request of the Seller to auction the Foal at the Online Auction.
 - w. **Foal:** A foal selected by the Selection Committee for the Online Auction or, unless explicitly stated otherwise, an Embryo;
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 Online Auction Conditions apply to all Purchase Agreements concluded during the Online Auction as

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well as all ensuing Agreements.

2. VB shall ensure that visitors of the Online Auction Website can inform themselves on these Online Auction Conditions a sufficient amount of time before the start of the Online Auction.
3. These Online Auction Conditions can be found on the Auction Website. These Online Auction Conditions are drawn up in Dutch language and this text is binding. If the Online Auction Conditions are also drawn up in another language, then, should any disputes arise as to the content or purport of these Online Auction Conditions, only the Dutch text and its meaning within the Dutch territorial jurisdiction will be binding.
4. Each participant in the Online Auction indicates by partaking in the Online Auction, to be familiar with the Online Auction Conditions and to accept its contents.
5. The Seller is obliged to request his Veterinarian, no later than five (5) days prior to the start of the Online Auction, to perform a clinical examination on the Foal, based on the veterinary protocol of VB. This veterinary report is available upon request at the Secretariat. The Buyer has the right to review this veterinary report. In case a dispute arises regarding the condition of the Foal at the time of Delivery or later, the veterinary report of the Veterinarian of the Seller is leading.
6. The Seller guarantees that the Foal, around the moment of selection, around the moment of the Online Auction and at Delivery, is free of illegitimate substances, as recorded in the most recently published FEI Equine Prohibited Substances List.
7. Foals can be viewed by appointment with the Seller.

Article 3. Preparation and execution of the Online 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, extend or cancel the Auction or take any other measures they deem necessary.
2. Bidders must register digitally on the Auction Website in a manner established by VB. Every Bidder receives a username and password. By registering, Bidders indicate to be familiar with the Online Auction Conditions and to accept its contents
3. Every Bidder is responsible for his or her digital actions.
4. The Online Auction is organised by VB.
5. During the Online Auction, VB has the right to correct mistakes (both verbal and in writing) made by VB or on her behalf, whether or not at the Online Auction.
6. Anyone participating in the Auction is obliged to follow the instructions and directions given by, or on behalf of, VB and must accept that technical malfunctions may occur, which may lead a digital bid to not be properly processed.
7. VB is not bound to guarantee that the Seller may sell the Foal free and unencumbered and can transfer ownership to the Buyer. VB is not liable for any thereof resulting damages.

Article 4. Auction procedure

1. The Foals are sold by overbidding and in the state in which they were allotted.
2. Bidding takes place by digitally putting in a bid. Each Buyer is deemed to bid on his/her own behalf and is bound to his/her bid, that is deemed unconditional and irrevocable. Bidding takes place at one's own account and risk. If a Bidder is mandated by a cooperation of Buyers or a legal entity, this must be mentioned to VB at the registration of the Bidder for the Online Auction. Bidder is bound by his/her bid until a higher bid is accepted.
3. 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)

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for each bid.

4. The Online Auction closes at an in advance indicated date and time. The duration of the Online Auction is stated at the Auction Website. If in the last five (5) minutes before the specified closing time a bid is made, the closing time is (repeatedly) extended with five (5) minutes. The final closure takes place on the moment that during the last five (5) minutes after the last bid, no new bid was received.
5. The Foal is allotted to the highest Bidder. From the moment of Allotment, the Agreement between the Buyer and Seller, as stipulated in the template in Annex 1, goes into effect.
6. As soon as possible after the end of the Online Auction, VB shall send the Purchase Agreement for the Foal to the Buyer and the Seller. The Buyer and the Seller shall return the signed Purchase Agreement to VB within five (5) working days, only to record the realization of the Purchase Agreement. Not returning the signed Purchase Agreement by Buyer and/or Seller, shall have no effect on the validity of the Agreement.
7. The Purchase Agreement comes about directly and exclusively between the Buyer and the Seller. VB only assumes the role of mediator through facilitating the Auction Website.

Article 5. Consumers and online Purchase

1. For online purchases, Consumers have the legal right of withdrawal, based on article 6:230o of the Dutch Civil Code. This article gives Consumers of an online purchase the legal right to dissolve an online purchase agreement within a period of fourteen (14) days, without stating reasons. If the Buyer wishes to exercise this right, he/she is bound to notify VB and Seller by the means of sending the Model Form for dissolution, attached as **Appendix 2**, or in writing via a registered letter.
2. VB shall pay, within fourteen (14) days after the dissolution, the Purchase Price plus the Auction costs and, if applicable, VAT, back to the Buyer. Any possible value depreciation as a result of the use of the Foal, that went beyond what is necessary in order to determine the nature, characteristics and use, casu quo rideability of the Foal, shall be for the account of the Buyer and deducted from the Purchase Price to be repaid to the Buyer. For the purpose of this Article, the main principle is that the Buyer should only handle and inspect the Foal in the same manner as he would do in a physical auction.
3. Buyer is bound to return the Foal to the Seller at the account and risks of the Buyer within a period of fourteen (14) days after the dissolution.
4. During the withdrawal period of fourteen (14) days and up to the moment of return, the Buyer is obliged to take good care of the Foal and if applicable, honour reasonable instructions by the Seller.

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 and in compliance with the stipulation payment period. 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. In the event of a default on timely payment by the Buyer, VB has a right of retention on the Foal.
2. If the Purchase Price of a Foal is liable to VAT Tax, this will be mentioned both online 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. In case the Buyer is a resident of a third country (not being a Member State of the European Union), the zero-rated VAT is applicable.
5. VB will pay the Purchase Sum minus the Auction Costs to the Seller on a bank account provided by the

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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.

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 Online Auction. A Foal that is sold during the Online 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 and is not completed until actual delivery of the Foal on a by Buyer specified address.
10. During the Online Auction an Embryo can be auctioned together with the recipient mare. The Purchase Price of the Embryo will then be increased with the purchase price of the recipient mare. Consultation between Seller of the recipient mare and Buyer must in that case provide a decisive answer whether the recipient mare will be sold or leased or if another option is chosen for the use c.q. ownership of the recipient mare. The total sum shall therefore consist of the Purchase Price for the Embryo plus the Auction costs, the fee for the recipient mare and possible VAT tax and must be paid in accordance with sub 1 of Article 6
11. 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.
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 for Online Auction 2020, he/she owes VB a immediately payable fine of €25.000,- (in words: twenty five thousand euros).

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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. 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. In all cases in which the above is not applicable, the Seller and/or Buyer or a third party can submit the dispute to the arbitration committee of the Online Auction.
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 Online Auction Conditions and all agreements to which these Online 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. In the event of disagreement on the interpretation of these terms and conditions, the Dutch text is binding. The legal relationship between the organisation and the buyer/seller are subject solely to Dutch law, with the complete exclusion of the Vienna Convention on Contracts for the International Sale of Goods (CISG). Disputes, other than those subject to the judgment of the auctioneer and the notary, shall be settled exclusively by the Court Oost Brabant.