



## Bloodstock Auction USA, LLC

### TERMS AND CONDITIONS

Release Date - August 25, 2020

These Terms and Conditions (“Agreement”) govern your participation as a member of Bloodstock Auction USA, LLC. As a member, you agree to abide by these Terms and Conditions, as amended by Bloodstock Auction USA, LLC from time to time, at its absolute discretion.

## MEMBER AGREEMENT

### 1 Introduction

1.1 This website <http://www.bloodstockauction.com> (the “Site”) is operated in the United States by **Anthony J Gafa, of Bloodstock Auction USA, LLC**, with a registered business address of 251 Little Falls Drive, Wilmington, DE 19808, USA.

In these Terms and Conditions, the expressions “we”, “us” and “our” are a reference to Bloodstock Auction USA, LLC. References to “you” and “your” are to you where you have registered as a member (“Member”). Reference to “Hip” also applies as “Hips” where more than one horse is involved.

1.2 By registering to participate on this Site as a Member, you hereby agree to be bound by the terms, conditions, and the obligations set forth in this Agreement, in addition to:

- a) the Bloodstock Auction “Website Terms of Use”; and
- b) any other laws or regulations that apply to the Site, whenever you use the Services made available on the Site.

1.3 Please take the time to read these Terms and Conditions and make sure you understand them. If you do not accept the Terms and Conditions you must refrain from using this Site. Your use of the Site as a Member is deemed to signify your acceptance of the Terms and Conditions, and therefore you are bound by the Agreement.

1.4 Bloodstock Auction USA, LLC reserves the right to retract or withdraw any electronic notifications at its sole discretion as per our Terms and Conditions.

1.5 In order for your membership to be activated, you must submit to us ‘proof of identity’ in the form of a current Driver’s License, or other form of photo identification that displays your current residential address, and is deemed appropriate by us in verifying your identity. Your identification will be securely uploaded to your Member Account.

1.6 By registering to participate on this Site as a Member, you hereby provide consent for Bloodstock Auction USA, LLC to share your contact information with National or State

based Racing Authorities, however, only in circumstances where this information is a requirement to complete a sale, or if written request is made to Bloodstock Auction USA, LLC directly by a Racing Authority.

## 2 Amendment

- 2.1 We reserve the right to amend these Terms and Conditions from time to time. Amendments will be effective immediately upon publication and their availability to members via the Site. Your continued use of the Site represents an agreement by you to be bound by the Terms and Conditions as amended.

## YOUR MEMBERSHIP

### 3 Using the Site

- 3.1 We make the following services available to you through the Site (the “**Services**”):
- a) listing Horses (each a “**Hip**”) for Auction (in which case you will be deemed to be the “**Consignor**”),
  - b) viewing and bidding on Hip(s) (in which case you will be deemed to be the “**Bidder**”),
  - c) buying Hip(s) where you are the Auction Winner (in which case you will be deemed to be the “**Buyer**”), and
  - d) The listing of Horses under **Syndications** and **Stallion Directory**, where we list shares in Horses on behalf of Syndicators, and list Stallions on behalf of Studs for availability and comparison. (Refer to Clause 40).
- 3.2 You are required to register using true and correct information in order to become a Member, and only a Member may use the Services on this Site. Registration is free; however, membership does not obligate you to list or purchase horses.

### 4 Eligibility

- 4.1 Registration as a Member is only available to individuals aged 18 years and over, that are not an undischarged bankrupt (Chapter 7 or Chapter 13). By using the Site, you guarantee that you satisfy these conditions.
- 4.2 If you act on behalf of a company, trust, syndicate or other group of persons, you acknowledge that you must register to use this Site in your own name and agree to be held personally liable in the event of any non-performance or breach of any terms, conditions, or obligations contained in these Terms and Conditions.
- 4.3 If you breach any of these Terms and Conditions, we may, at our discretion, cancel or suspend your membership on a temporary or permanent basis, including all associated, secondary and re-registered membership accounts. In addition, we may claim damages against you, and you may be liable to pay damages to an aggrieved Consignor or Buyer as applicable. Breaches include, but are not be limited to:
- a) non-payment after the purchase of a Hip(s), or refusing to collect a Hip(s),

- b) providing information that is untrue, misleading, inaccurate, or incomplete; or
  - c) engaging in any form of bid manipulation.
- 4.4 We reserve the right, acting in our sole discretion and without giving reason, to refuse, suspend or revoke any membership at any time.

## 5 Log In Details

- 5.1 Upon completion of your Registration you will be provided with Log In Details (Username and Password). You must not share your Log In Details with any third party and must ensure that you log off from the Site after each use. You agree to notify us immediately if you become aware or have reasonable grounds to believe that your Username or Password have been compromised.

**Note:** If a member has Logged In to their account, and that account remains idle for a period of 3 hours, the Site will automatically end the session and Log the Member out. Please be aware of this security measure when placing bids on the Site.

- 5.2 Upon notification of Log In misuse, we will conduct an investigation and take reasonable and appropriate action where we deem necessary.
- 5.3 Notwithstanding Clause 5.2, you acknowledge that you will be held liable for any action taken by any person who has accessed the Site using your Log In details, as if you had undertaken those actions yourself, including but not limited to, any bids placed on Hip(s).

## 6 Your Conduct

- 6.1 While using the Services or any information made available on this Site, you guarantee that you will:
- a) abide by these Terms and Conditions,
  - b) not use the Site for illegal purposes, including without limitation, posting to the Site information encouraging conduct that would constitute a criminal offence,
  - c) not engage in any collusive practices, manipulate the price of, or bidding on, any Hip(s) or interfere with other Members' listings (including submitting non-genuine bids on your own, or other Member's listings),
  - d) not use the Site to engage in misleading or deceptive conduct, including on-line marketing practices and not provide false or misleading information to us or any third party,
  - e) not use any feature of the Site to send unsolicited commercial emails to Members of the Site, whether individually or as a group,
  - f) not copy, translate, reproduce, communicate to the public, adapt, vary or modify anything on the Site without our prior written consent,
  - g) not use anything on the Site for or in connection with any business or enterprise (whether for profit or otherwise) that is in competition with our business,

- h) not post to the Site or otherwise propagate material of any kind that contains computer worms, viruses, or other types of malicious or harmful programs,
- i) not take any action that imposes an unreasonable or disproportionately large load on the Site's infrastructure,
- j) not damage, modify, interfere with, disrupt, or destroy the files, data, passwords, devices or resources that belong to us or do anything that compromises the security of the Site,
- k) not use the Site in relation to the actual or proposed sale or transportation of any illegal or prohibited goods; and
- l) not engage in any action or process that may damage the Intellectual Property and or bring the brand into disrepute.

## 7 Contacting Other Members

- 7.1 **Prior to the Fall of the Hammer:** While you may contact Consignors directly for the purposes of conducting reasonable due diligence prior to bidding on any Hip(s), you agree that you will not contact a Consignor for the purposes of purchasing any Hip(s) directly, or external to the Site. Any offers to purchase the Hip(s) must be submitted as bids, confirmed and completed directly through the Site.
- 7.2 **After the Fall of the Hammer:** If you are an Auction Winner, you may submit a request to the Consignor to contact them directly. You agree, however, that you will not contact a Consignor for the purposes of completing the sale of the Hip(s) outside the Site. All offers on Hips that did not attain their reserve must be submitted through Bloodstock Auction USA, LLC.
- 7.3 We reserve the right to terminate or suspend your membership if we suspect that you are not complying with Clause 7.1 and 7.2. Any sale of a Hip(s) that was conducted while in breach of Clause 7.1 and 7.2 will be subject to sales commission. (Refer to Clause 31).

## 8 Member Feedback

- 8.1 You acknowledge that we may elect to operate a Member feedback system on the Site where Members may post comments, compliments, criticisms and other observations regarding Bidders, Buyers or Consignors. You agree that we are not responsible for any content that may appear on feedback pages of such Site and that you will not:
- a) post any comments that are dishonest, unlawful, harmful, unfair, unreasonable or cannot be substantiated,
  - b) impersonate any other person when posting material to such Site,
  - c) post or transmit any material on the Site, which is offensive, defamatory, obscene, unlawful, vulgar, harmful, threatening, abusive, harassing or otherwise reasonably objectionable; or
  - d) disrupt the flow of dialogue or otherwise act in a manner which negatively affects other Members of the Site.

- 8.2 We reserve the right to remove or refuse to post any information and or materials (in whole or in part) that we, in our sole and absolute discretion, regard to be in breach of these Terms and Conditions, or in violation of any applicable law, without notice to you.
- 8.3 You acknowledge and agree that any information or material submitted by you to such Site for inclusion in any Member feedback system is, and will be treated by us as, non-confidential and non-proprietary and that we may use such material without restriction (without your claim to any copyright), including but not limited to for the purposes of advertising our business.

## CATALOGS AND AUCTION TIMINGS

### 9 Catalogs

- 9.1 Unless otherwise notified, Auctions will be conducted **Monthly**.
- 9.2 Auction Catalogs will be released at **7:00pm (Eastern Time)** on a nominated **Thursday** of each month, with the **“Final Countdown”** commencing at **7:00pm (Eastern Time)** on the **Tuesday** immediately following the catalog release date, or at other such time as notified by us.
- 9.3 Unless otherwise notified, Auction Catalogs will remain **“Live”** for a period of five (5) full days. Bids may be placed at any time during the five (5) day period, and during the **Final Countdown**.

### 10 Auction Timings

- 10.1 During the **Final Countdown**, Hips will enter the **“Virtual Sales Ring”** in numerical Hip order, with the first Hip entering the ring at **7:00pm (Eastern Time)**.
- 10.2 Each Hip is allocated one (1) full minute in the Virtual Sales Ring, subject to Clause 12.6.
- 10.3 Members are only permitted to place a Bid(s) on Hips while the Auction Catalogue is live.

**Note:** The order that Hips appear in the catalog will be determined by Bloodstock Auction USA, LLC, and will remain at the sole discretion of the auctioneer.

## BIDDING AND PURCHASING HIP(S)

### 11 Before you Bid

- 11.1 You must be a registered Member of this Site to Bid on any Hip(s).
- 11.2 Please take care when placing a Bid on the Site, as once your Bid is placed, and accepted by the Site, it cannot be withdrawn.
- 11.3 All Hips listed on this Site are sold in their present condition, subject to all faults, imperfections, or other defects whether latent or otherwise.
- 11.4 When placing a Bid on any Hip(s), you agree that:
- a) you have relied solely on your own enquiries and investigations,

- b) you have been provided reasonable opportunity to inspect any Hip(s) listed, prior to placing a bid,
- c) you have not relied on any statement or representation made by us,
- d) you are not entitled, under any circumstances, for compensation from Bloodstock Auction USA, LLC for any faults, imperfections or other defects arising in a Hip(s) before or after sale, whether clearly visible or not,
- e) your Bid may not be the winning Bid as a reserve may be in place, or another member may have previously placed an Auto Bid that is equal to, or greater than your Bid.

**Note:** Auto Bids take precedent over all other bids of the same value. In circumstances where an Auto Bid has been placed, and it reaches its maximum value, even if that maximum bid amount is 'Matched' by another Bidder, the Auto Bid will still take precedence. In this event, to become the highest bidder, a member will need to place a bid greater than the 'Matched' amount, at the next available bidding increment.

11.5 We do not:

- a) make any warranty or representation, express, implied, or inferred, relating to the quality, standard or suitability of any Hip(s) listed on this Site,
- b) endorse or recommend any Consignor,
- c) have any obligation to prequalify or validate the accuracy or currency of any representations made by any Consignor or third party about any Hip(s) offered for Auction through the Site.

11.6 Where necessary and prior to bidding, we strongly recommend that you obtain independent professional advice that is specifically tailored to your circumstances, including but not limited to, veterinary, financial, and legal advice. In particular, if you are considering placing a Bid on any Hip(s) that are listed as pregnant broodmare(s) on this Site, it is recommended that you make contact with any applicable stallion owners, managers, or stud masters to ensure that a Live Foal Guarantee (LFG) or free return is applicable to the stallion service for the mare in question, or whether it is able to be transferred to you upon sale.

## 12 Bidding

12.1 You may only place Bids on the Site on behalf of yourself or on behalf of a Company, Trust, Syndicate, or group of persons where you have been duly authorised to do so. You acknowledge, however, that you will be held personally liable for any Bids placed on the Site accessed via your Log In Details, regardless of whether that Bid was placed on behalf of a Company, Trust, Syndicate or group of persons.

12.2 Bids will be visible on the Site and will be automatically updated as Bids occur.

12.3 The increments by which Bids will increase are set out in the table below:

Price at time Bid is placed	Minimum Bid Increments
\$0 (\$AUD)	\$1,000.00 (\$USD) Opening Bid
\$1,000.00 - \$1900.00 (\$USD)	\$100.00 (\$USD) Increments
\$2,000.00 - \$19,750.00 (\$AUD)	\$250.00 (\$USD) Increments
\$20,000.00 - \$99,500.00 (\$USD)	\$500.00 (\$USD) Increments
\$100,000.00 - \$499,000.00 (\$USD)	\$1,000.00 (\$USD) Increments

- 12.4 All Bids placed are exclusive of Local, State, or Federal Taxes where the Consignor and or Owners are registered. Information on the Consignor or Owner tax status will be made in the description of each Hip and it is your obligation to confirm this prior to bidding.
- 12.5 Bidding on advertised Hip(s) are able to be accepted up until one (1) second prior to the closing time for each Hip, subject to our right to extend the **“Fall of the Hammer”** in accordance with Clause 12.6. No bids can be accepted after this time.
- 12.6 If a Bid is placed in the final twenty (20) seconds before the Fall of the Hammer on any Hip, the Auction will automatically be extended for an additional twenty (20) second period. This process will continue until such time as the final twenty (20) seconds passes without a Bid being placed by any Bidder.
- 12.7 All Hips receive a minimum of one (1) full minute in the Virtual Sales Ring. Hips will be auctioned in numerical Hip order, and a Hip will only enter the Sales Ring once the preceding Hip has been completed, inclusive of any time extensions.
- 12.8 A Consignor may place a Bid on a Hip which they have listed. Should the Consignor be the Auction Winner of their own Lot(s), the Consignor shall be obligated to pay the Sales Commission, calculated in accordance with Clause 30, to us by the same payment method in which the Listing Fee was paid. There may be circumstances where the Consignor will be required to pay the full Purchase Price to us, and this will need to be clarified after the completion of the auction. In such circumstances, any documents held by us will be released back to the Consignor.
- 12.9 Without limiting any other conditions within this Agreement, you must not:
- a) Bid on any Hip(s) on the Site, unless you have the financial ability to pay the full Bid price for each Hip(s) (including any applicable Sales Tax, if applicable) in accordance with the payment terms specified at 14.2(c); and
  - b) place a false Bid, hinder another Bidder, or in any way intentionally disrupt an Auction.
- 12.10 We may refuse to accept any Bid that, in our opinion, is not in the best interests of the Consignor. In the event that a Bid is disputed by a Member for any reason, then we shall be the sole arbitrator, and our decision will be final.



**Note For Bidders that are located outside the United States**

Bidders located outside of the United States need to telephone Bloodstock Auction USA, LLC on +1 (800) 501-0218 in order to be verified. If contact is not made prior to bidding, Bloodstock Auction USA, LLC reserves the right to cancel or withdraw Bids at its discretion.

### **13 Reserve Not Attained**

- 13.1 Where the Consignor has set a Reserve Price, if the highest bid does not meet this Reserve Price at the Fall of the Hammer, the Hip(s) shall be classified as **“Reserve Not Attained” or “RNA”**.
- 13.2 Should a Hip(s) not attain its reserve, the Hip(s) will then be made available to Members of the Site for purchase at the Reserve Price, or at a negotiated price agreed to by the Consignor, for a further period of thirty (30) days. Sales Commission will be payable (Refer to Clause 30) to Bloodstock Auction USA, LLC should any sale occur within the stipulated thirty (30) day period after the auction.

### **14 Purchasing Horses**

- 14.1 Subject to any Reserve Price set by the Consignor, at the Fall of the Hammer, the Hip(s) will be deemed to be sold to the highest Bidder (**“Buyer” or “Auction Winner”**) and the highest Bid (as well as, any applicable Sales Tax) will be said to be the **“Purchase Price”**.
- 14.2 At the Fall of the Hammer the Buyer:
- a) subject to Clause 15, will be deemed to have entered into an unconditional contract of sale to purchase the Horse,
  - b) will not have a cooling-off period,
  - c) must pay the amount specified in the Auction listing immediately (or upon the Satisfaction of Conditions, as defined in Clause 16),
  - d) must execute and provide all such documents as the Consignor, or we, require (acting reasonably); and
  - e) must provide a copy of your proof of identity issued by a government authority, showing your name and address (Drivers Licence or other accepted form of identification).
- 14.3 In the event that there is any interference with the operation of any Auction, any decision we make as to the Auction Winner will be final and binding on all parties.
- 14.4 Once a Hip(s) has been sold under Auction conditions, no further negotiations will be conducted by Bloodstock Auction USA, LLC in relation to that sale.

### **15 Special Conditions**

- 15.1 **Cribbers and Wobblers**. If the Consignor fails to make the disclosure required at Clause 23.4(d) ii, iii, and the Hip(s) proves to be a Cribber or Wobbler within a Seven (7) Day period after the completion of the auction, then subject to the Buyer providing clear



video evidence of the Hip(s) Cribbing (with branding clearly visible), and a signed vet certificate certifying that the Hip(s) is a Cribber or Wobbler, the Buyer may elect to cancel the sale by notice in writing.

If a Hip(s) proves to be a Cribber or Wobbler and the sale is cancelled, in the absence of any alternate agreement reached between the Consignor and the Buyer, the Consignor shall be responsible for the collection of the Hip(s) from the Buyers location, and all costs associated with such collection.

## 16 Payment

- 16.1 Any amounts payable under the Auction must be paid in accordance with the Terms and Conditions of this Agreement to Bloodstock Auction USA, LLC directly. Under no circumstances shall any amounts that are due to be paid to Bloodstock Auction USA, LLC be paid by the Buyer to the Consignor directly.
- 16.2 Bloodstock Auction USA, LLC reserve the right to retract or withdraw any electronic notifications at its sole discretion as per our Terms and Conditions.

## 17 Settlement

- 17.1 The sale of any Hip(s) to the Buyer will not be finalised until the Purchase Price has been paid in full by the Buyer to us in accordance with Clause 18.
- 17.2 Upon Settlement, we shall release the registration papers for the Hip(s) to the Buyer, provided the Consignor has fulfilled their obligations under Clauses 22 & 25.

## 18 Payment Methods – Buyers

- 18.1 The following payment methods are accepted:
- a) Cash Deposit/Bank Transfer into Bloodstock Auction USA, LLC's trust account,
  - b) Credit/Debit Card (Visa, MasterCard and American Express),
  - c) Transactions processed through the Site.
- 18.2 A flat 3.5% surcharge will apply to all Visa, Mastercard and American Express Credit Card and Debit Card transactions, however no surcharge will apply to payments made by Cash Deposit, ACH Transfer, or via internet banking.
- a) In accordance with Privacy Legislation all credit card details taken over the phone will be immediately destroyed once processed.
- 18.3 Payment for the **Purchase of Hip(s)** should be made into the account listed below:

Payments – For All Auction Purchases	
Bank:	SUNTRUST
Account Name:	BLOODSTOCK AUCTION USA, LLC
Account Number:	1000263187246
ACH / ABA Number:	061000104
SWIFT / BIC:	SNTRUS3A

**Note:** This account is only to be used for the payment of funds for Auction Purchases. For payment of Listing Fees, please see Clause 24.4.

## 19 Risk

- 19.1 From the moment of a final and successful Winning Bid, at the completion of the auction, sole risk and responsibility for the Hip(s) shall be borne by the Buyer. It is at the Buyer's discretion should they elect to purchase comprehensive insurance to cover any Hip(s) for the full insurable value against all risks.

## SELLING HIPS(S)

### 20 Appointment

- 20.1 By listing any Hip(s) on this Site you authorise Bloodstock Auction USA, LLC to act as your exclusive agent:
- to list and sell the Hip(s) on consignment at Auction, and
  - in the case where a Hip(s) does not attain its reserve, and is subsequently sold through Bloodstock Auction USA, LLC, by private treaty, for a period of thirty (30) days from the Fall of the Hammer.

**Note:** Normal Sales Commission rules apply for the 30-day period following the Fall of the Hammer (Refer to Clause 31).

- 20.2 The appointment under Clause 21.1 shall commence from the date that a Hip(s) is submitted by the Consignor to us for listing on the Site to the date when all obligations of either party in respect to the listing of the Hip(s) on the Site have been discharged, unless earlier terminated in accordance with the terms of this Agreement.

**Note:** Normal Sales Commission rules apply for the 30-day period following the Fall of the Hammer (Refer to Clause 31).

### 21. Exclusivity

- 21.1 You understand that by listing any Hip(s) for sale on the Site, you are restricted from listing that Hip(s) for sale by any other means until the Fall of the Hammer and in the case where a Hip(s) does not attain its reserve, for thirty (30) days after the Fall of the Hammer.

**Note:** Normal Sales Commission rules apply for the 30-day period following the Fall of the Hammer (Refer to Clause 31).

## 22 Guarantees

22.1 When listing horses as a Consignor, you guarantee that:

- a) you are the legal owner of the Hip(s), or you have been duly authorised by the legal owner to list the Hip(s) for Auction,
- b) you have good title to the horse and can sell the horse free of any encumbrances, which may include any outstanding training and or agistment fees,
- c) the Buyer is able to obtain quiet possession on completion of the Buyer's obligations in accordance with these Terms and Conditions,
- d) the Hip(s) is not affected by drugs and is of sound health; and
- e) the description and other information provided in respect of the Hip(s) listed in advertisements and on this Site are true and correct in all respects.

## 23 Listing Hip(s) for Auction

23.1 Bloodstock Auction USA, LLC always reserves the right to accept, decline or withdraw a listing at its absolute discretion.

23.2 You must be a registered Member to list any Hip(s) for sale on this Site.

23.3 You must fill out all fields when listing a Hip(s) for Auction on the Site.

23.4 All information provided by you to us at any time must be true, correct and constitute a full disclosure of all matters that a Buyer would reasonably require to form an accurate opinion of each Hip, including but not limited to information on whether the Hip(s):

- a) is a stallion, colt, gelding or a cryptorchid (rig),
- b) is pregnant (including details of Live Foal Guarantee); if listing a pregnant mare, it is highly recommended that a certificate from a registered veterinarian dated no more than fourteen (14) day prior to the date of the Fall of the Hammer, be provided confirming the mare has tested positive to a pregnancy test,

**Note:** On purchase or pick up, if a horse advertised as being pregnant is found not to be in foal then the purchase may be cancelled the sale at the discretion of the purchaser.

- c) has a foal at foot,
- d) has any health conditions including but not limited to:
  - i. impaired vision,
  - ii. a Wobbler, has string halt, or other substantial tendon, muscle or neurological damage,
  - iii. a Cribber,
  - iv. a Roarer, or suffers from any known Respiratory Problems,

- v. any bone fractures or chips,
  - vi. any other conditions that affect racing soundness,
  - vii. the horse is suffering, or has in the past suffered from, founder, colic surgery or laminitis,
  - viii. the horse having been fired and/or de-nerved,
  - ix. the horse having undergone any form of surgical procedure, including but not limited to surgery on joints, respiratory tract or abdominal surgery,
  - x. has any history of any previous health conditions,
- e) has been treated with any medication, including any steroid, sedative or pain suppressant,
- f) requires any ongoing veterinary treatment,
- g) is currently or has been previously subject to any bans, embargoes or other restriction (for bleeding, barrier behaviour or any other reasons) imposed by any relevant horse racing authority.
- 23.5 Hip(s) must be sold with all engagements, if any.
- 23.6 You agree that you are solely responsible for listing any Hip(s) on the Site and indemnify us in the event that there is any error, omission or inaccuracy in the listing of any Hip(s).
- 23.7 All listings submitted on the Site are subject to approval by us. We reserve the right to review any listing prior to Auction to ensure compliance with the Member Agreement and shall have no obligation to list any Hip(s) which we consider to be in breach of this Member Agreement.
- 23.8 **Setting A Reserve:** If you want to make the sale of the Hip(s) subject to a Reserve, you must indicate the Reserve Price amount at the time of listing. Reserves are not disclosed at any time, unless they are met during the auction, or at the conclusion of the auction if the reserve is not attained.
- Note:** Reserves must be set in accordance with the bidding increments used by the Site in the conduct of the Auction, as indicated in the table at Clause 12.3
- 23.9 When listing a Hip(s) you agree that **during** the Final Countdown to the Fall of the Hammer we will **not** modify Reserves. You also acknowledge and agree that:
- a) Changes to Reserves may only be made during the 5 day live catalogue period, any changes during the 5-day live catalogue period will be made on the Site upon notify by you to Bloodstock Auction USA, LLC of the new Reserve,
- Note:** Changes to Reserves may not take immediate effect on the Site.
- b) Reserves cannot be removed completely during the 5-day live catalogue period; Reserves may be reduced to the next incremental bid for your Hip(s) or 'Next Bid Buys' status (Incremental Bids Clause 12.3),
  - c) Once a Reserve for your Hip(s) has been attained, no changes can be made,
  - d) Once the Final Countdown commences no changes to Hip(s) are permitted.

## 24 Listing Fee

- 24.1 You agree that a listing fee in the amount set out below (“**Listing Fee**”) shall apply to any Hip(s) listed on the Site and that, without exception, no Hip(s) shall be listed until such Listing Fee has been paid by the Consignor to us in full. Any listing fee once submitted is not refundable.

Package	Listing Fee
Gold	\$550.00 (\$USD)
Silver	\$330.00 (\$USD)
Bronze	\$220.00 (\$USD)

- 24.2 The following payment methods for Consignors are accepted:

- a) Cash Deposit or ACH Transfer into Bloodstock Auction USA, LLC.’s account,
- b) Credit Card or Debit Card (Visa, MasterCard or American Express) transactions processed through the Site.

- 24.3 A flat 3.5% surcharge will apply to all Visa, Mastercard and American Express Credit Card and Debit Card transactions, however no surcharge will apply to payments made by Cash Deposit, ACH Transfer, or via internet banking.

- a) In accordance with Privacy Legislation all credit card details taken over the phone will be immediately destroyed once processed.

- 25.4 Payment of **Listing Fee** should be made into the account listed below:

Payments – For Listing Fees	
Bank Name:	WELLS FARGO
Account Name:	BLOODSTOCK AUCTION USA, LLC
Account Number:	3255396404
ACH / ABA Number:	063107513
Wire (Domestic):	121000248
SWIFT / BIC:	WFBIUS6S

**Note:** This account is only to be used for the payment of funds for Listing Fees. For payment of Auction Purchases, please see Clause 19.3.

## 25 Documentation

- 25.1 Upon listing a Hip(s) for Auction, the Consignor must:

- a) be able to provide evidence of the discharge of any security interest(s) or encumbrance(s) over the Hip(s), or a signed statement from the Consignor

warranting that there are no security interest(s) or encumbrance(s) over the Hip(s),

- b) confirm that a Coggins and EVA Test have been completed within six (6) months prior to the listing of the horse, and that a Current Health Certificate is available, that has been completed within ten (10) days of the listing of the horse;
- c) be able to provide any documentation or veterinary reports referred to in the description of the Hip(s), or as reasonably required for a Buyer to form an accurate opinion of the Hip(s) prior to bidding;
- d) complete the online transfer of ownership process, assigning the horse to Bloodstock Auction USA, LLC; and
- e) post using any applicable documentation for the Hip(s), that would be reasonably required by Bloodstock Auction USA, LLC to facilitate the transfer of ownership to the new owner, to the address listed below:

Bloodstock Auction USA, LLC  
1800 Pembroke Drive, Suite #300, Orlando, FL 32810

or alternatively, via email to: [operations@bloodstockauction.com](mailto:operations@bloodstockauction.com)

25.2 Should the Consignor fail to complete the required online transfer process prior to the commencement of any Auction in accordance with Clause 25.1(d), Bloodstock Auction USA, LLC may (at our sole discretion) withdraw the affected Hip(s) from the Auction, or if post sale, delay or withhold Settlement from the Consignor until such time that transfer of ownership has been actioned.

25.3 Notwithstanding Clause 25.2, Bloodstock Auction USA, LLC shall be authorised on behalf of the Consignor to complete the registration and transfer process in the name of the Buyer, and to do all such actions necessary to effect the transfer of title to the Hip. The Consignor and the Buyer must execute and complete all necessary actions, to complete the sale and transfer of title to the Hip.

## **26 Date of Listing**

26.1 Clauses 22, 23, 24 and 25 must be satisfied in full by a Consignor, prior to the Hip(s) being accepted for Auction on the Site, unless otherwise agreed by us. Satisfaction must be by 6:00pm (Eastern Time) on the Thursday that is five (5) days prior to the applicable Auction's Final Countdown, as indicated in Clause 9.1.

## **27 Appointment of Power of Attorney**

27.1 Each Consignor irrevocably appoints the Director and officer of Bloodstock Auction USA, LLC as their true and lawful attorney with full power to do all such things, to take all such action, to sign and execute all such documents (including but not limited to Registration Papers), and to give such instructions as may be necessary or in our opinion desirable for the purpose of enabling us to give full effect to this Agreement and hereby agrees to ratify and affirm anything done by us as such attorney.

27.2 In Particular, the buyer authorises us under Clause 27.1 to enter into on our behalf or the buyer's behalf a binding contract with the Consignor, the terms of which will include details of the Hip(s), the purchase price and the due date for payment. A copy of the contract will be provided after the completion of the sale.

## 28 Making a Hip(s) Available for Inspection

28.1 It is recommended that Consignors allow Buyers to conduct reasonable inspections of the Hip(s) prior to the Fall of the Hammer, including but not limited to visual inspections and veterinary examinations (including X-Rays, Scopes, and Blood-Testing). Any arrangements for inspection of the Hip(s) must be arranged between the Buyer and the Consignor directly.

28.2 All scopes must be conducted prior to the completion of the auction. If a Consignor provides a Scope Report as part of a listing, it is at the Buyers discretion whether to accept this report or arrange for a new Scope to be conducted. If a Buyer elects not to conduct a new Scope, this will be taken as confirmation that the Buyer has accepted the Consignor's Scope Report.

## 29 Withdrawing a Hip(s) from an Auction

29.1 Hip(s) are not able to be removed from an Auction once listed on the Site, unless a certificate, signed by a qualified veterinarian is produced, evidencing injury to, or the death of the Hip(s). The certificate must be presented to us prior to any Hip(s) being withdrawn from the Auction.

29.2 Under no circumstances can a Consignor withdraw a Hip(s) during the Final Countdown.

29.3 Bloodstock Auction USA, LLC may, at its discretion, withdraw a Hip(s) from sale at any time, for any reason.

## 30 Sales Commission

30.1 You agree that all Sales Commissions and monies owing under any circumstances on sold Hip(s) are payable by you to Bloodstock Auction USA, LLC.

30.2 You authorise us to deduct the following Sales Commission amounts from any amounts collected from Buyers following the successful completion of any Auction on the Site, or any successful sale made during the 30 day period after the Fall of the Hammer.

Value of Highest Bid (Excluding GST)	Sales Commission Payable
\$4,999 (\$USD) or less (No Reserve Price set by the Consignor)	Nil
\$4,999 (\$USD) or less (Reserve Price is set by the Consignor)	5% of the total Purchase Price
\$5,000 (\$USD) and greater (Either Reserved or Unreserved)	5% of the total Purchase Price



## 31 Payment upon Settlement and Delivery

- 31.1 Bloodstock Auction USA, LLC will pay to the Consignor the Purchase Price less any Sales Commission payable under Clause 30, within five (5) business days of Settlement.
- 31.2 Bloodstock Auction USA, LLC reserves the right to deduct any outstanding monies from a Consignor or affiliated entities out of any Hip(s) that is sold. These funds can be dispersed at the discretion of Bloodstock Auction USA, LLC if money is outstanding from any Auction.
- 31.3 We will make the payment to the Consignor referred to in Clause 31.1, by ACH Payment into the account nominated by the Consignor at time of listing the relevant Hip(s).
- 31.4 In circumstances where the Buyer fails to pay the Purchase Price, we will take such action as we deem necessary to pursue the Buyer for payment, however, you acknowledge that we shall have no liability to make any payment to the Consignor in circumstances where we are unable to recover the Purchase Price from the Buyer.
- 31.5 Bloodstock Auction USA, LLC is entitled to retain title documents for a Hip(s) until the Purchase Price and all other moneys owed by a Buyer to the Consignor or Bloodstock Auction USA, LLC have been paid. Where the Consignor buys back a Hip, Bloodstock Auction USA, LLC may retain the registration documents until all commissions and other moneys owed by the Consignor have been paid.

## COLLECTION

### 32 Collection of Hip(s)

- 32.1 The Buyer shall, in the absence of any other arrangement with the Consignor:
- be responsible for arranging all necessary transport, and
  - collect the Hip(s) within five (5) days from the Fall of the Hammer.
- 32.2 The Consignor shall co-operate with the Buyer to allow the collection and the transportation of any Hip(s) duly purchased through the Site.
- 32.3 The Consignor agrees to keep, feed and maintain the Hip(s), to the standard at which the Hip(s) was advertised at Auction, up to the Fall of the Hammer and after the completion of a successful Auction:
- at no charge to the Buyer, for a period of five (5) days from the Fall of the Hammer; and
  - at a fair and reasonable agistment rate, that otherwise cannot exceed \$100.00 per day, for any period commencing on the sixth (6) day after the Fall of the Hammer.
- Note:** Agistment charges should only be applied in circumstances where the collection of the horse has been delayed by acts or omissions of the Buyer.
- 32.4 The Consignor must not release the Hip(s) to the Buyer until the full Purchase Price has been paid directly to Bloodstock Auction USA, LLC by the Buyer. Should the Consignor breach this term and release the Hip(s) to the Buyer prior to full payment, the Consignor agrees to become liable for any amounts (such as Sales Commission) owing to

Bloodstock Auction USA, LLC, and assumes sole responsibility for the collection of any monies from the Buyer.

- 32.5 The Consignor shall bear the sole risk and responsibility for a Hip until risk in the Hip passes to the Buyer. In accordance with Clause 10, even though the consignor is obligated to maintain the Hip(s), to the standard at which the Hip(s) was advertised at Auction, should a Hip(s) sustain an injury after the Fall of the Hammer, the Buyer will be liable for any associated veterinary costs, unless agreed otherwise.
- 32.6 In circumstances where a buyer pays for a Hip(s), and fails to make necessary arrangements for the collection of the Hip(s) within fourteen (14) days, or is otherwise not contactable, the consignor shall be permitted to re-list the Hip(s) for sale in a subsequent Auction. In such circumstances, Bloodstock Auction USA, LLC will retain the original sale proceeds, and these proceeds will be used to cover any difference in sale price, and also be applied to cover (or partially cover) any agistment costs incurred as a result of the subsequent re-listing of the Hip(s).

## SALES TAX

### 33 Collection of Sales Tax

- 33.1 Bloodstock Auction USA, LLC is a Delaware Registered Company, and provides its online auction service from the state of Delaware. As such, Delaware Sales Tax applies to all sales completed via the Bloodstockauction.com Site.
- 33.2 The Delaware (DE) state sales tax rate is currently 0%, therefore no Sales Tax will be collected by Bloodstock Auction USA, LLC in relation to sales completed on the Site.
- 33.3 It is the responsibility of the Consignor to meet all and all obligations in relation to the collection and payment of state-based sales tax pertinent to the Consignors location, or for horses that are sold by the original breeder.

## LIABILITY, INDEMNITY, RELEASE AND EXCLUSIONS

### 34 Liability

- 34.1 To the extent permitted by law the aggregate of our liability to you is limited to an amount not exceeding \$1,000.00 (One Thousand Dollars). Under no circumstances shall we be liable for any indirect or consequential losses. We provide no advice, nor do we conduct any due diligence concerning any Hip for sale on this site.

### 35 Indemnity

- 35.1 You agree to indemnify us, and hold us harmless, for and against all expenses, costs, liabilities, claims, actions, proceedings, damages, judgments and losses of any kind whatsoever (including consequential and economic losses, property loss or damage,

and damages for injury, including personal injury and or death) incurred or suffered by you arising out of, caused by, attributable to, or resulting from:

- a) any act or omission by you;
- b) your negligence; or
- c) your non-compliance with these Terms and Conditions.

### **36 Release**

36.1 To the extent permitted by the law, you agree to release, us and our current and former officers, employees and agents from all liabilities, claims, actions, proceedings, damages, judgments and losses of any kind whatsoever (including consequential and economic losses, property loss or damage, and damages for injury, including personal injury and or death) which you may incur or suffer arising out of, caused by, attributable to, or resulting from:

- a) us performing any obligation or enforcing any right under the Terms and Conditions;
- b) the act or omission of any Consignor, Bidder, Buyer or third-party Member of the Site; and
- c) the provision of the Services by us.

### **37 Exclusions**

37.1 To the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on us are excluded under this Member Agreement.

37.2 Despite the above, nothing contained in these Terms and Conditions excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under US Consumer Laws or any international consumer protection legislation, provided that, to the extent that such law permits us to limit our liability, then our liability is limited to supplying the Services again or payment of the cost of having the Services supplied again.

## **DISPUTES**

### **38 Disputes**

38.1 Both Consignor and Buyer agree that any dispute arising between them must be treated confidentially and may not be publicised in any way, shape or form including but not limited to electronic media e.g. Facebook, Instagram, Twitter and the like.

38.2 In the event of any dispute arising prior to Settlement, the aggrieved party shall contact Bloodstock Auction USA, LLC immediately in which case we will be appointed as the arbitrator of the dispute. In determining the dispute, all parties agree to provide us with

such evidence as we may reasonably require in order to mediate and settle the dispute. We may settle any dispute in such a manner as we see fit (acting reasonably).

- 38.3 Any decision reached by us in relation to the dispute, acting in our sole discretion shall be final and binding on all parties. Settlement may include, but is not limited to:
- a) upholding the terms of the Auction;
  - b) seeking from, or awarding damages to, either the Consignor or the Buyer;
  - c) re-offering the Hip(s) for sale;
  - d) In the event of any dispute arising after Settlement, such dispute must be resolved between the Consignor and Buyer directly (and between those parties only).

### 39 Failure to Pay

- 39.1 Full payment of the Purchase Price must be made by the Buyer immediately upon the Fall of the Hammer or Satisfaction of Conditions (as applicable).
- 39.2 Without limiting our rights, if the Buyer fails to pay any monies owing to us, and cleared funds are not received within forty-eight (48) hours of the Fall of the Hammer or Satisfaction of Conditions (as applicable), we will contact the Consignor and the Consignor may (in its sole discretion) elect to:
- a) **Seek Payment of the Purchase Price** (including any costs associated with late payment, including but not limited to agistment costs) from the Buyer directly, in which case we shall have no further obligations in respect of collection of any monies from the Buyer and the Sales Commission shall become immediately due and payable by the Consignor to us. Payment should be made in accordance with Clause 24;
  - b) **Cancel the Sale** (effective from the fifth (5<sup>th</sup>) day after the Fall of the Hammer), with the Consignor being entitled to re-list the Hip for Auction on the Site, in which case the Sales Commission will be payable to us (Refer to Clause 30).
- 39.3 Should the Consignor elect to cancel the sale in accordance with Clause 39.2(b), the Consignor may elect to re-list the Hip(s) for Auction on this Site. In such a case, if the Consignor subsequently sells the Hip(s) for an amount which is less than the Purchase Price achieved in the first auction for the Hip(s), the Consignor may be entitled to recover from the Original Buyer the difference between the Purchase Price for the first Auction and the Purchase Price for the second Auction, except to the extent that the Hip(s) has materially changed from the first Auction to the second Auction (for example, due to sustaining an injury).
- 39.4 In the event that a Buyer fails to pay for a Hip(s) within the required timeframe (Clause 39.1 & 39.2), and it unable to be contacted by Bloodstock Auction USA, LLC or the consignor, Bloodstockauction will automatically cancel the buyers membership to the site, and forward their details to the appropriate racing authority to restrict or ban the individual(s) from future activity within the racing industry.

In certain circumstances, non-payment matters may also be forwarded to local police for further investigation. Any action taken by us will not prevent a Consignor from exercising their rights under Clause 39.3.

## 40 Syndications & Stallion Directory

40.1 Bloodstock Auction USA, LLC provides these services to listing parties, we are not responsible for errors or omissions in listings whatsoever, all listings are the sole responsibility of the horse's owner, syndicator, or stud master.

Questions, searches, and financial arrangements are made directly through the listing party and are not the function or responsibility of Bloodstock Auction USA, LLC. Fees for listing on Syndications or the Stallion Directory are available by contacting Bloodstock Auction USA, LLC.

## GENERAL

### 41 Personal Information and Intellectual Property

41.1 You consent and authorise us to:

- a) Collect and use your personal information in accordance with the Privacy Act of 1974, for the provision of the Services;
- b) Disclose your personal information to a Consignor in the event that you are the Auction Winner of a Hip(s);
- c) Disclose your Personal Information to a Buyer if required, in the event that your Hip(s) sell at Auction;
- d) Unless otherwise advised, use your personal information for promotional, marketing, publicity, research and profiling purposes including publishing your full name and stud name (if applicable), along with the Purchase Price of any Hip(s) on the Site or such other places as we reasonably determine.
- e) Provide your contact information to any Horse Racing Authority, should this be a requirement of that authority in order to complete a sale.
- f) Disclose the reserve price, disclaim, discuss the price. Bloodstock Auction USA, LLC on all occasions has the right to disclose the price a Hip has sold for at Auction, or after Auction, at any time as so required by Bloodstock Auction USA, LLC.
- g) All materials provided to us may (as part of our commercial business practices) form part of our copyright materials and you (as a Member) agree to this use, providing us with a perpetual irrevocable licence to use all materials from you, for our commercial business needs.

## **42 Force Majeure**

42.1 We are not responsible for any loss arising out of any occurrences or conditions beyond our control, including but not limited to any flood, war, terrorism, earthquake, act of god, general strike or any other event or thing outside either party's control including any change in itinerary or schedule which precludes us from performing our obligations under these Terms and Conditions.

## **43 Survival**

43.1 Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of the Terms and Conditions. Any other term by its nature intended to survive termination of the Agreement survives the termination of the Agreement.

## **44 Severability**

44.1 Part or all of any Clause of this Agreement that is illegal or unenforceable will be severed and the remaining Terms and Conditions will continue to remain in force.

## **45 Waiver**

45.1 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **46 Governing Law**

46.1 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to its rules of conflict of laws. The member parties hereby irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States of America located in such state (the "Delaware Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in such courts), waive any objection to the laying of venue of any such litigation in the Delaware Courts and agree not to plead or claim in any Delaware Court that such litigation brought therein has been brought in any inconvenient forum.