

## Bloodstock Auction

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### MEMBER AGREEMENT

#### 1. Introduction

1.1 This website <http://www.bloodstockauction.com> (the **Site**) is operated by **Anthony Gafa Lic No 100 37 356** for **Bloodstock Auction Pty Ltd (ACN 168 939 786)** of Unit 5 10/12 Wingate Rd, Mulgrave 2756. **Bloodstock Auction Pty Ltd NZBN 942 219 4170** of Unit 4/47 Alpha St Cambridge, New Zealand 3450, is operated by **Anthony Gafa Certificate No AR0347**.

In these terms and conditions, the expressions “we”, “us” and “our” are a reference to Bloodstock Auction Pty Ltd. References to “you” are to you where you have registered as a member (“Member”). Reference to “Lot” also applies as “Lots” where more than one horse is involved.

1.2 If you register to participate on this Site as a Member, you are agreeing to be bound by the terms and conditions contained in this “**Member Agreement**” and:

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

1.3 Please take time to read these terms and conditions and make sure you understand them. If you do not accept the terms and conditions of this Member Agreement you must refrain from using this Site. Your use of the Site as a Member is deemed to signify your acceptance of an agreement to be bound by the Member Agreement.

1.4 Bloodstock Auction Pty Ltd reserve the right to retract or withdraw any electronic notifications at its sole discretion as per our terms and conditions.

1.5 As part of the registration process we may request suitable proof of identity.

#### 2. Amendment

We reserve the right to amend these terms and conditions from time to time. Amendments will be effective immediately upon the same being made by us. Your continued use of the Site represents an agreement by you to be bound by the terms and conditions as amended.

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### 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 “**Lot**”) for Auction (in which case you will be deemed to be a “**Vendor**”);
- b) viewing and bidding on Lot(s) (in which case you will be deemed to be a “**Bidder**”);
- c) buying Lot(s) in the case where you are the Auction Winner (in which case you will be deemed to be a “**Purchaser**”); and
- d) The listing of Horses under **Syndications & Stallion Directory**, whereby, we list Horses under Syndications for the purpose of buying or selling shares or Stallion Directory for Stud fees availability and comparisons of Stallions (Refer to Clause 41).

3.2 You must register your correct details with us to become a Member. Only a member may use the Services on this Site. Registration is free and does not obligate you to purchase anything.

#### 4. Eligibility

4.1 Registration as a user of the Site (“**Member**”) is available only to individuals aged 18 years old and over, who are not an undischarged bankrupt. By using the Site, you warrant that you satisfy these conditions.

4.2 If you act on behalf of a company, trust, syndicate or 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 the terms and conditions of this Member Agreement.

4.3 If you breach any of these terms and conditions, we may (at our discretion) cancel or suspend your registration on a temporary or permanent basis (including all associated secondary and re-registered membership accounts) and/or claim damages against you (and you may be liable to pay damages to an aggrieved Vendor or Purchaser as applicable). Breaches may include, without limitation, where you:

- a. do not pay for a Lot(s) and/or refuse delivery of a Lot(s);

- b. give information that is untrue, misleading, inaccurate or incomplete; or
- c. have engaged 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 registration at any time.

## **5. Log On Details**

5.1 Upon completion of your Registration you will be provided with Log On Details (Member Name and Password). You must not share your Log On 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 has been compromised.

5.2 You understand that you will be held liable for any action taken by any person who has accessed the Site using your Log On Details, as if you had undertaken those actions yourself, including but not limited to any bids placed on the Site.

## **6. Your Conduct**

6.1 While using the Services or any information made available on this Site, you warrant that you will:

- a) abide by the terms and conditions of this Member Agreement;
- 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 Lot(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; and
- k) not use the Site in relation to the actual or proposed sale or transportation of any illegal or prohibited goods.

## **7. Contacting other Members**

7.1 Prior to the Close of Auction: While you may contact Vendors directly for the purposes of conducting such reasonable enquiries as you see fit prior to bidding on any Lot(s), you agree that you will not contact a Vendor for the purposes of purchasing any Lot(s) from any Vendor directly (and not through the Site). Any offers to purchase the Lot(s) must be submitted as bids confirmed and completed directly through the Site.

7.2 After the Close of Auction: If you are the Auction Winner, you may submit a request to the Vendor to contact them directly. You agree, however, that you will not contact a Vendor for the purposes of completing the sale of the Lot(s) outside the Site. All offers on Passed In Lots must be through Bloodstock Auction Pty Ltd.

7.3 We reserve the right to terminate or suspend your Registration if we suspect that you are not complying with clauses 7.1 and 7.2. and any sale of a Lot(s) that was conducted while in breach of 7.1 and 7.2 will still be subject to the commission payable (Clause 31) to Bloodstock Auction Pty Ltd.

## **8. Feedback**

8.1 You acknowledge that we operate a Member feedback system on the Site upon which Members of the Site may post comments, compliments, criticisms and other observations regarding Bidders, Purchasers or Vendors. You agree that we are not responsible for any content appearing on the feedback pages of the 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 the 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 effects 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 the Site for inclusion in the 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.

## AUCTION TIMETABLE AND CATALOGUES

### 9. Auction Timetable

- 9.1 The final countdown in Australia to Close the Auction starts with the first lot at 19:00 AEST and shall proceed in numerical order by one (1) minute intervals, subject to Clause 12.6, on:
- a) the first Tuesday of the relevant month.
  - b) the third Tuesday of the relevant month.
- The final countdown in New Zealand to Close the Auction starts with the first lot at 19:00 NZT and shall proceed in numerical order by one (1) minute intervals, subject to Clause 12.6, on:
- c) the second Tuesday of the relevant month.
  - d) the fourth Tuesday of the relevant month.
- 9.2 Each Auction shall continue for a period of five (5) days and shall commence at 19:00 AEST in Australia & 19:00 NZT in New Zealand on the Thursday that is five days prior to the date specified in Clause 9.1.

### 10. Catalogues

A catalogue for each respective Auction shall be released on the Thursday, 5 days prior to each of the Auction Final Countdown dates listed in clause 9.1, or at such other time as notified by us. **NB:** The order the Lot(s) appear in the catalogue are at the sole discretion of Bloodstock Auction Pty Ltd.

## BIDDING AND PURCHASING LOT(S)

### 11. Before you Bid

- 11.1 You must be a registered Member of this Site to bid on any Lot(s).
- 11.2 **Please take care when making a bid on the Site, as once your Bid is placed, it cannot be withdrawn.**
- 11.3 All Lot(s) 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 Lot(s), you agree that you:
- a) must rely solely on your own enquiries and investigations;
  - b) have been given reasonable opportunity to inspect any Lot(s) listed prior to bidding.
  - c) have not relied on any statement or representation made by us.
  - d) are not entitled, under any circumstances, for compensation for any faults, imperfections or other defects arising in the Lot(s) before or after sale, whether clearly visible or not.
  - e) When an Auto Bid has been placed on any Lot(s) then it is the member's responsibility to check they are indeed the highest bidder. The first highest bid placed will always be accepted by us as the winning bid based on the official bidding records for each Lot(s).
- 11.5 We do not:
- a) make any warranty or representation, express, implied or inferred, relating to the quality, standard or suitability of any Lot(s) listed on this Site;
  - b) endorse or recommend any Vendor;
  - c) have any obligation to prequalify or validate the accuracy or currency of any representations made by any Vendor or third party about any Lot(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 particular circumstances including but not limited to veterinary, financial and legal advice. In particular, if you are considering placing a bid on Lot(s) that are listed as pregnant broodmare(s) on this Site, it is recommended that you make contact with any applicable stallion owners/managers/stud masters to ensure that a Live Foal Guarantee (LFG) or free return is applicable to the stallion service for the mare in question and whether it can be transferred on sale.

## 12. Bidding

12.1 You may only make 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-On 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 below:

Price at time of placing the Bid	Minimum Bidding Increment
\$0	\$400.00 Minimum opening bid
\$400.00 - \$1900.00	\$100.00
\$2,000.00 - \$19,750.00	\$250.00
\$20,000.00 - \$99,500.00	\$500.00
\$100,000.00 - \$499,000.00	\$1,000.00

12.4 All bids are made on a GST exclusive basis and will be subject to GST where the Vendor is registered for GST. Information on the Vendor's GST status will be made in the description of each Lot and it is your obligation to confirm this prior to bidding.

12.5 You will be able to bid on advertised Lot(s) until the second prior to the advertised closing date and time of the Auction, subject to our right to extend the Close of Auction in accordance with clause 12.6 ("Close of Auction"). No bids will be accepted after this time.

12.6 If a bid is placed in the last twenty (20) seconds prior to the Close of Auction, the Auction will be automatically extended for a further twenty (20) second period, until such time as a full twenty (20) seconds has passed without a Bid being lodged by any Bidder.

12.7 In accordance with 12.6 any additional time applied, will be applied to every Lot proceeding the affected Lot.

12.8 In Australia a Vendor may bid for any Lot which they have listed. Should the Vendor be the Auction Winner of their own Lot(s), the Vendor shall be obligated to pay the Commission, calculated in accordance with clause 31, to us by the same payment method in which the Listing Fee was paid. In such circumstances the Vendor shall have no obligation to pay the full Purchase Price to us and any documents held by us will be released back to the Vendor. NB: In New Zealand Vendors are not allowed to bid on their own Lot(s)

12.9 Without limiting any other conditions within this Member Agreement you must not:

- a) bid on any Lot(s) on the Site, unless you have the financial ability to pay the full bid price for each Lot(s) (including any applicable GST amounts); 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 Vendor.

12.11 In the event of a disputed bid, then we shall be the sole arbitrator and our decision is final.

### **Bidders outside Australia & New Zealand:**

Bidders outside of Australia &/or New Zealand need to telephone Bloodstock Auction Pty Ltd (Phone: +61 2 4560 1000) to be verified. If contact is not made prior to bidding, Bloodstock Auction Pty Ltd reserves the right to cancel or withdraw bids at its discretion.

### 13. Passing In

13.1 Where the Vendor has set a Reserve Price, if the highest bid does not meet this Reserve Price at the Close of Auction, the Lot(s) shall be said to have been passed in from Auction ("**Passed In**").

13.2 Should a Lot(s) be Passed In, the Lot(s) will be made available for negotiation to Members of the Site for purchase at the Reserve Price or agreed offer in conjunction with the Vendor, for a further period of thirty (30) days. Commission will be payable (Clause 31) to Bloodstock Auction Pty Ltd.

### 14. Purchasing Horses

14.1 Subject to any Reserve Price set by the Vendor, at the Close of Auction, the Lot(s) will be deemed to be sold to the highest Bidder ("Purchaser" or "Auction Winner") and the highest bid (as well as, any applicable GST) will be said to be the "Purchase Price".

14.2 At the Close of Auction the Purchaser:

- a) subject to clause 15 (Scoping), will be deemed to have entered into an unconditional contract for sale of 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 Vendor 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 Lot(s) is sold under Auction conditions no further negotiations will be conducted by Bloodstock Auction Pty Ltd.

### 15. Special Conditions

15.1 In the case of a Lot(s) being purchased and that Lot(s) is a Race Horse, Unraced or a Yearling, a Purchaser may elect at Close of Auction, that the Sale is conditional upon the completion of a satisfactory upper respiratory laryngoscopic evaluation (**Scope**) of the Lot(s) prior to purchase. Such election must be made by the Purchaser within twenty-four (24) hours of Close of Auction and subsequently the Purchaser shall have forty-eight (48) hours from Close of Auction to complete such scope subject to the following conditions:

15.2 Any scope must:

- a) be completed by a suitably qualified veterinarian;
- b) be arranged by the Purchaser; and
- c) take place at a location mutually agreed between the Purchaser and the Vendor (or in the case where the parties cannot agree, at the property in which the Lot resided at the Close of Auction).

15.3 The Purchaser shall be liable for any costs associated with the scoping of the Lots, including any veterinarian fees, as agreed between the parties.

15.4 If:

- a) the Vendor refuses to make the Lot available to the Purchaser for scoping, the sale can be immediately cancelled at the discretion of the Purchaser and the Vendor shall be liable to pay the Commission to us; or
- b) the Purchaser does not complete the Scope within forty-eight (48) hours of the Close of Auction, the Purchaser will be taken to have waived the condition that a scope be completed and the sale will be deemed to be unconditional.

15.5 Should any Lot return an unsatisfactory scope (as identified by the qualified veterinarian who conducted the scope in a written report in accordance with Clause 15.6), subject to Clause 15.8 the Purchaser will be given the option of cancelling the sale, in which case, we will not be entitled to any Commission.

15.6 If a veterinary surgeon is of the opinion that the horse has any of the following conditions:

- a) Laryngeal neuropathy (grossly deficient abductor function of one or both arytenoid cartilages, grades 4 and 5 Lane Bain Fallon Proceedings 1993);
- b) Rostral displacement of the palatopharyngeal arch;
- c) Epiglottic entrapment;

- d) Persistent dorsal displacement of the soft palate;
- e) Arytenoid chondritis or arytenoid chondropathy;
- f) Sub Epiglottic Cyst(s);
- g) Cleft Palate; or
- h) Any airway lesion causing significant airway obstruction resulting in exercise intolerance and this/these have not been disclosed prior to the horse being offered then the Purchaser may cancel the sale in accordance with Clause 15.5.

15.7 Should the Lot return a satisfactory scope, (as identified by the qualified veterinarian who conducted the scope in accordance with Clause 15.6), the sale will be deemed to be unconditional and the Purchaser will have no right to cancel the Sale (unless otherwise stated in this Member Agreement).

#### **15.8 Windsuckers and Wobblers.**

If the Vendor fails to make the disclosure required in Clause 24.4(d) ii, iii. and that Lot(s) proves to be a windsucker or wobbler within 7 days of the sale then subject to the Purchaser producing at his expense written evidence, signed by a veterinary surgeon certifying that the Lot(s) is a windsucker or wobbler, the Purchaser may elect to cancel the sale by notice in writing.

#### **16. Satisfaction of Conditions of Sale**

The sale of any Lot(s) shall become unconditional:

- a) if the Purchaser has not elected that the sale is conditional upon successful completion of a scope, at the Close of Auction;
- b) if the Purchaser has elected that the sale is conditional upon successful completion of a scope either:
  - i. upon the confirmation of a successful scope in accordance with clause 15 (which must be within forty-eight (48) hours of the Close of Auction);
  - ii. if the Purchaser fails to undertake a scope in accordance with clause 15, on the conclusion of the forty eighth (48th) hour from Close of Auction.

#### **17. Payment**

17.1 Any amounts payable under the Auction must be paid in accordance with the terms and conditions of this Member Agreement to Bloodstock Auction Pty Ltd directly. Under no circumstances shall any amounts that are due to be paid to Bloodstock Auction Pty Ltd be paid by the Purchaser to the Vendor directly.

17.2 Bloodstock Auction Pty Ltd reserve the right to retract or withdraw any electronic notifications at its sole discretion as per our terms and conditions.

#### **18. Settlement**

18.1 The sale of any Lot(s) to the Purchaser will not be finalised until the Purchase Price has been paid in full by the Purchaser to us in accordance with Clause 19.

18.2 Upon Settlement, we shall release the registration papers for the Lot(s) to the Purchaser, provided the Vendor has fulfilled their obligations under Clauses 24 & 26.

#### **19. Payment Methods – Purchasers**

19.1 The following payment methods are accepted:

- a) Cash Deposit/Bank Transfer into Bloodstock Auction Pty Ltd.'s bank account;
- b) Credit/Debit Card (Visa, MasterCard).
- c) Transactions processed through the Site.

19.2 A 2% surcharge will apply to all credit/debit card transactions however no surcharge will apply to payments made by cash deposit or using internet banking.

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

19.3 Purchase Price deposits into Bloodstock Auction's P/L Bank Account should be made to:

**In Australia**

Acc Name: Bloodstock Auction P/L  
BSB: 012 491  
Acc No: 400 145 612  
Branch: Bella Vista

**In New Zealand**

Acc Name: Bloodstock Auction P/L  
Acc No: 06 0193 0649 497 02  
Branch: Auckland

**NB: THIS ACCOUNT SHOULD NOT BE USED BY VENDORS TO DEPOSIT AMOUNTS FOR LISTING FEES.**

**20. Risk**

From the moment of a final & successful winning bid, sole risk and responsibility for the Lot(s) shall be borne by the Purchaser. It is the Purchaser's responsibility to purchase comprehensive insurance to cover any Lot(s) for its full insurable value against all risks from the moment of a final & successful winning bid.

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**SELLING LOT(S)**

**21. Appointment**

21.1 By listing any Lot(s) on this Site you are authorising Bloodstock Auction Pty Ltd to act as your exclusive agent to list and sell the Lot(s) on consignment at Auction and, in the case where a Lot(s) is Passed In and subsequently sold through Bloodstock Auction Pty Ltd, by private treaty for a period of thirty (30) days from the Close of Auction.

**NB:** Normal sales commission rules apply for the 30-day period following Close of Auction – please ref clause 31

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

**NB:** Normal sales commission rules apply for the 30-day period following the Close of Auction – please ref clause 31.

**22. Exclusivity**

You understand that by listing any Lot(s) for sale on the Site, you are restricted from listing that Lot(s) for sale elsewhere until the Close of Auction and in the case where a Lot(s) is Passed In, for thirty (30) days after the Close of Auction.

**NB:** Normal sales commission rules apply for the 30-day period following auction – please ref clause 31.

**23. Warranties**

When listing horses as a Vendor, you warrant that:

- a) you are the legal owner of the Lot(s) or are legally authorised to list the Lot(s) for Auction;
- b) you have good title to the Horse, can sell the horse free of any encumbrances and the Purchaser will obtain quiet possession on completion of the Purchaser's obligations under this Member Agreement;
- c) the Lot(s) is not affected by drugs and is of sound health; and
- d) the description and other information in respect of the Lot(s) listed in advertisements and on this Site are true and correct in all respects.

**24. Listing Lot(s) for Auction**

24.1 Bloodstock Auction Pty Ltd always reserves the right to accept, decline or withdraw a listing at its discretion.

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

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

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

- a) is a stallion, colt or a cryptorchid (rig);

- b) is pregnant (including details of Live Foal Guarantee); if listing a pregnant mare, it is recommended that a certificate from a registered veterinarian dated no more than two (2) weeks prior to the date of the Close of Auction, be provided confirming the mare has tested positive to a pregnancy test.  
**NB:** On purchase or pick up if a horse is found not to be in foal than purchase may be cancelled.
- 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. windsucker;
  - iv. is a roarer or suffers from any known Respiratory Problems;
  - v. suffers from laminitis;
  - vi. any bone fractures or chips;
  - vii. any other conditions affecting racing soundness;
  - viii. the horse is suffering, or has in the past suffered from, founder, colic surgery or laminitis;
  - ix. the horse having been fired and/or de-nerved.
  - x. the horse having undergone any form of surgical procedure, including but not limited to surgery on joints, respiratory tract or abdominal surgery);
  - xi. 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 horse racing authority.

24.5 Lot(s) must be sold with all engagements, if any.

24.6 You agree that you are solely responsible for listing any Lot(s) on the Site and indemnify us in the event that there is any error, omission or inaccuracy in the listing for any Lot(s).

24.7 All listings submitted on the Site are subject to approval by us. We reserve the right to review any Auction prior to listing to ensure compliance with the Member Agreement and shall have no obligation to list any Lot(s) which we consider are in breach of this Member Agreement.

24.8 **Setting A Reserve:** If you would like to make the sale of the Lot(s) subject to a Reserve, you must indicate the amount of the Reserve Price at the time of listing the Lot(s) or prior to the final countdown to Close of Auction starting time (as per clause 9.1).

24.9 When listing a Lot(s) you agree that **during** the final countdown to Close of Auction we will **not** modify Reserves.

- a) Changes to Reserves may only be done within the 5-day live catalogue period, any changes during the 5-day live catalogue period will be made on the Site when you notify Bloodstock Auction of the new Reserve (NB: changes to Reserves may not take effect on the Site immediately).
- b) Reserves cannot be remove completely during the 5-day live catalogue period; Reserves may be reduced to reflect the next incremental bid for your Lot(s) (Incremental Bids Clause 12.3).
- c) Once a Reserve for your Lot(s) has been met, no changes can be made.
- d) Once final bidding commences no changes to Lot(s) are permitted.

## 25. Listing Fee

- a. You agree that a listing fee in the amount set out below ("Listing Fee") shall apply to any Lot(s) listed on the Site and that, without exception, no Lot(s) shall be listed until such Listing Fee has been paid by the Vendor to us in full. Any listing fee once submitted is not refundable. Listing Fee quoted is based on the Auction Country the horse appears in.

Package	Listing Fee (including GST based on Auction & listing country)
Gold	\$550.00
Silver	\$330.00
Bronze	\$220.00



- b. The following payment methods for Vendors are accepted:
- I. Cash Deposit/Bank Transfer into Bloodstock Auction Pty Ltd.'s bank account
  - II. EFT into Bloodstock Auction Pty Ltd.'s bank account
  - III. Credit/ Debit Card (Visa, MasterCard) transactions processed through the Site
  - IV. Bank cheque, posted to

In <b>Australia</b>	In <b>New Zealand</b>
Attn: Accounts	Attn: Accounts
PO Box 37	PO Box 1165
Windsor NSW 2756	Cambridge NZ 3450

- c. A 2% surcharge will apply to all credit/debit card transactions however no surcharge will apply to payments made by cash deposit or using internet banking (In accordance with Privacy Legislation all credit cards details taken over the phone will be immediately destroyed once processed).

- d. Listing Fee deposits into Bloodstock Auction Pty Ltd.'s Bank Account should be made to:

In <b>Australia</b>	In <b>New Zealand</b>
Acc Name: Bloodstock Auction P/L	Acc Name: Bloodstock Auction P/L
BSB: 012 491	Acc No: 06 0193 0649 497 00
Acc No: 3897 33359	Branch: Auckland
Branch: Bella Vista	

**NB: THIS ACCOUNT SHOULD NOT BE USED BY PURCHASERS TO DEPOSIT THE PURCHASE PRICE (OR ANY PART THEREOF) OF ANY LOT(S).**

## 26. Documentation

1. Upon listing a Lot(s) for Auction, the Vendor must:
  - a) upload to the Site:
    - i. evidence of the discharge of any security interest(s) or encumbrance(s) over the Lot(s), or a signed statement from the Vendor warranting that there are no security interest(s) or encumbrance(s) over the Lot(s);
    - ii. and any other documents or veterinary reports referred to in the description of the Lot(s), or reasonably necessary for a Purchaser to arrive at an informed opinion of the Lot(s) prior to bidding.
  - b) post using registered mail:
    - i. all registration papers for the Lot and fully executed transfer of ownership documents (executed by all Owners of the Lot) to the following address by registered mail:
 

In <b>Australia:</b>	In <b>New Zealand:</b>
Bloodstock Auction Pty Ltd	Bloodstock Auction Pty Ltd
Att: Registration Papers Clerk	PO Box 1165
PO Box 37 Windsor, NSW 2756	Cambridge NZ 3450
2. Should the Vendor fail to provide the documents (or if such documents are not fully completed) required under clause 26.1 prior to the commencement of any Auction, we may (at our sole discretion) withdraw the affected Lot(s) from Auction, or withhold from the Vendor Settlement of the sale until such appropriate documents have been delivered to us.

## 27. Date of Listing

Clauses 24, 25 and 26 must be satisfied in full by any prospective Vendor, prior to the Lot(s) being accepted for Auction on the Site, unless otherwise agreed by us. Satisfaction must be by 19:00 AEST in Australia and 19:00 NZT in New Zealand on the Thursday that is five days prior to the relevant Auction's Final Countdown to the Close the Auction, as indicated in clause 9.1.

**28. Appointment of Power Of Attorney**

1. Each Vendor irrevocably appoints the Director and officer of Bloodstock Auction Pty Ltd 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 Member Agreement and hereby agrees to ratify and affirm anything done by us as such attorney.
2. In Particular the purchaser authorises us under the power of attorney to enter into on our behalf or the purchaser's behalf a binding contract with the vendor, the terms of which will include details of the Lot(s), the purchase price and the due date for payment. A copy of the contract will be provided after the completion of the sale.

**29. Making the Lot(s) available for Inspection**

It is recommended that Vendors allow Purchasers to conduct reasonable inspections of the Lot(s) prior to the Close of Auction, including but not limited to visual inspections and veterinary examinations (including X-rays, scopes, blood testing). Any arrangements for inspection of the Lot(s) must be arranged between the Purchaser and the Vendor directly.

**30. Withdrawing from an Auction**

- 30.1 No Lot(s) may be removed from the Auction after listing on the Site, unless a certificate, signed by a qualified veterinary is produced, evidencing injury to, or the death of; the Lot(s) is presented prior to the Lot(s) being withdrawn from the Auction.
- 30.2 Under no circumstances can a Vendor withdraw a Lot(s) from the final countdown to Close of Auction period.
- 30.3 Bloodstock Auction Pty Ltd may withdraw a Lot(s) from sale at any time, for any reason.

**31. Commission**

- 31.1 You agree all commissions and monies owing under any circumstances on sold Lot(s) are payable by you to Bloodstock Auction Pty Ltd on sold Lot(s).
- 31.2 You authorise us to deduct the following Commission amounts from any amounts collected by Purchasers following the successful completion of any Auction on the Site or any successful sale made during the 30 days after the Close of Auction.

Value of Highest Bid (ex GST based on horse location)	Commission Payable
\$4,999 or less (where no Reserve Price is set by the Vendor)	Nil
\$4,999 or less (where a Reserve Price is set by the Vendor)	5% of the total value of the Purchase Price
\$5,000 and over (Regardless of Reserved or Unreserved Price set by the Vendor)	5% of the total value of the Purchase Price

**32. Payment upon Settlement and Delivery**

- 32.1 We will pay to the Vendor the Purchase Price less any Commission payable under clause 31, within five (5) business days of the following occurring:
  - a. Settlement (please ref to clauses 18, 24 & 26)
  - b. Bloodstock Auction Pty Ltd reserves the right to deduct any outstanding monies from a vendor or affiliated entities out of any Lot(s) that is sold. These funds can be dispersed at the discretion of Bloodstock Auction Pty Ltd if money is outstanding from any Auction.
- 32.2 We will make the payment referred to in clause 32.1, by EFT into the account nominated by the Vendor at time of listing the relevant Lot(s).
- 32.3 In circumstances where the Purchaser fails to pay the Purchase Price, we will take such action as we deem necessary to pursue the Purchaser for payment, however, you acknowledge that we shall have no liability to make any payment to the Vendor in circumstances where we are unable to recover the Purchase Price from the Purchaser.

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**DELIVERY****33. Delivery**

- 33.1 The Purchaser shall, in the absence of other arrangements with the Vendor:
- a. be responsible for arranging transport and
  - b. take delivery of the Lot(s) within five (5) days after the completion of the final countdown to Close of Auction.
- 33.2 The Vendor shall co-operate with the Purchaser to allow the collection and the transport of any Lot(s) duly purchased through the Site.
- 33.3 The Vendor agrees to keep, feed and maintain the Lot(s), to the standard at which the Lot(s) was advertised at Auction, up to the Close of Auction and after the completion of a successful Auction:
- a. at no charge to the Purchaser, for a period of five (5) days from the Close of Auction; and
  - b. at the rate of \$100.00 plus GST per day (or part thereof) unless agreed otherwise, for any period after the first five (5) days from the Close of Auction, but only where the delivery of the horse is delayed solely by the acts or omissions of the Purchaser.
- 33.4 The Vendor must not release the Lot(s) to the Purchaser until the full Purchase Price and all other monies owing to Bloodstock Auction Pty Ltd has been paid by the Purchaser. Should the Vendor breach this term and release the Lot(s) to the Purchaser prior to full payment, the Vendor agrees to become liable for any amounts (such as Commission) owed to Bloodstock Auction and assumes sole responsibility for the collection of any monies from the Purchaser.

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**GOODS AND SERVICES TAX****34. GST**

- 34.1 Words or expressions used in this Clause 34 in relation to Australia have the meanings given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related imposition Acts or, if not so defined, then those meanings given to them in the Competition and Consumer Act 2010 (Cth). In New Zealand the Goods and Services Tax Act 1985
- 34.2 All bids made on this Site are made exclusive of GST. Where the Vendor of a Lot is registered for GST ("GST Supplier") and the Lot is sold, an amount equal to any GST payable by the GST Supplier in relation to that supply ("GST Amount") will be added to the Purchase Price and shall become due and payable by the Purchaser ("GST Recipient"). We shall be entitled to rely on all representations made by a Vendor regarding their GST status, and Purchasers are advised to make their own enquiries as to GST exemption requirements.
- 34.3 GST is also applicable on all Services provided by us through this site, in which case we shall be the "GST Supplier" and the Vendor shall be the "GST Recipient" and all Commission payments shall be deemed to be "GST Amounts".
- 34.4 The GST Amount must be paid at the same time and in the same manner as making payment of any monetary consideration on which the GST is calculated.
- 34.5 The GST Recipient's obligation to pay the GST Amount is conditional upon receipt of a tax invoice that complies with the relevant law. We shall, on behalf of the GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit to which it is entitled.
- 34.6 If an Adjustment Event occurs in respect of a Taxable Supply described in this Clause 34, an adjustment must be made to any amount paid pursuant to this Clause 34. In such circumstances we shall issue, on behalf of the GST Supplier an adjustment note for the Adjustment Event.
- 34.7 Any reference in the calculation of Consideration, or of any indemnity, reimbursement or similar amount, to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 34.8 A Party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

## LIABILITY, INDEMNITY, RELEASE AND EXCLUSIONS

### 35. Liability

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). 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 Lot for sale on this site.

### 36. Indemnity

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/damage and damages for injury, including personal injury and death) incurred or suffered by us 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 this Member Agreement.

### 37. Release

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/damage and damages for injury, including personal injury and 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 Member Agreement;
- b. the act or omission of any Vendor, Bidder, Purchaser or third party Member of the Site; and
- c. the provision of the Services by us.

### 38. Exclusions

38.1 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.

38.2 In relation to any release and/or indemnity given in favour of us, the provisions of Part 4 the Civil Liability Act 2002 (NSW), Part 9A of the Civil Liability Act 2002 (Tas) and Part 1F of the Civil Liability Act 2002 (WA) do not apply.

38.3 Despite the above, nothing contained in this Member Agreement excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian 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.

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## DISPUTES

### 39. Disputes

39.1 Both Vendor and Purchaser 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, twitter or the like.

39.2 In the event of any dispute arising prior to Settlement, the aggrieved party shall contact us immediately in which case Bloodstock Auction Pty Ltd. 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 settle the dispute. We may settle any dispute in such a manner as we see fit (acting reasonably).

39.3 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 Vendor or the Purchaser;
- c) re-offering the Lot(s) for sale;

- d) In the event of any dispute arising after Settlement, such dispute must be resolved between the Vendor and Purchaser directly (and between those parties only).

#### **40. Failure to Pay**

- 40.1 Full payment of the Purchase Price must be made by the Purchaser immediately upon the Close of Auction or Satisfaction of Conditions (as applicable).
- 40.2 Without limiting our rights if the Purchaser fails to pay any monies owing to us within forty-eight (48) hours of the Close of Auction or Satisfaction of Conditions (as applicable) we will contact the Vendor and the Vendor may elect (in its sole discretion) to:
- a. seek payment of the Purchase Price (as any costs associated with late payment, including but not limited to agistment costs) from the Purchaser directly, in which case we shall have no further obligations in respect of collection of any monies from the Purchaser and the Commission shall become immediately due and payable by the Vendor to us. Payment should be made in accordance with clause 25;
  - b. cancel the sale (effective immediately from the close of the fourth Business Day after the countdown to Close of Auction and may re-list the Lot for Auction on the Site, in which case Commission will be payable to us (refer clause 31).
- 40.3 Should the Vendor elect to cancel the sale in accordance with clause 40.2(b), the Vendor may elect to subsequently re-list the Lot(s) for Auction on this Site. In such a case if the Vendor subsequently sells the Lot(s) for an amount which is less than the Purchase Price achieved in the first auction for the Lot(s), the Vendor may be entitled to recover from the Purchaser the difference between the Purchase Price for the first Auction and the Purchase Price for the second Auction, except to the extent that the Lot(s) has materially changed from the first Auction to the second Auction (for example, due to sustaining an injury).

- 41. Syndications & Stallion Directory:** Bloodstock Auction Pty Ltd provides these services to listing parties, we are not responsible for errors or omissions in listings what so ever, all listings are the sole responsibility of the horse's owner, syndicator or stud master. Questions, searches and financial arrangements are made directly though the listing party and are not the function or responsibility of Bloodstock Auction Pty Ltd. Fees for listing on Syndications or the Stallion Directory are available by contacting Bloodstock Auction Pty Ltd.

#### **GENERAL**

#### **42. Personal Information and intellectual property**

- 42.1 You consent and authorise us to:
- a. Collect and use your personal information as defined in the (Australian Privacy Act 1988 (Cth) and (New Zealand Privacy Amendment Act 2013) for the provision of the Services;
  - b. disclose your personal information to Vendors in the event that you are the Auction Winner of any Auction;
  - c. disclose your Personal Information to a Purchaser in the event that your Lot(s) sells 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 Lot(s) on the Site or such other places as we reasonably determine.
  - e. Disclosing the reserve price, disclaim, discussing the price. Bloodstock Auction Pty Ltd on all occasions has the right to disclose the price it sold for at auction or after auction at any time as so required by Bloodstock Auction Pty Ltd.
  - f. 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.

#### **43. Force Majeure**

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 the Member Agreement.

**44. Survival**

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

**45. Severability**

Part or all of any clause of this Member Agreement that is illegal or unenforceable will be severed and the remaining terms and conditions will continue in force.

**46. Waiver**

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.

**47. Governing Law**

These Member Agreement are governed by the laws applicable in New South Wales and New Zealand all parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state and country.