

# TERMS – WARRANTIES – BUYING PROCEDURE – SETTLEMENT

## **1 GOVERNING LAW**

Triangle Sales is a division of AuctionWare LLC, a Texas Corporation fully licensed and bonded to conduct horse sales in the state of Oklahoma. AuctionWare LLC is an independent contractor regularly engaged in the business of conducting consignment sales of horses and is recognized as “sale management”. AuctionWare LLC holds no ownership interest in any horse offered for sale, and is not responsible for any liability whatsoever, including, but not limited to, the loss, damage, injury, death or illness of any horse, person or property before, during or after the sale. In the event of any legal dispute between a buyer and owner, AuctionWare LLC will occupy the position of agent for a disclosed principal and stakeholder and will be discharged from all obligation upon delivery of any property and/or funds held, to a court having jurisdiction of such dispute.

## **2 LIABILITY**

Buyers, bidders, owners and/or spectators are notified to use extreme caution while on the sale grounds, particularly while horses are being presented in the sale arena. All persons attending this sale do so at their own risk. Neither AuctionWare LLC nor any other independent contractor associated with the sale, assumes any liability whatsoever for accidents, death or injury to persons or property before, during or after the sale.

## **3 BUYER REGISTRATION/PRE-SALE PURCHASE ARRANGEMENTS**

Every potential buyer must pre-register at the sale office prior to bidding. A valid US driver's license, intended form of payment and a complete buyer registration application are required. Any new buyer and his banker should complete the Request To Purchase By Check form provided if personal checks are to be used as payment. Any buyer exceeding the amount of established credit must update buyer verification.

AuctionWare LLC reserves the right to accept or reject any request for buyer or owner participation at this sale.

Non-US Bidders – Foreign buyers are welcome. To participate please note US funds and a form of positive identification are necessary. Methods of payment accepted:

1. US Cash
2. US Cashier's Check
3. US Bank Drawn Approved Check
4. US Money Order
5. Mastercard, Visa, Discover & American Express
6. American Express Travelers Check
7. Pre-sale Escrowed US Funds Designated for Sale Purchases

**NO BANK DRAFTS ARE ACCEPTED. NO POST DATED CHECKS ARE ACCEPTED.** A 3% office processing fee will be added to all purchases, however this fee will be discounted for purchases paid by cash, cashier's check, check, money order, travelers check or escrowed funds.

#### **4 CATALOG ERRORS AND ANNOUNCEMENTS**

ALL ELIGIBILITIES AND NOMINATIONS NOTED WITHIN THE SALE CATALOG HAVE BEEN PROVIDED BY THE OWNER AND HAVE NOT BEEN VERIFIED BY AUCTIONWARE LLC.

The accuracy of all information regarding a horse's catalog page is the sole responsibility of the owner as is the certainty that all announcements regarding corrections, updates or warranties are made while horse is in the auction arena. Buyers are cautioned to pay close attention to announcements from the auction block regarding corrections or updates to the sale catalog page as such announcements take precedence over printed material. While certain information may have been procured by AuctionWare LLC from third parties on behalf of the owner, it is nonetheless solely the responsibility of the owner to verify the accuracy of such information and to make certain such changes are made public. AuctionWare LLC nor any representative thereof, assumes any responsibility or liability for errors or omissions, or for any verbal or written statement regarding the horse sold.

If a prospective buyer is not sure about an announcement made regarding a horse up for bidding, he should immediately consult with the bid spotter working that section.

#### **5 WARRANTIES & EXPRESSED LIMITED WARRANTIES**

BUYERS ARE ENCOURAGED TO PRE-INSPECT AND ARE CAUTIONED TO CAREFULLY EXAMINE ANY HORSE PRIOR TO BIDDING OR PURCHASING. PRE-SALE VETERINARY ASSISTANCE IS AVAILABLE ON THE SALE GROUNDS AT BUYERS EXPENSE.

Potential buyers, at their expense, have the option to have a veterinary examination performed on any horse prior to that horse entering the auction arena. Owner's permission must be obtained prior to any such examination.

All horses consigned to this sale are offered in accordance with the laws of the State of Oklahoma. There is no warranty, express or implied, by AuctionWare LLC, any sale staff member or the owner of any horse offered for sale as to the soundness, condition, merchantability or fitness for any particular purpose. All horses are sold "AS IS" with all existing conditions and defects except as expressly announced from the auction block or as expressly provided herein. Any guarantees announced on behalf of the owner from the auction block are strictly between owner and buyer. Owners are bound by these sale conditions as well as the consignment agreement completed upon entry to the sale. Within that consignment agreement owner represented and warranted to buyers and AuctionWare LLC the following:

- a. title to the horse free from all adverse claims to ownership, use or possession and owner agrees to defend title against all claims
- b. the horse is sound of eyes and mouth
- c. the horse is not a "cribber" or a "weaver"

- d. the sex and condition as to a stallion, gelding or ridgeling is as described in the sale catalog
- e. the pedigree and parentage of the horse is as represented
- f. the horse is suitable for the purpose it is represented
- g. the owner will disclose any and all unsound conditions, defects or bad habits the horse may have including shoe pads and scars
- h. the tail or mane extensions or any other alterations by announced at the time of sale

OWNERS ARE WARNED THAT ANY HORSE REFUSED BY THE BUYER FOR LACK OF DISCLOSURE OF ANY WARRANTY OR LIMITED WARRANTY DESCRIBED IN TERM #5 HEREIN WILL BE SUBJECT TO RETURN. UPON ANY SUCH RETURN, OWNER WILL OWE AUCTIONWARE LLC, THE CONSIGNMENT FEE PLUS THE GREATER AMOUNT OF THE 8% COMMISSION OR \$1,000.00.

## **6 BROODMARES**

No guarantees or warranties are made by AuctionWare LLC as to the pregnancy status and eventual foaling, fertility or breeding privilege of any mare offered for sale. Final pregnancy status and covering sire for any mare shall be announced from the auction block on behalf of the owner. Any mare selling "in foal" sells without return breeding privileges unless announced on behalf of the owner. Any breeding agreement is solely between the buyer and owner. Broodmares represented by an owner as "in foal" are subject to a veterinary pregnancy examination at buyer's expense immediately upon purchase and prior to removal from the auction grounds. Any broodmare found not to be as represented in the auction arena may be returned as unsold to the owner who shall then become responsible for the cost of veterinary pregnancy examination, as well as entry fee and commission.

## **7 RIGHT OF RETURN**

In the event that any horse is not as represented in the sale catalog as announced, or if owner fails to disclose at time of sale any of the limited warranties described in Paragraph 5 above, horse is subject to return by the buyer.

Within twenty-four (24) hours after the close of the sale session in which the horse is purchased, the buyer shall file with AuctionWare LLC (fax: 405-273-8959 or office@trihorse.com) a written notice of rejection along with veterinary supporting statement of condition of the horse. AuctionWare LLC may require testing by a second veterinary source of its choice to determine if the horse had the issue at the time of sale. Said veterinarian's decision will be final. If the veterinarian determines that the issue or defect(s) was present at the time of sale and was not announced, the sale of said horse shall be null and void and the owner must pay the consignment fee plus the greater amount of the 8% commission or \$1,000.00, and the cost of all veterinary services performed. If the horse is found by the second veterinarian to not have the alleged issue or defect, the sale of said horse is valid and enforceable and buyer assumes all costs associated including veterinary services. AuctionWare LLC has the right to determine what a reasonable expense is.

It is the intent of AuctionWare LLC to tape record the entire auction which shall be used to settle disputes regarding statements made about horses while in the auction arena. In the event of disputes, the final veterinary examination and tape recording will be used to settle said dispute.

## **8 UPSET BID**

Unless waived by announcement, there shall be a minimum “upset (starting) bid” of \$500.00 for any horse presented for sale. If the “upset (starting) bid” is not received, the horse shall be automatically repurchased by the owner as unsold and all expenses become due by owner to sale management, thus no horse will be sold for less than \$500.00.

## **9 OWNERS RIGHT TO BID**

This auction is conducted “with reserve”, meaning the right to bid is reserved by the owner. To protect the desired sale price for the horse, owner or its authorized agent must:

- a. be the final bidder on the horse and execute the Buyers Acknowledgement Of Purchase And Security Agreement OR
- b. deliver a fully executed official AuctionWare LLC reserve bid form to the sale office at least one hour prior to the beginning of the sale on the day the horse sells. Under this procedure, AuctionWare LLC reserves the right to bid on behalf of the owner, up to the amount of the reserve price OR
- c. make known to the Auctioneer for announcement that the horse has been repurchased or passed-out BEFORE LEAVING THE AUCTION ARENA

## **10 BIDDING PROCESS/DISPUTES**

The Auctioneer reserves the right to reject any and all bids. Should any dispute arise between two or more bidders, the Auctioneer shall settle said dispute and that decision shall be absolute, final and binding on all parties. BIDS RECEIVED AFTER THE FALL OF THE AUCTIONEER’S GAVEL ARE NOT GROUNDS FOR DISPUTE.

In case two or more bidders claim the final bid, the Auctioneer may re-open the bidding procedure and ask for advanced bids, solely between the bidders having claimed the last bid. If there is no advanced bid, the horse shall be sold to the bidder from whom the Auctioneer recognized the final bid. If the bid should be reduced below the disputed bid, the Auctioneer may re-open the bidding with the highest bidder becoming the buyer regardless of whether the final bid equals or exceeds the original disputed bid.

## **11 TITLE AND RISKS**

Title transfers immediately to the buyer at the final fall of the Auctioneer’s gavel. Title transfer includes all risk of loss including but not limited to illness, injury or death of the horse. Additionally, at title transfer, the buyer assumes all responsibility for the care and maintenance of the horse, for any loss or damage to property and for injury or death of persons caused by the horse, buyer or buyer’s employees. Additionally, buyer agrees to hold harmless AuctionWare LLC for such loss or damage.

TITLE AND RISKS ARE ASSUMED BY THE BUYER WHETHER OR NOT SETTLEMENT AND DELIVERY HAVE BEEN MADE.

## **12 BUYERS ACKNOWLEDGEMENT OF PURCHASE AND SECURITY AGREEMENT**

After making a winning bid on a horse, buyer shall remain seated and immediately complete the Buyers Acknowledgement Of Purchase And Security Agreement. The buyer should confirm the hip number and final sale price on the agreement before signing. Any mistake made by the sale clerk regarding the final bid shall be corrected immediately. All disputes regarding final bids shall be settled by Auctioneer and/or sale audio recording. The buyer must print the requested information clearly, as this document will be used for invoicing and transfer. The buyer will be given a copy which must be presented at time of settlement. Any buyer who makes a winning bid and signs the Buyers Acknowledgement Of Purchase And Security Agreement is responsible for that purchase and cannot assign new ownership to a second party unless approved by AuctionWare LLC.

## **13 RESALES**

If the highest bidder fails to immediately execute the Buyers Acknowledgement Of Purchase And Security Agreement or otherwise fails to comply with these terms or in the event of an announced mistake by the Auctioneer, AuctionWare LLC reserves the right to accept the same purchase amount from another buyer, accept the next highest bid, put the horse up for sale a second time, or retain the horse for the owner as unsold. However, nothing shall prevent AuctionWare LLC and/or the owner from pursuing whatever legal remedy may be available to compel the original buyer to perform as set out herein.

## **14 ACCOUNT SETTLEMENT**

All accounts must be paid within the specified time announced prior to the commencement of the auction. All payments must be made directly to the sale cashier and not to the owner, under any circumstance. All payments must be in the form of US currency and drawn on US banks only. Methods of payment accepted:

1. US Cash
2. US Cashier's Check
3. US Bank Drawn Approved Check
4. US Money Order
5. Mastercard, Visa, Discover & American Express
6. American Express Travelers Check
7. Pre-sale Escrowed US Funds Designated for Sale Purchases

PLEASE NOTE: All funds are cleared electronically immediately following each sale session.

NO BANK DRAFTS ARE ACCEPTED. NO POST DATED CHECKS ARE ACCEPTED. A 3% office processing fee will be added to all purchases, however this fee will be discounted for purchases paid by cash, cashier's check, check, money order, travelers check or escrowed funds.

## **15 PERSONAL CHECK LIABILITY**

Any person issuing and signing a personalized check or authorizing a credit card purchase in the State Of Oklahoma will be held liable for the amount of the check. Writers of any returned check or disputed credit card purchases will be turned over to the local district attorney and the Texas Southwestern Cattle Raisers Association and will be prosecuted to the fullest extent of the law.

In addition to a \$25.00 NSF charge there will be a \$500.00 fee for all returned checks that are not repaid by banking wire transfer within one day of the return date of the check.

## **16 DEFAULT**

Purchasers who fail in any respect whatsoever to pay for any horse under these terms shall be declared in default. Any horse purchased by a defaulter may be resold by AuctionWare LLC at public or private sale without notice for purchaser's account. Costs of such resale will be those of the defaulter. Should such resale fail to satisfy the defaulter's account in full, defaulter will immediately pay to AuctionWare LLC the amount owing or be subject to legal suit. The defaulter will be responsible for all costs, including attorney's fees incurred by AuctionWare LLC, in collection of amounts owing for horse(s) purchased or, in enforcement or interpretation of this term of sale.

## **17 LIEN/SECURITY INTEREST**

To secure the payment of the purchase price and expenses for any horse purchased, together with all other indebtedness owed or hereafter owing by the buyer to AuctionWare LLC, the buyer hereby grants a purchase money security interest and lien in and to each horse described in or covered by the Buyers Acknowledgement Of Purchase And Security Agreement and all accounts, contract rights, registration papers, breeder's certificates, records, general intangibles, proceeds and products relating thereto.

## **18 TRANSFERS/REGISTRATION CERTIFICATES**

NO REGISTRATON CERTIFICATES FOR PURCHASED HORSES WILL BE RELEASED AT THE SALE. THERE IS ABSOLUTELY NO EXCEPTION TO THIS RULE. ALL PAPERWORK WILL BE HELD BY AUCTIONWARE LLC, UNTIL BUYER'S PAYMENT BECOMES UNCONDITIONAL PAYMENT.

The transfer fee is the responsibility of the owner. Registration certificate and completed transfer will be mailed directly to the AQHA, APHA or other registry by AuctionWare LLC. Buyer will receive original registration certificate directly from that registry after the transfer process is complete. Any registration certificate being processed by the proper breed association at the time of sale, will be forwarded to AuctionWare LLC which, in turn, will be sent directly to the buyer.

## **19 HALTERS**

A complimentary shipping halter and lead will be provided for each horse sold. Buyers may pick up halters in the sale office after full account settlement has been made. DO NOT leave the auction arena with any leather show halter provided by AuctionWare LLC.

## **20 STABLE RELEASE**

To remove a horse from the sale grounds, buyer must obtain a stable release from the sale office after full settlement. Buyer must present gate security the release to remove any horse from the sale grounds. Hip number must be present and legible for horses released from sale ground.

## **21 HIP NUMBERS AND STALLS**

Leave hip number on the sale horse and leave horse in the original sale stall. Stable releases will be checked against hip number. No horse will be released from sale grounds without a legible hip number.

## **22 POST SALE REMOVAL**

All sale horses must be removed from the sale grounds by 9:00 am on the day following the last sale session. Horses on the grounds after this time remain at the risk, responsibility and expense of the buyer. Any delays in shipping must be pre-approved by sale office management. Any expenses incurred by AuctionWare LLC due to an extended stay on the grounds will be reimbursed by the buyer.