

## **COWPONY SALES, LLC TERMS & CONDITIONS**

### **TERMS AND CONDITIONS LISTED BELOW APPLY TO BOTH SELLER AND BUYER**

Please read these Terms and Conditions carefully, as they will govern your use of Cowpony Sales, LLC's (CPS) website and auction services. Those who consign and bid are bound by these Terms and Conditions, Entry Form, Health and Fitness Guarantee as amended by any posted notices, which together form the contract of sale between the successful bidder ("Buyer"), CPS, and the consignor ("Seller"). When consigning or bidding on any horse offered by CPS, the Buyer and Seller indicate acceptance of the following Terms and Conditions. Any participation in the auction binds you to agreement of these Terms and Conditions, whether you read or understand said Terms and Conditions. If you do not wish to be bound by these Terms and Conditions, you may not use the CPS website or auction services. All horses are sold subject to the following Terms and Conditions which shall control the mutual, reciprocal duties among CPS, the Seller, and the Buyer.

#### **1. PURPOSE**

- 1.1. The purpose of these Terms and Conditions is to
  - 1.1.1. Establish sale procedures
  - 1.1.2. Facilitate informed bidding
  - 1.1.3. Provide for orderly settlement of finances in completion of purchases
  - 1.1.4. Allocate rights, responsibilities, and risks
  - 1.1.5. Provide for orderly dispute resolution

#### **2. AGREEMENT**

- 2.1. I represent and agree that I am of legal age to form a binding contract.
- 2.2. I (hereinafter, referred to as Buyer) agree to these terms and conditions, and swear that all the information furnished is true and correct.
- 2.3. Buyer agrees to be responsible for any purchase made or actions taken by an Agent authorized by me to act on my behalf.
- 2.4. Buyer agrees that this registration to bid is not assignable without the express written approval of CPS.
- 2.5. Buyer & Seller agree to make any sale transaction for this entry through CPS. (Refer to Section 18.5)
- 2.6. Buyer agrees that if they have the winning, final bid, or accepted bid in auction subject to Seller Confirmation, the Buyer has entered into a binding agreement to purchase the horse.

#### **3. BUYER'S RESPONSIBILITY**

- 3.1. By placing a bid in this auction, Buyer is indicating they have examined or researched a horse to their satisfaction.
- 3.2. Prior to bidding, Buyers may
  - 3.2.1. Ask Seller for additional information
  - 3.2.2. Make an appointment with Seller to examine the horse at Seller's property
  - 3.2.3. Arrange with Seller to have a veterinarian perform pre-purchase examination
  - 3.2.4. Hire an agent or equine professional to inspect and evaluate the horse

#### **4. REPRESENTATION OF HORSE**

- 4.1. Seller is responsible for the correct representation of this entry on the entry form, including the description, entry form, health and fitness guarantee, horse information, riding and training sections of this submission, as well as in communication with potential or eventual buyers.

- 4.2. Some representations on disposition, training, talent, and handling are the opinion of the Seller and given only as an indication of the horse's capability.
- 4.3. Buyer should inspect, examine, and research the horse to their satisfaction.
- 4.4. Seller is responsible for disclosing any known conditions listed on the Health and Fitness Guarantee.
- 4.5. Seller is solely responsible for the accuracy of all information that appears in the online sale catalog and previews.
- 4.6. Buyer and Seller agree to hold CPS harmless from any claims arising out of any such inaccuracies or omissions.
- 4.7. Seller has a continuing duty to respond to the Buyer after the sale, in the event of a dispute over Seller's representation of this entry.

## 5. BROODMARES

- 5.1. For mares selling as bred, a veterinarian must check the mare for pregnancy within ten (10) days prior to listing for this sale and a statement of this examination must be provided to CPS.
- 5.2. If a mare is known to be carrying twins, it must be disclosed.
- 5.3. Any purchaser of a broodmare sold in this sale may have the mare examined by an acceptable veterinarian within three (3) business days from the end of the auction and before the horse leaves the seller's premises.
- 5.4. Any broodmare so examined whose pregnancy status is found not to be as represented in the sale catalog, may be returned to the Seller as unsold, and the Seller shall pay veterinarian's fee for examination.
- 5.5. Any Seller offering mares as being bred with a live foal guarantee or return privileges must furnish CPS, or Buyer, with written acknowledgement of this agreement signed by the stallion owner (or an authorized agent) that such privileges will be honored.
- 5.6. If the stallion owner withholds the breeder's certificate until the foal is born, the Seller must furnish a letter, signed by the stallion owner (or an authorized agent), that such certificate is free of any additional costs and indicated how the mare owner will obtain the certificate.

## 6. NO IMPLIED WARRANTIES

- 6.1. There is no warranty expressed or implied by the sales company, sponsors, or Seller, as to the performing soundness, merchantability, or fitness for any particular purpose of any horse offered in this sale, other than those made specifically by the Seller. Except as stated in Conditions 4 and 5, **ALL HORSES ARE SOLD "AS IS" WITH ALL EXISTING CONDITIONS AND DEFECTS. RESPONSIBILITY FOR THE REPRESENTATION OF THE HORSE LIES BETWEEN THE SELLER AND THE BUYER.**

## 7. BUYER'S RIGHT TO LIMITED POST-PURCHASE EXAMINATION

- 7.1. Buyer has the right to have a veterinarian perform a limited post-purchase examination, at Buyer's expense, to determine if any of the issues in Condition 4 were not disclosed.
- 7.2. The examination must be done within three (3) business days from the end of the auction and before the horse leaves the Seller's facility.
- 7.3. This examination will be limited to moving the horse for soundness on riding horses or show horses of any type and checking the reproductive tract on breeding horses.
- 7.4. Positive reaction to flexion tests and hoof testers does not constitute unsoundness, if the horse is moving sound.
- 7.5. Radiographs, flexion tests and the use of hoof testers are allowed in a pre-purchase examination, but no in the limited post-purchase exam.
- 7.6. If a performance or show horse, or prospect for such, is found to be lame at the time of the examination, the sale of the horse can be rejected without further diagnosis.
- 7.7. Any purchaser of a broodmare sold in this sale may have the mare examined by an acceptable veterinarian as a part of this limited post-purchase exam as stated in Condition 5.

7.8. A horse sold with one or more of the issues described herein and in Condition 4, which was not disclosed at the time of sale can be rejected by the buyer, upon receipt of a statement from a qualified veterinarian, establishing the existence of the condition, within 3 business days of the date of sale and before the horse leaves the Seller's facility.

7.9. If a sale is rejected, the horse will remain the property of the Seller.

## **8. DRUGS AND MEDICATION**

8.1. Seller agrees that this entry will not be given any drugs to alter soundness or temperament during this auction, including for presentation in videos, inspection by potential buyer, examination by veterinarian, or delivery to buyer.

8.2. If the entry must receive any medication as a result of an injury or illness, to protect the welfare of the entry or maintenance of any condition, this information must be provided to CPS and be disclosed in the online catalog.

## **9. RELEASE OF HORSE TO BUYER**

9.1. Seller shall not release a horse to a Buyer until Buyer has made full payment for the horse and funds have been verified.

9.2. Once bidding concludes, and CPS has collected payment from the Buyer, CPS will send to the Seller and Buyer, a confirmation email stating such.

9.3. When Buyer or transporter arrives, they will show Seller their copy of the confirmation email to confirm payment.

## **10. TRANSPORTATION FROM SELLER TO BUYER**

10.1. Buyer is responsible for cost and arrangements for transportation of horse from Seller to Buyer.

10.2. Soon after purchase, Buyer will contact Seller directly to schedule removal of horse.

## **11. COGGINS REPORT**

11.1. Seller must provide a copy of a Negative Coggins report drawn within 11 (eleven) months of the closing date of the sale.

## **12. HEALTH CERTIFICATES**

12.1. Seller will be responsible for obtaining Interstate Health Certificate for transportation.

## **13. RISK AND RESPONSIBILITY FOR HORSE**

13.1. Buyer assumes all risk, responsibility, and expense for the horse at the end of bidding.

13.2. Seller agrees to provide basic board and care for up to five (5) days at no additional charge.

13.3. Beyond five (5) days, Buyer will be responsible to pay for board, at a reasonable cost determined by Seller, plus any other expenses that may be required to maintain the horse until Buyer takes possession or has the horse picked up from the Seller.

13.4. CPS recommends the buyer obtain Full Mortality Insurance on horses immediately after purchase, however, this decision and risk rest solely on the Buyer.

## **14. RESERVE AUCTION**

14.1. This is a Reserve Auction, unless otherwise announced for a specific horse.

14.2. The right of the Seller to bid on their own horse, through the auctioneer or otherwise, is expressly reserved.

14.3. CPS reserves the right to bid, whether it is on behalf of a Seller for any minimums or reserves, as well as for their own personal purchase.

## **15. DEFINITION OF SELLING OPTIONS**

15.1. Sell with NO RESERVE or Minimum Price

15.1.1. Will sell to the highest bidder

15.2. CPS will continue to market the horse after the auction closes if the Reserve Price is not met. If a buyer comes from CPS marketing efforts within the two weeks following the close of the auction, CPS is due commission, and payments and processes should be handled by CPS as outlined in the Terms & Conditions.

## 16. BIDDING & EXTENDED BIDDING

- 16.1. Bidding will open and close at a specific time and date, which is listed for each auction.
- 16.2. A SOFT CLOSE bidding system is used.
  - 16.2.1. If bids are received within the last 4 minutes on the countdown timer on a horse, an additional 4 minutes will be added on that lot. Only after a 4-minute period passes with no additional bidding will the bidding close. A bidder may place individual bids. Alternatively, a Bidder may place maximum bids where they declare the maximum dollar amount they want to bid, and the computer will bid on their behalf until they have successfully purchased the horse or the asking price exceeds the amount of their maximum bid. CPS reserves the right to bid, whether it is on behalf of a Seller for any minimums or reserves, as well as for their own personal purchase.

## 17. BIDDING ERRORS

- 17.1. You should make sure to review all bids before and after submitting.
- 17.2. If you mistakenly increase your own bid or make a gross error, you must immediately contact the CPS office by email (we must have your request in writing).
- 17.3. We may not be able to reverse your bid.
- 17.4. We will not reverse bids that have caused another bidder to be outbid.
- 17.5. If you bid on the wrong item, we will not reverse your bid.
- 17.6. Please make sure to immediately review your bid. We will not reverse bids after the auction has begun to close.

## 18. PAYMENT BY BUYER

- 18.1. Once bidding is closed an invoice will be emailed to Buyer.
- 18.2. Payment in full must be made within 48 hours after the sale is closed.
- 18.3. Pay Cowpony Sales, LLC in all cases.
- 18.4. Forms of payment
  - 18.4.1. Credit Card (an additional 4% will be added to the final purchase price)
  - 18.4.2. Bank wire transfer
  - 18.4.3. Cashier's check or certified check (overnight)
- 18.5. In no case may any part of the purchase price be paid directly to the Seller by the Buyer, as such payment shall not be valid or entitle the buyer to obtain the horse unless Seller pays CPS the commission due.
- 18.6. A charge of \$100.00 will be made for insufficient funds or on any check that is returned.
- 18.7. Buyer agrees not to stop payment for any reason.

## 19. DEFAULT ON PURCHASE

- 19.1. If any person shall purchase a horse and not pay for it as prescribed above, CPS or consignor shall have the right to resell the horse or at their option, bring legal action.
  - 19.1.1. In the event Buyer defaults on purchase, Buyer agrees to pay CPS for any lost administrative fees (commission, advertising, etc.)
  - 19.1.2. If legal action is pursued, the buyer agrees to pay all cost of such suit together with reasonable attorney fees as fixed by the court.
  - 19.1.3. In the event of resale, the defaulting buyer agrees to pay all costs of resale and price deficiency, if any.
    - 19.1.3.1. Interest of 1-1/2% per month will be charged on the unpaid balance of any account not paid for as set forth in these conditions.

## 20. CPS DOES NOT GUARANTEE PAYMENT BY THE ONLINE BIDDER

- 20.1. Due to the nature of the electronic transaction CPS cannot guarantee the validity or performance of an Internet bidder.
- 20.2. Seller understands that CPS does not guarantee the validity, enforceability, payment, or collection of any instrument received in payment of the purchase price of any entry.

## 21. PAYMENT TO SELLER

- 21.1. CPS AGREES TO MAIL CHECKS TO THE CURRENT OWNER FOR THEIR ENTRY NO LATER THAN FIFTEEN (15) BANKING DAYS FROM THE DATE THE AUCTION ENDS OR ONCE FULL PAYMENT HAS BEEN VERIFIED AND FUNDS CLEAR THE BANK, whichever is later.
- 21.2. Payment is normally mailed on the 10<sup>th</sup> banking day after the auction. Payment will be made to Seller, as stated above, providing all registration and health papers are in order, or the purchaser has not failed to pay for the entry for any reason, or the sale of the horse is not in dispute.
- 21.3. Seller agrees that if the sale of any entry is not consummated by reason of default of the buyer or otherwise, CPS shall not be liable for the payment or collection of the purchase price or for the return of the entry. In the event a purchaser fails to pay for and receive an entry for which they placed the final bid, CPS shall not be held liable for said sale, but shall have the right to accept the same amount from another person, accept the next highest bid or put the entry up for sale again.

## 22. REGISTRATION PAPERS

- 22.1. Will be held by CPS until all payments clear the bank (up to 21 days) at which time they will be mailed, with completed transfer reports to AQHA, or if another breed, to the buyer directly.
- 22.2. Registration Papers may be held by CPS in the event transportation arrangements are not complete, or board fees have been accrued by the buyer.
- 22.3. Papers will be released when a horse has been transported and/or all fees have been paid to the seller.
- 22.4. If any buyer desires to obtain papers immediately, the horse or horses must be paid for with cashier's or Official Bank check, or bank wire.

## 23. HYPP STATUS

- 23.1. For horses descended from the Quarter Horse stallion IMPRESSIVE, (AQHA Reg. No. 076724): 1.) If horse has been tested for HYPP ("Hyperkalemic Periodic Paralysis"), the Seller shall notify CPS of the results of such test and the results will be stated.

## 24. NO GUARANTEE OF SERVICE

- 24.1. CPS does not guarantee or covenant that the Auction technology, the website, or any related services will meet the Buyer's requirements or be uninterrupted or error-free.
- 24.2. CPS does not guarantee real-time performance of any service or that it will execute all online or absentee bids.

## 25. WITHHOLDING FUNDS

- 25.1. Buyer and Seller agree that CPS shall not be required to remit to Seller or Buyer, the net proceeds of the sale of any entry which is the subject of a dispute or claim by the buyer, for misrepresentation, fraud or breach of warranty, until such dispute or claim is resolved and the proceeds of the sale have been received by CPS.
- 25.2. The responsibility to resolve such a claim lies between the Seller and the Buyer.
- 25.3. Notwithstanding any other provision hereof, should a dispute arise between the Seller and the Buyer, CPS may retain its fees and costs and may hold in escrow the balance of any proceeds of sale in its possession, as well as any titles or registration certificates, pending a resolution of the dispute.
- 25.4. Any and all legal fees and costs incurred by CPS may be deducted by CPS from the net proceeds of sale still in their possession.
- 25.5. Otherwise, the Seller and Buyer shall be jointly and severally liable for the same upon demand.

## 26. DISPUTED CONDITION & BINDING ARBITRATION

- 26.1. In the event of a dispute between the parties, a claim to enforce this Agreement of the allegation of a default, which is not resolved by agreement, the parties waive the right to

litigate the issue and agree the matter shall be submitted to binding arbitration, using a single arbitrator to be selected by the parties.

- 26.2. If the parties cannot agree on the selection of the arbitrator, they shall allow the arbitrator to be designated by CPS.
- 26.3. The arbitration shall take place in Sibley County, MN, unless mutually agreed otherwise.
- 26.4. In any procedures arising out of, regarding or related to this Agreement, the defaulting party shall pay to CPS, any cost, expense and attorney's fee incurred by CPS in such proceeding, in addition to any amounts awarded in such proceedings in event the CPS substantially prevails.
- 26.5. Buyer or Seller may bring no action, regardless of form, including arbitration, more than one year after the cause of action has accrued.
- 26.6. Should either party fail or refuse to cooperate upon a demand for arbitration, the arbitrator shall automatically declare the non-cooperative party to be the defaulting party.

## 27. INDEMNITY

- 27.1. Buyer and Seller release CPS and its representatives, from any and all responsibilities, liabilities, obligations, claims, lawsuits, or legal proceedings arising from the sale of this entry.
- 27.2. If legal action is initiated against CPS involving this entry, the Seller and Buyer agree to fully indemnify CPS from such suit, including legal fees and costs incurred by CPS.
- 27.3. Seller and Buyer agree that CPS may publish sale results including information concerning this sale transaction.

## 28. LIMITS OF LIABILITY

- 28.1. CPS shall not be liable for lost profits or any incidental, special or consequential damages whatsoever arising out of or in connection with any sale or transaction.
- 28.2. In NO event will the total liability of CPS from all damages, losses, and causes of action resulting from the Seller's or Buyer's use of the CPS website or service exceed the largest amount of funds held for their benefit.

## 29. INTERFERENCE

- 29.1. Buyer and Seller agree not to use any device, software or routine to interfere with or attempt to interfere with the functioning of this online auction.

## 30. PRIVACY POLICY

- 30.1. By registering as a bidder or consigning a horse in this auction, Buyer and Seller agree to the use of the Buyer's or Seller's information by CPS. Buyer's or Seller's information will be used by CPS to contact Buyer or Seller and for record keeping.
- 30.2. In the future, we may use email lists to contact Buyers or Sellers. We may do custom email promotions for customers, advertisers, or organizations through our Constant Contact account. If Buyer or Seller wishes to discontinue receiving these emails, contact our office or unsubscribe through Constant Contact.

## 31. SEVERABILITY

- 31.1. If any provision or portion of a provision of this agreement is held to be invalid or unenforceable for any reason, such provision or portion of a provision shall be struck and the remaining provisions shall be enforced.

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SIGNATURE

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PRINTED NAME

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DATE

Revised 7/28/2022

INITIALS: \_\_\_\_\_