

**RULES OF AUCTION AND TERMS AND CONDITIONS OF SALE**

**TO BE HELD ONLINE ON [www.foresyteauction.com](http://www.foresyteauction.com)**

**FROM 18:00 SOUTH AFRICAN STANDARD TIME ON**

**3 SEPTEMBER 2023**

**AND ENDING AT 20:00 SOUTH AFRICAN STANDARD TIME ON**

**6 SEPTEMBER 2023**

**1. THE DATE, TIME AND PLACE OF THE AUCTION**

- 1.1. These are the rules and sale terms and conditions for the FORESYTE 'ONLINE SALE BY AUCTION' of horses (**Auction**).
- 1.2. These rules of auction and the terms and conditions of sale are collectively described in this document as the **Conditions**.
- 1.3. The Auction will be held by Foresyte Stud CC (**Foresyte**) starting from 18:00 South African Standard Time on the 3rd of September 2023 and ending at 20:00 South African Standard Time on the 6th of September 2023.
- 1.4. The Auction will be conducted electronically via internet on the website portal [www.foresyteauction.co.za](http://www.foresyteauction.co.za) (the Portal).
- 1.5. The auctioneer is Foresyte Stud CC having its physical address (**Stud Farm**) at 25 Pauline Crescent, Summerveld, Kwazulu-Natal, South Africa. Foresyte can be contacted at [bonzi@mweb.co.za](mailto:bonzi@mweb.co.za).
- 1.6. Foresyte will hold the Auction using the online platform of ClipMyHorse TV Auctions, an auction house whose physical address is Am Sonnenberg 6, D-65321 Heidenrod, Germany and whose contact details are +49(0)611-36080-14.

**2. COMPLIANCE WITH THE CONSUMER PROTECTION ACT, 68 OF 2008 (CPA)**

- 2.1. Section 45(2) of the CPA says that "*When goods are put up for sale by auction in lots, each lot is, unless there is evidence to the contrary, regarded to be the subject of a separate transaction*".
- 2.2. Each sale on the Auction is subject to a reserve or upset price.
- 2.3. Foresyte and any of the other owners of horses on the Auction or their representatives may bid for any horse on Auction.
- 2.4. The rules of the Auction contained in these Conditions comply with section 45 of the CPA and the Consumer Protection Regulations, 2011 (**Regulations**).

- 2.5. The Auction will begin at the published time and will not be delayed. The period of the Auction may be extended in terms of clause 6.16.

### 3. DEFINITIONS AND THESE CONDITIONS

- 3.1. For the purposes of these Conditions a **'registered buyer'** will be referred to as **'bidder'** until a tendered bid becomes the final closing bid and Foresyte accepts that final closing bid when the **'bidder'** will be referred to as the **'buyer.'**
- 3.2. The Conditions shall be binding on each and every bidder and buyer of horses, as well as any agent of a person who is registered as a bidder and who bids or buys on behalf of another person.
- 3.3. Any person who registers as a bidder and submits an electronic bid on the Portal or makes an entry in the sales documents as defined in clause 3.5 makes a binding legal offer to purchase a horse in terms of these Conditions.
- 3.4. By registering as a bidder, the bidder is deemed to have diligently read, become thoroughly familiar with and accepted and agreed to, these Conditions and these Conditions will in their entirety be binding on any consequences of such registration, including but not limited to any sale of any horse.
- 3.5. For the purposes of these Conditions **"sale documents"** shall include any of the following documents or electronic submissions, entered, completed and/or signed by or on behalf of the bidder or buyer;
- 3.5.1. a completed online registration form
  - 3.5.2. an electronically placed bid on the Portal
  - 3.5.3. a Foresyte tax invoice
  - 3.5.4. an agent authorization form
  - 3.5.5. any power of attorney.
- 3.6. **"horse"** shall mean a horse which is sold on the Auction and the words **"lots"** and **"lot"** shall mean the horse/s sold on the Auction.
- 3.7. **Livery Fee** means R300 per day (excluding VAT) for any day or part thereof that the horse remains at the Stud Farm after expiry of a period of 14 days commencing on the earlier of the date on which the horse is sold or the Auction ends;
- 3.8. **"VAT"** shall mean value added tax at the rate applicable to the sale and which at the date of publication of these Conditions on the Portal is 15%.
- 3.9. **"Purchase facility"** shall mean the maximum amount any buyer, who has secured financing or terms from a third person or institution, will be allowed to bid at the Auction.

- 3.10. **"Insurance"** means the morality insurance which will be purchased from the Insurer for each horse on the Auction and which will commence **"at the commencement of the fall of the hammer"** and continue for 30 days thereafter, on the terms and conditions contained in the insurance policy which is available on the Portal;
- 3.11. **"Insurance premium"** means 1% of the sum of the auction price plus VAT;
- 3.12. **"Insurer"** shall mean Arco360 (Pty) Ltd, Registration No. 2007/031720/07, a registered financial equine insurance brokerage which is underwritten by Genric Insurance.
- 3.13. **"reserve price"** means the undisclosed minimum price for a lot which must be achieved before Foresyte may accept a bid for that lot;
- 3.14. Any reference to **"auction price"** means the amount of the final winning bid of a lot accepted by Foresyte, unless the context requires otherwise. **The "auction price" excludes VAT, auction commission, the Insurance Premium and Livery Fees.**
- 3.15. Any reference to **"purchase price"** means the sum of the **auction price + VAT (currently 15%), auction commission (which is 5% of the auction price plus VAT, if applicable), the Insurance Premium) plus all applicable Livery Fees.**
- 3.16. Any reference to **"buyer"** shall be deemed to include a **"bidder"** where the context can be interpreted to appropriately include both.
- 3.17. Any reference to **"bidder"** shall be deemed, unless the context requires otherwise, to be a person or their proxy who has completed an online bidder registration form which has been accepted by Foresyte.
- 3.18. Any reference to **Foresyte**, shall be deemed, unless the context requires otherwise, to include a reference to the members, agents, representatives, employees, grooms and contractors of Foresyte.
- 3.19. Any reference to **"current bid"** means the bid which is currently the highest bid while bidding on a particular horse is still active on the Portal and therefore still open and subject to a counter bid.
- 3.20. Any reference to **'final bid'** or **"final winning bid"** means the bid which was the highest bid at the moment that bidding on a particular horse closed on the Portal and is therefore not subject to a counter bid.
- 3.21. Any reference to **"at the commencement of the fall of the hammer"** will mean that bidding is closed and any further counter bids will not be accepted and any reference to **"at the exact moment the online portal bidding window closes"** or **"bidding timed out"** or **"bidding closed"** will have the same meaning.
- 3.22. A horse shall be deemed **"sold"** immediately upon Foresyte's acceptance of the final bid and if Foresyte accepts the final bid, it will confirm that acceptance by e-mail communicated to the final bidder immediately after bidding is closed.

- 3.23. Upon the issue of the e-mail confirming acceptance of the final winning bid by Foresyte, the bidder will henceforth, for the purposes of these Conditions as well as any reference within the context of the Auction, be referred to as the buyer of that particular horse.
- 3.24. Headings have been inserted in the Conditions for convenience only and shall not affect the interpretation or meaning thereof.
- 3.25. Words importing one gender shall imply both genders and words importing the singular shall include the plural and vice versa.
- 3.26. Foresyte reserves the right to alter or amend the Conditions as and when it deems necessary.

#### 4. NO WARRANTIES OR REPRESENTATIONS

- 4.1. Foresyte will make available to prospective buyers in relation to each horse on Auction the results of veterinary examinations, the Foresyte veterinarian's statements and evaluations and X-ray images (collectively **Vet Info**). The Vet Info is the product of the independent services of Foresyte's veterinarian. The Vet Info expresses the view of Foresyte's veterinarian who is an independent expert. **Any prospective buyer relies on the Vet Info at his or her own risk. Foresyte does not give prospective buyers any contractual promise nor warranty nor does Foresyte make any representation in respect of any horse on Auction by providing prospective buyers with the Vet Info and Foresyte does not give any contractual promises, representations or warranties in relation to the Vet Info.**
- 4.2. All the horses on Auction are sold as inspected and tested by the buyer and no liability is assumed by Foresyte for the horse's status of health or soundness, and Foresyte shall not be liable in any way for, or in relation to, any of the Vet Info.
- 4.3. The onus is on the prospective buyer to consult with Foresyte veterinarian about the Vet Info and all queries to the Foresyte veterinarian must be made by e-mail to Foresyte not later than 1 week before the date when the Auction begins.
- 4.4. Should the buyer wish to conduct any further veterinary investigations on any horse using the prospective buyer's own veterinarian, any such investigation will be at the sole discretion of Foresyte and at the sole expense of the buyer. No additional veterinary examinations of any horse on Auction will be permitted later than 1 week prior to the Auction.
- 4.5. The onus is on the prospective buyer or his/her proxy acting on their instructions to make an appointment and arrive at the Stud Farm within the days allocated on the Portal to physically view, test ride and evaluate the horse/s they are interested in buying, as well as to request and familiarize themselves with any information or records which are available related to the horse in question. Physical inspections will only be permitted at the buyer's risk and expense, subject to the buyer or his/her proxy signing the indemnity available on the Portal and abiding by Foresyte's requirements governing such inspections. Physical inspections are subject to Foresyte's sole discretion.
- 4.6. **Except as specifically provided for in the Conditions, the sale of all horses shall be "voetstoots", on an "as is" and "where is" basis, including all faults and defects, patent and latent, either before or after the sale.**

- 4.7. **Foresyte does not make or give any representation of a warranty or guarantee, expressed or implied, whatsoever in respect of any horse sold on the Auction.**
- 4.8. Foresyte shall not, neither shall any of its representatives, be liable for any error or defects in respect of the correctness of any statement or information whatsoever pertaining to a horse, including any statement or information contained in any sale documents or Vet Info. In these Conditions and the sale documents and the Vet Info, "statement" or "information" pertains to any representation, including but without limitation, regarding the pedigree, height, age, description, condition, performance, potential, suitability or merchantability of, or any other particulars relating to a horse presented for sale on the Auction.
- 4.9. If Foresyte makes a mistake in good faith in respect of any information about a lot in the Auction catalogue or any advertisement relating to the Auction, Foresyte may, in its sole discretion, cancel any sale concluded in respect of that lot even after a bid has been accepted, payment of the purchase price has been made to Foresyte and the horse has been delivered to the buyer. Foresyte will refund the purchase price to the buyer upon return of horse to the Stud Farm and in the same the condition in which the horse was received by the buyer.
- 4.10. It is the sole responsibility of the prospective buyer to check the inoculation and/or the vaccination status of any horse which he may be interested in buying prior to the commencement of the Auction and to satisfy himself that they meet all the legal and his own requirements.
- 4.11. The buyer hereby acknowledges that he/she will make their purchase decision on full reliance on their own, their proxy or independent advisor's conclusions regarding the condition of the horse or its suitability for intended purpose, and that he/she has not relied on the Vet Info nor any statement or representation made by or on behalf of Foresyte to make such decision. **Furthermore, the buyer acknowledges that no compensation shall be payable by Foresyte for any faults, imperfections, conditions or any other patent or latent defects in a horse which may become patent at any time after the bidding is closed.**
- 4.12. **Foresyte hereby discloses that it is not the registered owner of all the horses on Auction, and Foresyte does not accept any liability should it be discovered that the person who has represented themselves as the owner of a horse is not in fact the true legal owner of the horse. Foresyte has accepted and relied on a valid South African Equestrian Federation Equine Passport as proof of ownership of those horses at Auction which do not belong to Foresyte.**

## 5. NO RETURNS

Except in the circumstances described in clause 4.9, due to the ease of injury or damage to horses, Foresyte will not accept any returns of horses purchased at the Auction.

## 6. BIDDING TERMS AND CONDITIONS AND BIDDER REQUIREMENTS

- 6.1. The 2023 Foresyte Auction Portal is open for bidder registration.
- 6.2. Foresyte, at its sole discretion, reserves the right to withdraw any horse from the Auction at any time before it is sold without furnishing reasons for doing so.

- 6.3. Any person who attends the auction to bid on behalf of another person must produce a letter of authority expressly authorizing him or her to bid on behalf of that person.
- 6.4. Every bidder and any person bidding on his or her behalf must be registered in the bidder's record and must sign the bidder's record. Foresyte will only accept bids from bidders who are registered in the bidder's record.
- 6.5. Before the Auction begins, every person who intends to bid at the Auction must register as a bidder and provide the information required to identify that bidder and anyone for whom he or she is bidding as required by the Financial Intelligence Centre Act, 2001.
- 6.6. To identify themselves and verify their identities as required by the Financial Intelligence Centre Act, 2001, bidders must provide to Foresyte the information and documents listed on the bidder registration form.
- 6.7. As a minimum bidders who are individuals and companies must provide Foresyte with the following information and/or documents:

6.7.1. in the case of individuals:

- 6.7.1.1. clear colour copy of both sides of smart identity card or the photograph page of a green identity document or a current and valid passport;
- 6.7.1.2. proof of physical address which is not less than 3 months old such as a copy of a rates or utility account or a bank statement or telephone or fibre account;
- 6.7.1.3. statement of source of funds used to pay the purchase price;
- 6.7.1.4. if applicable, proof of registration as a VAT vendor;

6.7.2. in the case of companies:

- 6.7.2.1. a copy of the company's share register;
- 6.7.2.2. copy of company registration documents issued by the Companies and Intellectual Properties Commission showing full name, registration number and registered address;
- 6.7.2.3. clear colour copy of both sides of smart identity card or the photograph page of a green identity document or a current and valid passport of every **director** and every **shareholder** who is an individual;
- 6.7.2.4. proof of physical address which is not less than 3 months old such as a copy of a rates or utility account or a bank statement or telephone or fibre account;
- 6.7.2.5. statement of source of funds used to pay the purchase price;
- 6.7.2.6. if applicable, proof of registration as a VAT vendor.

- 6.8. Companies must provide the information and documents listed in clauses 6.6 and 6.7.2 for every company or individual who directly or indirectly owns 5% or more of the shares in that company until the individuals who are the ultimate beneficial owners of that company are identified.
- 6.9. If a potential bidder is something other than an individual or company, please e-mail Foresyte for the list of requirements to identify and verify the identity of that potential bidder.
- 6.10. Potential bidders and buyers will be able to register online after which they will be deemed to have read and thoroughly familiarized themselves with the Conditions as well as the auction rules and bidding protocol set out in these Conditions and described on the Portal.
- 6.11. Registered bidders will have their own dashboard from whence confidential bids may be placed.
- 6.12. The only information available to all bidders regarding competing bidders will be the current highest bid value and the country from whence this bid is placed. All other information regarding bidders and their identity will be confidential.
- 6.13. Active bidding on all the horses listed in the catalogue will open from 18:00 on 3 September 2023.
- 6.14. Bidding on all the horses will close sequentially, one lot at a time, every 5 minutes, starting from 18:00 on 6 September 2023 onwards. The Auction will thus continue from 18:00 on 3 September 2023 continuously until the bidding closure process begins at 18:00 on 6 September 2023 until bidding closes on the last horse sometime after 20:00 on 6 September 2023.
- 6.15. The Portal will list the bid closing time for each specific lot as well as time remaining before bidding closes.
- 6.16. If a bid is entered within the last remaining 20 seconds before the specified closing time for bidding on a lot, then bidding on that lot will be extended for 3 minutes commencing from the time the last bid was placed. This protocol allows a reasonable time for a counter bid to be placed before bidding closes. The extension of bidding time on any lot does not affect the bid closing time for any other lot.
- 6.17. A bid (made by clicking a button or submitting a bid price or as otherwise described on the Portal), is an offer to purchase. Once a final bid has accepted by Foresyte it cannot be withdrawn.
- 6.18. Foresyte, at its sole discretion, reserves the right to decline the offer comprising the last bid on any lot, even if that bid exceeds the reserve price.
- 6.19. On closure of the bidding, subject to the last bid exceeding the reserve price, the last bidder will immediately be informed via e-mail from Foresyte that their bid has been accepted, whereupon the horse will be deemed to be sold and all risks in and to the horse, including risks related to the health or pregnancy status of the horse, will immediately pass to the winning bidder who is then referred to as the buyer. Ownership of the horse will only pass to the buyer

against payment of the purchase price and all other amounts owed to Foresyte in terms of these Conditions as provided in clause 9.9.

- 6.20. Upon receipt of Foresyte's e-mail accepting a bid, the buyer and new owner of the horse must respond by filling in and returning the provided sale document to acknowledge purchase of the horse and receipt of the tax invoice for the purchase price. If the sale documents are not completed and returned within 2 days after the Auction closes, Foresyte may cancel the sale and claim damages from the buyer.
- 6.21. After acceptance of its bid, the buyer shall immediately be responsible for settlement of the purchase price plus any applicable Livery Fees.
- 6.22. Horses will be insured for mortality with the Insurer by Foresyte on behalf of the buyer but on the basis that until the purchase price is paid in full, the proceeds of the Insurance are hereby ceded to Foresyte. The Insurance shall be placed for the Insurance Premium.
- 6.23. If for whatever reason a dispute arises in respect of the sale transaction, Foresyte reserves the right, at its sole discretion, to either enforce the terms applicable to the transaction or to cancel the transaction and in that event the owner of the horse in question (that is Foresyte or any other person for whom Foresyte is selling the horse on the Auction) shall retain ownership of that horse.
- 6.24. In any dispute between a buyer and seller then unless Foresyte is the owner of the horse sold, that dispute must be resolved directly between the buyer and the seller and Foresyte shall not in any way be involved in that dispute.
- 6.25. Furthermore, in the circumstances referred to in clause 6.23 Foresyte retains the right to either keep the horse, or to resell the horse to whomever it decides, at whatever price it determines, or to give the horse away to whomever it deems fit. This decision shall be absolute, final and binding on all parties.
- 6.26. Foresyte retains the right, at its sole discretion, to determine or change the bidding rules as it sees fit to facilitate the Auction.

## **7. PAYMENT OF THE PURCHASE PRICE**

- 7.1. The full purchase price shall immediately become due and payable as soon as Foresyte accepts the final bid.
- 7.2. Should the full purchase price plus any applicable Livery Fees not be paid within a period of 30 days from the date of sale, Foresyte shall have the remedies available as contained in clauses 9, 10 and 11 of these Conditions.

## **8. EXPORT AND IMPORT REQUIREMENTS**

- 8.1. Any buyer who is not a South African citizen shall lodge with Foresyte an unconditional and irrevocable bank guarantee issued by a South African bank acceptable to Foresyte and which is on terms acceptable to Foresyte within 1 business day after the Auction closes. Failure by a buyer to comply with the obligation in this clause shall entitle Foresyte to immediately cancel the sale without prejudice to its rights in law or in terms of these Conditions.



- 8.2. The buyer of any horse requiring to be exported or imported, whether internationally and/or inter-provincially, shall bear the onus and consequently be responsible for ensuring that all requirements necessary for the transport, export or import of such horse is met. The buyer shall not be absolved from complying with his obligations, in particular his payment obligation, in terms of the Conditions by virtue of an allegation of impossibility of performance in terms of the common law in regard to compliance with the necessary requirements.

## 9. RISK, OWNERSHIP AND MAINTENANCE COSTS

- 9.1. All risk in respect of a horse sold at the Auction shall pass to the buyer upon acceptance by Foresyte of the final winning bid, at which time the buyer shall forthwith be responsible for the care, keep, custody, control, insurance and security for the horse and for all expenses relating thereto and shall bear all risk in and to the horse including of injury to, sickness or death of the horse or of harm caused to or by it.
- 9.2. The buyer hereby indemnifies Foresyte, its officers, employees, agents and representatives and the owners or operators of facilities in use by Foresyte from all losses, damages, liabilities, expenses, claims, causes of action or legal fees arising out of or related to the possession, care, keep, custody, control or maintenance of any horse on which he is the successful bidder, including any claims arising out of injuries, sickness, death or damage caused by the horse after the bidder becomes the buyer and assumes risk in and to the horse.
- 9.3. Pregnant broodmares sold on the Auction have been certified 'in foal' by the Foresyte veterinarian in the days before the Auction and consequently the 'loss of pregnancy' risk passes to the new owner upon Foresyte's acceptance of their bid. Foresyte will therefore not be liable for any loss of pregnancy of a broodmare sold at the Auction.
- 9.4. The buyer shall not allow or cause any horse bought in terms of the Conditions to become subject to any lien, hypothec or other form of security until such time as the debt comprising payment of the purchase price and all other amounts owed to Foresyte have been settled in full. In the event of such lien, hypothec or other form of security arising, Foresyte shall be entitled to exercise its rights and remedies in clauses 9, 10 and 11 of these Conditions.
- 9.5. Foresyte shall insure all horses offered for sale, on behalf of the buyer, as described in clause 6.22. The Insurer's policy document and terms of Insurance are available on the Portal where all the terms and conditions of the Insurance are set out as well as extent of insurance cover. By registering as a bidder and/or submitting a bid or entry on any sale documents the buyer acknowledges that he/she has read and understood the Insurer's policy document as to the extent of cover offered.
- 9.6. Upon registration as a bidder, the buyer of a horse acknowledges that he has read these Conditions and that he/she is thoroughly familiar with these Conditions and understands them.
- 9.7. Should the full purchase price of any horse not be settled in full, for whatever reason whatsoever, within the insured period (that is within 30 days after date of acceptance by

Foresyte of the final bid), Foresyte shall be entitled but not obliged, at the cost of the buyer, to extend such period of Insurance until such time as the purchase price is fully paid by the buyer.

- 9.8. Save as provided for in these Conditions or unless other prior arrangements confirmed in writing have been made with Foresyte and accepted in writing by Foresyte, a buyer shall remove the horse purchased and paid for, at their earliest convenience from the Stud Farm after the sale. **DESPITE ANY OTHER PROVISION OF THESE CONDITIONS, NO BUYER SHALL BE PERMITTED TO TAKE DELIVERY OF OR REMOVE A HORSE SOLD FROM THE STUD FARM UNLESS AND UNTIL THE BUYER HAS PAID THE PURCHASE PRICE IN FULL TOGETHER WITH ANY OTHER AMOUNTS OWED TO FORESYTE.**
- 9.9. **Despite any other provision of these Conditions, ownership of a horse shall only pass to the buyer upon payment to Foresyte of the full purchase price together with any other amount owed to Foresyte in terms of these Conditions, notwithstanding that the buyer may have taken possession of the horse.** Until the purchase price and all other amounts owed to Foresyte in terms of these Conditions have been paid in full, the buyer shall not be entitled to have the horse registered in his name or that of his nominee, nor shall any passports, registration certificates nor any other documentation be handed over.
- 9.10. The buyer shall be liable to arrange the transport of the purchased horse from the Stud Farm together with any ancillary costs such as pre transport veterinary treatment and the buyer shall bear the cost of such transportation in full. It will not be the responsibility of Foresyte to arrange, facilitate or transport any purchased horses unless agreed separately between the parties in a written agreement signed by both parties.

## 10. PAYMENT SECURITY AND PAYMENT

- 10.1. Foresyte shall, in its sole and unfettered discretion, be entitled to require any prospective buyer to lodge with Foresyte a bank guarantee sufficient to cover the agreed purchase facility.
- 10.2. All horses bought at the Auction must be paid for in full by the buyer prior to Foresyte providing that buyer with the required release permit and permitting the buyer to take delivery of the horse. Purchases shall be paid by electronic funds transfer.
- 10.3. Foresyte reserves the right not to release a horse to a buyer, and to keep it stabled at the Stud Farm at the cost of the buyer, until payment of the full purchase price from the buyer has been honoured and cleared by the bank.
- 10.4. No horse may be removed from the Stud Farm before a release permit in respect of that horse has been issued by Foresyte. The release permit will only be issued if the purchase price of the horse is paid in full or if prior credit terms have been arranged and approved.
- 10.5. Foresyte shall, in exceptional cases, at its sole discretion, agree to waive, in writing, compliance with some or all of the provisions of clause 10.4 above.
- 10.6. Foresyte shall furnish each bidder with a form containing bank account details accompanied by proof of such account details for payment of the purchase price and all other amounts which may at any time become due to Foresyte.

## 11. LEGAL REMEDIES, REPOSSESSION AND COSTS

- 11.1. If the buyer materially breaches any of the Conditions or dies or any steps are taken to place the buyer under any order of business rescue, provisional or final sequestration, provisional or final winding-up or provisional or final judicial management, as the case may be, then and in that event the buyer agrees and acknowledges that Foresyte shall, without notice and without detracting from any other remedies which may be available to Foresyte and without prejudice to Foresyte's right to claim and recover damages for breach of contract:
  - 11.1.1. be entitled to summarily cancel the sale of any horse to the buyer (in respect of which monies are owing by the buyer) and to repossess such horse from anyone in possession of it and such cancellation is deemed to have immediately preceded the buyer's death, business rescue, business rescue, sequestration, winding-up or judicial management ("**the repossessed horse**"); or
  - 11.1.2. to claim specific performance of all the buyer's obligations whether or not such obligations would otherwise then have fallen due for performance.
- 11.2. In the event of repossession of a horse for whatever reason provided for in these Conditions, Foresyte may take all necessary steps, either itself or through a proxy or agent, and enter upon any land or premises to recover possession of the horse.
- 11.3. In the event of clause 11.2 coming into effect, the buyer agrees to voluntarily hand over the horse to Foresyte or its agents or to instruct his employees, proxy, trainer(s) or whoever is in possession of the horse to do so. All costs and expenses occasioned by such repossession shall be recoverable by Foresyte from the buyer including all legal costs on a full indemnity basis.
- 11.4. Should the buyer refuse to voluntarily hand over the horse, Foresyte shall be entitled to immediately apply for and obtain a repossession order from a court of competent jurisdiction and the buyer shall be liable for all Foresyte's costs in that regard on the attorney and client scale.
- 11.5. Where any person claims to have a lien over any horse in respect of which the purchase price has not been paid, Foresyte has the right to settle such lien as it deems fit to recover possession of the horse. Any monies paid in discharge of any lien shall form part of the debt which Foresyte shall be entitled to recover from the buyer in addition to any other amounts which may be payable.
- 11.6. Notwithstanding the cancellation of the sale by Foresyte, Foresyte shall be entitled to retain any sums paid by the buyer in respect of the debt in reduction of damages, if any, which may be suffered by Foresyte by reason of the breach by the buyer and the resultant cancellation of the agreement of sale.
- 11.7. The buyer renounces the benefits of the legal exceptions of *non numeratae pecuniae*, that is the defence that money was not paid over, *non causa debiti*, that is the defence that there is no cause of indebtedness, *errore calculi*, that is the defence of an incorrect calculation and the right to revision of accounts. The buyer acknowledges that he/she is acquainted with the full meaning and effect of these exceptions.
- 11.8. The buyer consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of the Magistrate's Court Act No.32 of 1944 (as amended) having jurisdiction under Section 28 of the said Act, notwithstanding that the claim by Foresyte exceeds the normal jurisdiction of the

Magistrate's Court as to amount. Foresyte shall, in its discretion, be entitled to proceed against the buyer in any other court of competent jurisdiction notwithstanding the foregoing.

11.9. Foresyte reserves the right to refuse any buyer who has materially breached any of these Conditions the opportunity to bid for or purchase a horse at the Auction or any Foresyte auction held at any time in the future.

11.10. Foresyte will not accommodate 'buyer's remorse'. The purchase price of any horse purchased will be payable in full. Auctions are excluded from section 55(1) of the Consumer Protection Act, 2008, which expressly states that the cooling off period does not apply to goods bought on auction.

## **12. DOMICILIUM**

The physical address provided by a buyer in his application when registering as an online bidder shall be deemed, for the purposes of the Conditions, to be his chosen domicilium citandi et executandi.

## **13. WHOLE AND ONLY CONTRACT**

These Conditions constitute the whole and only contract between the parties and any representations made by or on behalf of either party will not affect it unless set out herein. No agreement at variance with the terms and conditions of these Conditions and no consensual cancellation of the contract, will be binding on the parties unless reduced to a written agreement signed by or on behalf of both parties.

## **14. INDULGENCE**

Any indulgence shown, extension given or failure to enforce a right by either party will not prejudice that party's rights to thereafter enforce its rights in terms of this agreement or in law.