

## Conditions of Sale - Trakehner Stallion Market - Neumünster 2018

The following constitutes the agreement and legal obligations between the buyer and the seller as well as the auction conductor (Trakehner Gesellschaft mbH), henceforth called "organizer":

### 1. Organizer/Seller.

(a) The auction is conducted by the Trakehner Gesellschaft mbH, Rendsburger Straße 178a, 24537 Neumünster, Germany, represented by Managing Director Lars Gehrman. The Trakehner Gesellschaft mbH sells the horses listed in the catalog in the name and on account of the owner/seller as his/her agent/representative.

#### Public auction.

(a) The auction is held as a public auction, as outlined in §§ 383 paragraph 3, 474 paragraph 2, sentence 2 BGB, and conducted by a licensed professional auctioneer at the Holstenhallen facility, located at Justus-von Liebig-Str. 2-4, in Neumünster. The legal framework for commodity sales is not binding. The auctioneer is the sole person with the authority to offer the horses for sale at the auction and to accept bids for the same.

The auction is open to anybody purchasing a ticket to the event, as long as tickets are available.

The sale of a particular horse, and the Bill of Sale for such horse, becomes effective upon the conclusion of the bidding for such horse as determined by the auctioneer in his/her sole discretion. Accepted bids are binding for both the successful bidder as the buyer and the owner/seller of the horse.

### 2. Presentation.

2.1. During the auction, the stallions and mares will be presented in-hand and foals will be presented at liberty. All riding horses will be presented under saddle. An in-hand presentation of riding horses may also be arranged if special circumstances warrant; such presentation will be announced during the auction if it occurs.

2.2. The order of auction horses will be determined by the auction management. Generally, the order of catalog numbers will be used as a guideline. However, justified occasions may arise for the auction management to change this order. Changes in order have to be stated publicly in writing no less than 2 hours prior to the auction and can be found in the auction office. Authority to decide rests with the auction management.

### 3. Bidding.

The prices will be called in Euros.

The opening offers will be:

Approved stallions:	15.000,-
Premium stallions:	15.000,-
Non-approved stallions and 2yr old fillies:	8.000,-
Riding horses and non-approved stallions (under saddle):	12.000,-
Foals:	3.500,-
2yr old fillies:	8.000,-
Older mares:	9.000,-

The auctioneer determines the bidding increments and minimum bids. The auctioneer may deviate from the foregoing opening bids at his/her discretion.

The final price in the auction is considered a net price.

#### 4. Payment slip.

The successful bidder must sign a purchase/payment slip, which will identify the purchased horse, the catalog number, the winning bid amount, and the name of the buyer.

If the successful bidder does not sign the purchase slip, or he/she otherwise refuses to pay for the horse, the auctioneer may return the horse to the auction lot. Even if the horse is returned to auction, the first bidder remains liable for his/her refusal to pay, including, without limitation, for paying to the organizer the difference in price should the horse be purchased by another buyer upon re-presentation at the auction.

#### 5. Validity of the bid.

Any claims challenging the validity of a successful bid must be raised immediately, and no later than before the last horse is entered in the auction ring at the respective day of the auction. Claims must be addressed with the auctioneer as well as the General Manager of the organizer. The auctioneer has the authority to decide whether to annul the bid and place the horse back in the auction for re-bidding.

#### 6. Transfer of risk.

The successful bidder assumes all risk of loss related to the horse immediately following the auctioneer's acceptance of the winning bid.

#### 7. Passage of title.

**(a)** Title to a purchased horse passes to the successful bidder only after the purchase price and all associated fees have been paid in full. Until all such amounts are fully paid, the horse remains the property of the exhibitor.

**(b)** All successful bidders/buyers, release the Trakehner Gesellschaft mbH, the auctioneer, as well as the owner from any third party liability claims. By participating in the auction, any and all liability or potential liability of the Trakehner Gesellschaft mbH, the auctioneer, and/or the consigner/owner is released and discharged. The foregoing release does not apply to damage claims arising from personal injuries to life, body and health, if the organizer, the seller, the auctioneer, their legal representative, or their employees or agents is responsible. This release of liability further does not apply to damages caused by the deliberate or grossly negligent violation of a legal duty by the organizer, the owner/seller, the auctioneer, their legal representative, or their employees or agents.

#### 8. Price.

The final price for each horse sold shall consist of the final bid plus VAT depending on the seller's tax rate (0% private, 10.7% agricultural entity, 19% entrepreneur); plus an amount equal to 6% of the final bid, as commission; plus applicable V.A.T., plus an amount equal to 1.19% of the final bid plus commissions, plus V.A.T., for insurance premiums and insurance tax. The tax rate of each seller is made public and printed in the catalog, to be found for each horse behind the owner's name. The Trakehner Gesellschaft mbH does not guarantee the correctness of stated tax rates.

##### Example:

Final bid (knock-down price)	0 % private seller	10.7 % sale by agricultural entity	19 % sale by entrepreneur
	10,000.00 €	10,000.00 €	10,000.00 €
plus 0 %, 10.7 % 19 % VAT	0.00 €	1,070.00 €	1.900.00 €
plus 6 % fees	600.00 €	600.00 €	600.00 €
plus 19 % VAT on fees	114.00 €	114.00 €	114.00 €
plus 1.19 % of knock-down buyer's obligation, to be paid	119.00 €	119.00 €	119.00 €
Purchase Price	10,833.00 €	11,903.00 €	12,733.00 €

Purchase price, to be paid by buyer: 10,833.00 € (private sale) 11,903.00 € (sale by agricultural entity) 12,733.00 € (sale by entrepreneur).

The seller has passed the right to collect the purchase price to the Trakehner Gesellschaft mbH irrevocably. If no other agreement with the organizer has been reached, payment is due upon acceptance of a winning bid by the auctioneer and must be paid in cash (in Euro) immediately after the auction in the auction office. The seller must agree upon payment by bank check or via bill explicitly. Payment has to be deposited in the organizer's account no later than 7 days after the auction. If the seller does not agree to payment via check or bill, he/she agrees to take back the horse on his/her own account and risk of the buyer for 7 days until the horse is fully paid for. Beginning with the 8<sup>th</sup> day after the auction, the buyer is required to pay for board and keep of the horse (15 € plus 19% VAT).

#### **9. Agreement on the legal and factual nature**

All representations regarding the physical characteristics of the horses at auction are contained in the pedigree chart as outlined in the catalog, as well as the organizer's official statements regarding the horse's gender, color, date of birth and performance results, if applicable.

In addition, a photograph of the horse may be shown in the catalog, accompanied by a short comment. These images/comments do not guarantee a sales standard, for which the organizer or seller can be held liable. They are not part of the agreement on the legal and factual nature of the horse. These **are not** declarations of intent, **but rather** declarations of knowledge in terms of subjective opinion. This is also applicable regarding comments on the horse's potential future usage. Neither the organizer nor the owner/seller makes any guarantees about the abilities of the horse. The seller **explicitly does not acknowledge liability for the accuracy of such statements.**

Prior to arrival at the auction place, the owners of the adult horses at auction had the horses evaluated in a clinical and radiological examination. The radiological exams have been conducted according to standard procedures (both front toes at 90° centered on hoof joint; both front toes at 90° centered on fetlocks; Oxspring both fronts with gap of fetlock joint visible; both hind toes at 90°; both hocks (0°, 45° and 115°) and both stifle joints (90°-110° and 180° same size = PA).

A health report evaluating these x-rays has been prepared by the examining veterinarian for the owner. All health reports are available for assessment by prospective buyers and/or their veterinarians in the auction office. The objective data/findings of the clinical and radiological exam are the sole representations regarding the physical condition of each horse and are considered legal and factual nature. Any other reports, prognoses or classifications not based on the official veterinary report are not considered representations on the part of the organizer/vendor and buyers assume all risks associated therewith.

The Trakehner GmbH/organizer and the owner/seller point out that potential buyers may arrange for further veterinary exams that exceed the above mentioned examinations prior to the auction. Any extra exams are entirely the responsibility of and will be billed to the prospective buyer. All such exams must be arranged with the organizer before the auction starts.

The organizer/owner makes no warranties or representations regarding the condition of any horse in the auction other than those shown in the exams described above. Any other conditions of the horse that are not explicitly made public in the auction office by the official veterinary report are considered unknown and ambiguous, the risk of which is borne solely by the purchaser.

With respect to approved stallions and at time of transfer of risk (section 6) it is agreed that (a) the stallion is not an EVA shedder; (b) the stallion has demonstrated sufficient libido and ability to produce semen via a normal and undisturbed copulatory reflex; and (c) the semen is shippable. This is the case when the semen is fertile when stored at 5°C for 24 hrs in conserved form.

Likewise it is agreed that the stallion has been tested for WFFS (genetic testing). The results are made available in the veterinary office and can be seen by any potential buyer or a representative veterinarian.

Any acute health problems or deviation from the description as given in the catalog and from objective veterinary findings will be announced by the Trakehner GmbH/organizer and will be made available in writing in the auction office. It is therefore advised that potential bidders get up to date information on any last-minute changes on horses from the auction office. All veterinary reports, radiographs, and the results of the clinical examination are available for viewing and evaluation by all potential buyers, their representatives and veterinarians. The auction provides veterinary care for all auction horses while they are

stabled in Neumünster and are absolved from any duty of confidentiality to their owner/representative for the duration of the event. They can therefore be consulted during the regular trial and inspection times in the veterinary office.

#### **10. Used goods.**

All horses offered in the auction are considered used goods with regards to their training to lead, load, and travel. They are further marked by microchips and/or brands, have been examined by a veterinarian, and have received immunizations. Any other use, e.g. by breeding or riding, participation at foal or mare shows, or competitions are outlined in the auction catalog.

#### **11. Non-warranty clause/liability disclaimer.**

**(a)** Any liability related to the condition of the horses at auction is limited to an intentional or grossly negligent breach of the representations described in Section 9, above. All warranties for defects and warranty rights are excluded, released, and disclaimed. This release does not apply to claims for damages arising from personal injuries to life, body and health due to negligence from the seller, its legal representatives or its employees or agents.

This release of liability also does not apply for damages, which result from any other intentional or grossly negligent violation of a legal duty by the seller, its legal representative or its employees or agents.

##### **Time limit for notice of defects.**

**(b)** The buyer is required to file any potential claims in writing within four (4) weeks of the close of the auction, addressed to the seller. Any claims regarding the breeding or fertility clause of approved stallions must be filed in writing with the organizer by June 30<sup>th</sup> of the following calendar year. Any such claims must arrive at the office of the Trakehner Gesellschaft mbH by the deadlines stated above.

For claims regarding the breeding or fertility clause of approved stallions set forth in Section 9, above, a veterinary certificate must accompany such claim, stating that the horse did not meet the fertility criteria outlined in Section 9 at the time of transfer of risk.

##### **Procedure for remedy of defects.**

**(c)** If a buyer is entitled to relief resulting from the breach of a statutory warranty rights and/or based upon a claim that a purchased horse deviates from the official representations of the seller described above, the seller may choose to remedy such defects.

The buyer agrees to accept the seller's correction of any correctable defect.

The buyer must inform the seller in writing that a defect exists and must make the horse available for pickup. Alternatively, the seller has the right to request that the horse be made available for pickup at the buyer's location. If the horse is not made available for pickup, than any claim shall be denied and may not be maintained.

The seller is granted an adequate time frame from the day of delivery of the horse remedy any defects. In case of claims regarding stallion breeding performance and/or semen quality, this time frame shall be 3 months.

The seller must prove, through the report of a veterinarian, that any defect has been satisfactorily remedied within the timeframes stated above.

Buyer's claims are excluded in case of unsuccessful remedy of defects and rescission of the contract. This does not apply to damages caused by the deliberate or grossly negligent violation of a legal duty resulting in harm to body, life or health by the consigner/organizer, the auctioneer, their legal representative, or their employees or agents.

### **Claim of damages.**

**(d)** If a defect cannot be remedied, the seller shall rescind the sales contract and refund of the sales price as well as any actual costs of feeding and board, necessary farrier work and veterinary work incurred since the sale. The seller shall not be liable for any costs resulting from the usage or the horse and the potential loss of value based on such usage.

The buyer and seller agree that board, including feeding, for the duration of any claim shall be reimbursed at a cost of 300.00 Euro per month. If it is not possible for a buyer to guarantee board and feed at this price, the organizer agrees to place the horse in such board for the duration of the claim. The buyer is required to accept this offer. Claims of abatement are excluded.

Also, claims by the buyer in case of unsuccessful rectification of defect are exempt. This release does not apply to claims for damages arising from personal injuries to life, body and health due to negligence from the seller, his/her legal representatives or his/her employees or agents.

### **Statute of limitations.**

**(e)** Any potential claims for remedy of defects or damages are must be asserted within 3 months of transfer of risk. Any warranty claim of the buyer with regards to the breeding and fertility clause of approved stallions must be asserted by September 30<sup>th</sup> of the next calendar year following the auction.

Any limitation on the statute of limitations as set forth herein shall not apply claims are made based on an intentional or grossly negligent action of the seller, his/her legal representatives or his/her employees or agents.

## **12. Boarding of horses**

If the horse purchased during the auction remains in the care of the owner/seller after the sale, the buyer agrees to fulfill his responsibilities as outlined in a boarding contract for a barn slot for the purchased horse. Board must be paid directly to the owner/seller.

## **13. Transport/removal from the premises.**

**(a)** No horse may be removed from the auction premises until payment has been finally settled with the Trakehner GmbH. The horse may only be removed from the premises only after an exit voucher issued by the Trakehner GmbH has been presented.

Should a purchasing party require the help and assistance from the consigner/owner, his/its personnel or any other person involved officially in the conduct of the auction, the purchaser releases the organizer and any person providing such assistance from any and all liability connected therewith, except for personal injury caused by such person's gross negligence.

**(b)** The horses (stallions, mares, riding horses, with the exception of foals) will be equipped with a halter, lead rope and blanket and have to be removed from the premises by the end of the auction, or no later than the following day at 10:00 AM.

## **14. Insurance after the auction.**

With the net knockdown price, all horses are insured by the R+V/VTV at 80% of their value against death due to disease or accident as well as loss of use for riding purposes due to disease or accident, or transport-related damages resulting from the first transport from the auction venue to the buyer's stable.

Transport insurance covers all transports within the insurance period to the first buyer's location (land, sea, air). The legal basis for this contract is the AVP TLP 01/2008 of the VTV. The insurance sum is the bidding price, for stallions and riding horses a maximum of 75,000.00 €, for mares and foals a maximum of 25,000.00 €.

Insurance coverage ends 8 weeks after the auction. The buyer has the opportunity to extend this insurance

on his own account so long as payment to the insurer is made within 8 weeks after the auction. Under these circumstances, no new veterinary protocol or waiting period is necessary. Information is available from the R+V/VTV agent Alexander Kuschel, phone: +49 (0)4324/882390, fax: +49-(0)4324/8823919.

**15. Inclusion of conditions of sale**

The conditions of sale are printed in every auction catalog. Furthermore, the conditions of sale are made public. All cashiers have similarly been provided with a written description of the conditions of sale.

**16. Place of performance/fulfillment.**

For all services rendered hereunder, with respect to the auction, or any contracts related thereto, the place of performance is Neumünster.

If the buyer is a merchant, a corporate body under public law, or public separate assets, the place of fulfillment is Neumünster. Place of jurisdiction is also Neumünster.

**17. Choice of law.**

For this auction, and all potential out of court and legal measures regarding the terms and conditions of the contract of sale, German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods applies.

**18. Superiority of the German version.**

Conditions of sale are available in German and English language. In case of discrepancy, only the German version is binding. When interpreting, the German version is the authoritative version.

**19. Severability clause**

If any term listed above is void or unenforceable, no other terms shall be affected.