

<b>General Terms and Conditions Trakehner Gesellschaft mbH Hybrid Foal Auction July 24th 2021 in Münster-Handorf</b>
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## **I. General**

The Trakehner Gesellschaft mbH (= organizer), Rendsburger Straße 178a, 24537 Neumünster is conducting a *Hybrid Foal Auction* on July 24th 2021. A Hybrid Auction is an auction with a physical presence at the Equestrian Center in Münster-Handorf, and will simultaneously be conducted via phone and an online presence in real time. The foals will be sold on behalf of the exhibitor (seller). Formation of a bill of sale (§ 433 German Civil Code) will take place between the exhibitor as seller and the buyer, who is participating in the auction as a bidder. The online participant agrees to these General Terms and Conditions with his/her registration. At the latest from the moment a person participates in the bidding process (online, phone, in person), that person agrees to the General Terms and Conditions of this Hybrid Foal Auction.

These General Terms and Conditions shall apply exclusively; any conflicting conditions or conditions deviating from these General Terms and Conditions will not be recognized, unless they have been confirmed explicitly their validity in writing by the Trakehner GmbH. The General Terms and Conditions shall also apply if the Trakehner GmbH fulfils delivery without reservation even though the Trakehner GmbH is aware of conflicting conditions or conditions of the purchaser which deviate from the General Terms and Conditions.

All agreements reached between the Trakehner GmbH and the auction participant (buyer) for the purpose of the execution of an agreed contract shall be set forth in these General Terms and Conditions.

The General Terms and Conditions also apply to entrepreneurs (§ 14 German Civil Code) and consumers (§ 13 German Civil Code), unless their validity has been restricted explicitly in individual articles.

The organizer reserves all ownership and copyright to any and all images, videos, sketches, descriptions and other documents used for this auction. Dissemination of these items by third parties, participants, bidders, and buyers to other third parties requires the organizer's explicit written consent.

## **II. Participation at the Hybrid Foal Auction**

1. For participation in the online auction, the interested party has to register at (<https://www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/>). A participation contract will be established between the organizer and the participant, which is based on these General Terms and Conditions. There is no right to attend. The Trakehner GmbH retains the right to refuse a participant from actively bidding and to rescind the registration. This is only permissible if there is an important reason for which the continuation of a legal relationship with the blocked person is no longer acceptable and reasonable for the Trakehner GmbH. Each participant can only hold one account.

A registration can be deleted in a participant's profile without giving reasons. In that case all registered data will be deleted permanently, as long as they are not required for an already concluded

bid or an ongoing process. In that case, the deletion will proceed once it is established that the data are no longer required.

2. During the registration process, the participant has to provide complete, accurate and correct data. Furthermore, the participant has to state whether he/she/it is a consumer according to § 13 German Civil Code, or an entrepreneur according to § 14 German Civil Code. Incorrect information will result in termination of the participation contract without previous notice by the organizer.

3. Participants may be natural or legal persons. Natural persons may only register if they are of legal age and have unlimited capacity to conduct business. Legal persons have to disclose the natural person(s), for example CEOs or presidents, that act on behalf of them, with full name, address and the manner of representation.

4. The password associated with the registration may be changed by the participants, may not be forwarded to third parties, must be kept confidential and the participant has to prevent fraudulent use. The participant is liable for any damage that the organizer experiences due to misuse of the password, if and when this misuse is based on the participant's negligence. This liability also includes third party claims against the organizer.

Immediately when the participant becomes aware of any misuse or loss of the registration data and password, he/she/it has to inform the organizer via phone so that the account can be blocked.

5. The participant may cancel the participation contract at any time without giving reasons. In that case, the organizer deactivates the account and its corresponding password. Auctions for which the participant has placed a bid and that are still ongoing will be concluded within the scope of the policy terms.

6. The organizer and third parties authorized by the organizer may store the IP-address and other data of participants. These data may only be disseminated to the buyer and vicarious agents of the organizer.

7. The participant must request a current veterinary protocol for the foal he/she/it is bidding on from the auction vet.

### **III. Placing a bid via phone**

The participant of the Hybrid Foal Auction may choose to bid via phone. In order to do so, the prospective bidder – before the auction – has entered into a written bidding mandate with the Trakehner GmbH. The participant is required to leave a full name, address and catalog number of the foal to be bid on as well as a maximum amount the participant is willing to spend. The written mandate requires a current copy of the bidder's identification card. The bidder is required to look into the health report issued by the auction vet for the foal he/she/it is bidding on.

#### **IV. Public auction**

The auction is conducted by a licensed professional auctioneer and held as a public auction according to § 383 paragraph 3 and § 474 paragraph 2 of the German Civil Code at the Westphalian Horse Society's property, Sudmühlen Straße 33, 48157 Münster, Germany. The legal framework for commodity sales is not binding. The auctioneer offers the foals for sale at the auction and accepts bids for the same.

**The auction is open to the public.**

#### **V. Sequence of the Hybrid Auction**

1. All foals will be presented on the organizer's internet site (<https://www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/>) and can be viewed no later than by July 14<sup>th</sup> 2021.

2. Bids can be placed online at ([www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/](http://www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/)). Only registered participants can place bids online. Bids will not be accepted if the participant failed to agree to these General Terms and Conditions and acknowledges acceptance of the power of revocation terms. Bids placed until the end of the auction (placed as "BID" online and in accordance with these General Terms and Conditions) will only participate in the auction, if they have been received by the organizer before the auction of that individual foal is concluded. The bidder bears the risk of the submission.

Within the online tool, the bid and the content of the bid as well as required customer data will be summarized on a single page. The participant can verify all information on this summary page and can make changes if necessary. When the participant clicks the button "BID", the offer is binding and the participant agrees to enter a formal sales contract (bill of sale) with the organizer. Higher bids by third parties eliminate the current bid. Each participant is bound to the offered bid until knock down is achieved, even if the organizer does not receive a higher bid for the individual foal, or the participant's bid is met by a higher third party bid, in which case that participant's bid is no longer the winning bid. Bids that are under the reserve do not take part in the auction, even if the reserve is not met throughout the process. Each participant will be informed about the current highest bid via tool on the web platform once the live auction commences on July 24<sup>th</sup> 2021 at 7:30 PM (CET). The participant can then place higher bids via the same web platform during the live auction.

#### **VI. Conclusion of contract**

The bill of sale is concluded upon acceptance of the bid between the publicly appointed and sworn auctioneer and the bidder (live – online – phone) as the buyer, and the owner of the foal.

#### **VII. Information about conclusion of contract after acceptance of an online bid**

The participant who posts the highest bid online until the end of the auction of that individual foal, and thus receives acceptance of the bid, will be informed about the matter via email or other means available via the online platform. Receipt of this notification merely confirms the already

formed and binding contract. Participants that have not placed the highest bid will not receive any notification. The maximum bid will be indicated anonymously on the platform immediately after the end of the bidding period. The notification to the purchaser includes, according to § 312 f of the German Civil Code, a confirmation of the contract, in which the content of the contract is repeated, and contains the information required by Article 246a of the Introductory Law to the German Civil Code, including the right of revocation.

### **VIII. Termination of the online bidding process**

The Trakehner GmbH may terminate the online bidding process at any such time that an important reason, determined by equitable discretion, requires such action. Also, system-wide breakdown due to technical issues may also lead to immediate termination of all online bidding. The decision to terminate and the reasons for such action will be announced on the website. All bids placed up to that point are immediately canceled. Claims for damages, especially due to technical problems during the online bidding process, particularly system crashes, failure of bid transmission or bid rejection, are excluded and inadmissible.

### **IX. Presentation**

1. Each foal up for auction will be presented in a video on the Trakehner GmbH's website at [www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/](http://www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/). It will be publicly posted and can be viewed by anyone.
2. During the auction, foals will be shown at liberty. The order of foals in the auction will be determined by the auction management.

### **X. Bidding**

The prices will be called in Euros.

The online bidding will begin with an opening bid posted by the Trakehner GmbH at (<https://www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/>).

The opening bid will be as follows:

**Foals** € 3,500.00

An effective bid must correspond to the minimum bid and at least one bidding step above the previous participant's bid. The bidding step amounts € 250.00 / 500.00 / 1,000.00 / 2,000.00 and are predetermined by the online system.

Only bids of € 250.00 and higher shall be accepted.

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

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

## **XI. Payment slip**

For bidders participating live: 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/it otherwise refuses to pay for the foal, the auctioneer may return the foal to the auction lot. Even if the horse is returned to auction, the first bidder remains liable for his/her refusal to pay.

The same terms apply to bidders that have participated via phone mandate. In this case, the signature is provided by the buyer's legal representative.

## **XII. Validity of the bid**

Any potential claims challenging the validity of a successful bid must be raised immediately, and no later than before the last foal has entered the auction ring at the respective day of the auction. Claims must be addressed with the publicly appointed and sworn 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.

## **XIII. Price**

The seller has passed the right to collect the purchase price to the Trakehner Gesellschaft mbH irrevocably. The Trakehner Gesellschaft mbH has accepted this act of transfer.

1. The final price for each horse sold shall consist of the final bid plus V.A.T 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.

### **Information regarding agency transactions:**

The tax rate can vary depending on the rate of sales tax.

- Commercial agricultural entity/farmer = 19 %
- Individual agricultural entity/farmer = 10.7 %
- Hobby/private = 0 %
- German contractor/tradesmen and foreign commercial exhibitors that had to register in Germany = 19%

The individual tax rate is listed in the catalog.

We have created a sample transaction for a knock.-down price of 10,000.00 €, details below:

Knock-down price: 10,000.00 €  
 Buyer's fee: 6 %

Example:

Status of seller Tax rate	Private 0 % USt.	Agricult. entity 10.7 % USt.	Entrepreneur 19 % USt.
Knock-down price	10,000.00 €	10,000.00 €	10,000.00 €
Plus V.A.T.	0 €	1,070.00 €	1,900.00 €
<b>Subtotal 1</b>	<b>10,000.00 €</b>	<b>11,070.00 €</b>	<b>11,900.00 €</b>
Buyer's fee	600.00 €	600.00 €	600.00 €
plus 19 % V.A.T. on the buyer's fee	114.00 €	114.00 €	114.00 €
<b>Subtotal 2</b>	<b>10,714.00 €</b>	<b>11,784.00 €</b>	<b>12,614.00 €</b>
Insurance (1 % on the net knock-down price)	100.00 €	100.00 €	100.00 €
plus 19 % insurance tax	19.00 €	19.00 €	19.00 €
<b>Total sum</b>	<b>10,833.00 €</b>	<b>11,903.00 €</b>	<b>12,733.00 €</b>

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).

2. Payment is due upon acceptance of a winning bid by the auctioneer and must be paid in cash (in Euro) or by check immediately after the auction in the auction office. Payment **must** be deposited in the organizer's account no later than 7 days after the auction. All costs and interest related to payment via check are the responsibility of the buyer. Payment via check is only considered in full once the check has been cleared and deposited in the account irrevocably. Until the full outstanding billing amount has been settled with the organizer, the foal remains the property of the seller (according to § 449 German Civil Code). The foal remains in custody of the seller until 6 months after birth.

### 3. Information for clients from other countries:

The V.A.T. collected for individual agricultural entities/farmers (10.7%) cannot be refunded, because this tax is not collected by the tax authorities. A tax exemption can be granted for the auction fee after all necessary paperwork has been submitted. If the seller is a contractor/tradesman or other commercial exhibitor (19%) or a commercial agricultural entity/farmer (19%) and has a tax ID, a tax exemption is possible. Export papers have to be filed promptly.

## XIV. Agreement on the legal and factual nature

All representations regarding the physical characteristics of the foals 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 foal 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. Neither the organizer nor the owner/seller makes any guarantees about the abilities of the foal.

Prior to arrival at the auction place, the owners had the foals evaluated in a clinical examination. The examination was conducted by a veterinary of the owners' choosing.

A health report has been prepared by the examining veterinarian for the owner. All health reports are available for assessment by prospective buyers and/or their veterinarians. The objective data/findings of the clinical exam are the sole representations regarding the physical condition of each foal and are considered legal and factual nature.

Any other reports, prognoses or classifications are not considered representations on the part of the legal and factual nature and are considered subjective opinions by the person filing the report.

Each foal, for which parents no test results for WFFS status is known, will be screen for genetic defects concerning WFFS. Results from these tests for all foals are available for viewing by potential buyers and/or their veterinarians. The WFFS test status is agreed upon as factual nature at the time of transfer of risk.

The Trakehner GmbH/organizer points 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. Any other conditions of the horse that are not explicitly made public in the health report are considered unknown and ambiguous, the risk of which is borne solely by the purchaser.

#### **XV. Used goods**

All foals offered in the auction are considered used goods with regards to their training to lead, load, and travel. They are further marked by microchips, familiarized with farrier work, have been examined by a veterinarian. Any other use, e.g. by participation at foal shows or inspections are outlined in the auction catalog if applicable.

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

1. Foals are sold with all warranties for defects and warranty rights excluded, released, and disclaimed unless otherwise agreed upon (Section XIV).

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.

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

The buyer is required to file any potential claims in writing within four (4) weeks of the close of the auction and transfer or risk, addressed to the seller.

Any such claims must arrive at the seller's address by the deadlines stated above.

### **3. Supplementary performance**

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 via supplementary performance.

To comply with supplementary performance, the buyer must inform the seller in writing that a defect exists and must make the foal available for pickup.

The seller is granted an adequate time frame from the day of delivery of the foal to remedy any defects and provide supplementary performance..

The seller must prove, though the report of a veterinarian, that any defect has been remedied satisfactorily or supplementary performance has been provided within the timeframes stated above.

Buyer's claims are excluded in case of successful remedy of defects and supplementary performance. 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.

### **XVII. Further claim of damages**

If a defect cannot be remedied and supplementary performance is not possible, the seller shall rescind the bill of sale 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 a deterioration of the foal's condition.

Actual costs of transport will only be refunded for a single trip within Germany. In that regard, the actual refund will be 0.50 € per kilometer driven. In case of a return trip across borders, the seller only covers costs until border crossing commences.

The buyer and seller agree that board, including feeding, for the duration of any claim shall be reimbursed at a cost of 180.00 € (plus V.A.T.) per month. If it is not possible for a buyer to guarantee board and feed at this price, the organizer agrees to place the foal 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 and supplementary performance 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.

### **XVIII Liability of the organizer**

The organizer cannot be held liable on grounds of the bill of sale. 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.

#### **XIX. Statute of limitation**

Any potential claims for remedy of defects or damages must be asserted within 3 months of transfer of risk.

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

#### **XX. Obligation to examine and complaint obligations**

If the buyer is an entrepreneur according to § 310 paragraph 1 of the German Civil Code, his claim of damages require that he/she/it complies with his/her obligation to examine and complaint obligations according to § 377 German Commercial Code.

#### **XXI. Acceptance and transfer of risk**

1. The buyer is required to pick up the foal 6 months after its birth at the seller's location. Until that time point, the seller carries all risk as well as all costs for farrier and veterinarian. After the end of the 6 month timeframe, all costs and the risk/danger are transferred to the buyer.

An earlier acceptance and pickup is possible as long as the buyer agrees. In that case, this new time point marks transfer of costs, risk/danger.

If the buyer is late regarding the pickup of the foal, he/she/it is required to carry all boarding costs as well as costs associated with veterinary and farrier work, etc. If this case arises, the buyer signs a contract with the commission agent/exhibitor of the foal for board (under the exhibitor's terms). Board payments are to be transferred to the exhibitor directly.

2. The risk of a random deterioration or demise of the acquired foal is transferred to the buyer 6 months after its birth.

3. At the time of transfer of risk (no later than 6 months after date of birth), a clinical exam will be conducted on behalf of the seller, who is responsible for all associated costs. All results of this clinical exam will be made available as a veterinary certificate. Acceptability has to be documented in a clinical certificate. In case of reasonable doubt regarding the result of the clinical exam, one of the four following veterinary hospitals has to be authorized on behalf of the buyer to examine the health status to determine acceptability of the foal. All associated costs are the responsibility of the buyer. The result of this exam is generally binding for all parties. The following veterinary hospitals are appointed as leading experts:

Equine Hospital Bargteheide, Alte Landstraße 104, 22941 Bargteheide

University of Leipzig, Faculty of Veterinary Medicine, Dept. of Surgery, An den Tierkliniken 21, 04103 Leipzig

Equine Hospital, Kiebitzpohl 35, 48291 Telgte

Equine Hospital, Vaterstettener Weg 6, 85599 Parsdorf

#### **XXII. Insurance**

With the knock down (final bid), all foals are insured by the Vereinigte Tierversicherungen (VTV) for a maximum of 25,000.00 € against death due to disease or accident as well as loss of use for riding purposes due to disease or accident, theft, robbery and death or euthanasia due to fire, lightning or transport-related damages resulting from the first transport from the auction venue to the first buyer's stable. Compensation is 80%. Insurance coverage covers the first eight (8) weeks after the auction, and at least until the foal has reached full six months of age. The buyer has the opportunity to extend this insurance on his own account and payment within the timeframe mentioned above. Under these circumstances, no new veterinary protocol or waiting period is necessary. Information is available from the VTV chief agency, Alexander Kuschel, phone: +49 (0)4324/882390. Mr. Kuschel is available during the auction at +49 (0)171/7784147.

#### **XXIII. Inclusion of terms of conditions**

The General Terms and Conditions are available online at (<https://www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/>) and are printed in all auction catalogs. They are also available from the auction office, where they are posted publicly. A note announcing the public display is placed on the auction grounds.

#### **XXIV. Data protection**

The Trakehner GmbH collects and stores the participant's data necessary for business processing. With regard to the processing of personal data of the customer, the Trakehner GmbH complies with the legal provisions. Further details can be found in the online privacy statement at (<https://www.trakehner-verband.de/veranstaltungen/fohlenauktion/fohlenauktion-2021/>). The customer shall, at any time and upon request, obtain information regarding the recording of any personal data.

#### **XXV. Application of law/German law**

For this auction and all potential out of court and legal measures regarding the terms and conditions of the contract of sale or this auction, German Civil Code and Commercial Code applies. Further, the United Nations Convention on Contracts for the International Sale of Goods in the version from April 11<sup>th</sup> 1980 is excluded.

#### **XXVI. Place of fulfillment and jurisdiction**

For all services rendered within the framework of the contracts, and disputes between the buyer and the organizer, the place of performance is the seller's place of residence. The agreement

about the place of fulfillment and jurisdiction is applicable as long as the buyer is a merchant, a corporate body under public law or otherwise an entity/customer incorporated under German public law or a specialized agency subject to German public law.

#### **XXVII. Severability clause**

If any or several of the conditions listed above should become void, this will not affect any other conditions.

#### **XXVIII. Superiority of the German version**

The General Terms and Conditions 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.