

## IMPORTANT INFORMATION

- Deadlines:
  - **2 weeks before the sale date**, the following must be received:
    - Original Registration Papers
      - 3 generation pedigrees will be printed in the catalog
    - Videos and Pictures
    - X-rays (if submitting)
    - A current Negative Coggins (within 6 months)
  - **2 days before the sale date**, the following must be received:
    - A signed breeder's certificate for all bred mares and unregistered foals, or a letter from the stallion owner stating the breeder's certificate will be issued at foaling.
    - **Written notice of Seller's reserve**, sent to [apexauctiongroup@gmail.com](mailto:apexauctiongroup@gmail.com) – if not timely received, Seller agrees to sell the horse without a reserve.
- Fees, Commission & Payment:
  - Consignment fee of \$250, and commission will be eight percent (8%) of the sale price.
  - Seller is responsible for transfer fees, which will be deducted from Seller's net proceeds.
  - Remittance of net proceeds will begin after Buyer's payment is deemed sufficient and if all the following requirements have been met (typically 2 weeks): 1) all required documents (ex: Breeder's Certificate, Original Registration Papers, *etc.*) have been provided; and (2) any dispute or claim by the Seller, Buyer, or any other

interested party have been resolved.

- Inspections / Disclaimer of Warranties:
  - Participants are urged to personally and thoroughly inspect and examine any horse of interest prior to bidding or buying.
  - **THERE ARE NO IMPLIED WARRANTIES MADE BY APEX AUCTION GROUP OR SELLER AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE OF ANY HORSE OFFERED FOR SALE IN THIS AUCTION.**
  
- Withdrawal / Private Treaty:
  - All consignments must go through the sale.
  - Once a horse is consigned, it may not be withdrawn from the sale for any reason other than infirmity, verified by a veterinarian's letter, except with the express written consent of Apex Auction Group.
  - Any horse withdrawn from the sale, for any reason other than infirmity, verified by a veterinarian's letter, will be assessed a \$500 penalty in addition to the \$250 catalog fee, which Seller agrees to pay. Further, all consigned horses sold as a result the sale will be subject to the 8% sales commission in addition to the catalog fee. Seller agrees not to sell the horse by private sale once the horse is consigned. If Seller breaches this agreement, Seller agrees pay Apex Auction Group 8% of the sale price in addition to a \$500 penalty and \$250 catalog fee. Seller agrees to disclose to Apex Auction Group the total sale price (including any commissions paid or other consideration exchanged for the horse) and provide all reasonably requested documentation and information pertaining to same.

- Any Seller who consigns a horse, grants to Apex Auction Group a security interest in the horse and their proper certificates of registration and in any products and proceeds, in the amount of any outstanding sum owed to Apex Auction Group on Seller's account.
- Apex Auction Group reserves the right, in its sole discretion, to refuse to accept a horse for consignment, and to refuse to permit any person from participating in the sale.
- **WARNING: UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A FARM ANIMAL PROFESSIONAL OR FARM OWNER OR LESSEE IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN FARM ANIMAL ACTIVITIES, INCLUDING AN EMPLOYEE OR INDEPENDENT CONTRACTOR, RESULTING FROM THE INHERENT RISK OF FARM ANIMAL ACTIVITIES.**

## Terms and Conditions

ALL PARTICIPANTS MUST READ AND AGREE TO THE FOLLOWING TERMS AND CONDITIONS BEFORE CONSIGNING A HORSE OR BIDDING ON/PURCHASING A HORSE.

These Terms and Conditions govern all activities involving the sale. By participating in the auction, all Sellers, Bidders, and Buyers, as well as their respective agents, and all other interested parties (collectively the “**Participants**”), agree to be bound by these terms and conditions and all resulting sales are subject to these terms and conditions and the preceding Important Information (collectively the “**Terms and Conditions**”).

“**Horse**” shall be deemed to include all horses, and all interests therein offered or sold during the sale, unless otherwise provided herein.

“**Seller**” shall be deemed to include the Horse’s registered owner(s), and the owner(s) respective agents acting on owner’s behalf, including but not limited to consignor(s), if different than owner(s), unless otherwise provided herein. All Sellers are bound by the consignment contract and the information provided therein as well as these Terms and Conditions.

“**Apex Auction Group**” means Apex Auction Group, LLC, and its members, managers, officers, employees, agents, and representatives.

Apex Auction Group reserves the right, in its sole discretion, to refuse to accept a Horse for consignment, and to refuse to permit any person from participating in the sale.

All Participants are strongly advised to consult their own legal and tax counsel with respect to the purchase of any Horse at the sale.

### The Role of Apex Auction Group

Apex Auction Group is not an agent for or representative of the Participants, but only provides a medium through which a willing Seller and a willing Buyer can come to an agreement on the sale and purchase of a Horse.

### Withdrawal / Private Treaty

All consignments must go through the auction. All consigned Horses sold as a result of the auction will be subject to the 8% sales commission in addition to the catalog fee.

Once a Horse is consigned, it may not be withdrawn from the sale for any reason other than infirmity, verified by a veterinarian's letter, except with the express written consent of Apex Auction Group. Any Horse withdrawn from the sale, for any reason other than infirmity, verified by a veterinarian's letter, will be assessed a \$500 penalty in addition to the \$250 catalog fee, which Seller agrees to pay. Seller agrees not to sell the Horse by private sale once the Horse is consigned. If Seller breaches this agreement, Seller agrees pay Apex Auction Group 8% of the sale price in addition to a \$500 penalty and \$250 catalog fee. Seller agrees to disclose to Apex Auction Group the total sale price (including any commissions paid or other consideration exchanged for the Horse) and provide all reasonably requested documentation and information pertaining to same.

Any Seller who consigns a Horse, grants to Apex Auction Group a security interest in the Horse and their proper certificates of registration and in any products and proceeds, in the amount of any outstanding sum owed to Apex Auction Group on Seller's account.

#### Accuracy of Catalog and Statements & Seller's Warranty of Title

**Apex Auction Group is not responsible for errors or omissions contained in the catalog or any other written or verbal statement made regarding the Horse. The Participants waive and release Apex Auction Group from all liability for errors or omissions, or for any verbal or written statement regarding a Horse sold in the sale.**

Seller hereby warrants that title and ownership of each Horse consigned by Seller is as described in the consignment form, and further warrants that the title thereto is free from any liens, mortgages or encumbrances.

#### Inspection / Condition of Horse

**Participants are urged to personally, and with veterinary assistance, thoroughly inspect and examine any Horse of interest prior to bidding or buying.** Bidders and Buyers are responsible for obtaining veterinary assistance.

Seller may, but is not required to, supply radiographs in the Dropbox Repository. These radiographs are not intended to take the place of an in-person and thorough inspection of a Horse by a Participant.

**Apex Auction Group does not warrant or guarantee the accuracy of any veterinary statements, digital radiographs, genetic testing results, or any other verbal or written statement regarding a Horse sold in the sale.**

Any Buyer who fails to obtain a pre-purchase examination prior to bidding does so at Buyer's sole risk.

Buyer shall defend, indemnify, and hold harmless Apex Auction Group from any loss, liability, damages, claims, lawsuits, causes of action, judgments, costs, expenses, and attorney's fees arising from any faults, conditions, or defects discovered after the sale.

#### Broodmares

The current pregnancy status of broodmares will be announced at the time of sale on the Seller's behalf and will take precedence over any printed material in the catalog or other advertising.

No guarantees are made by Apex Auction Group, nor by the Seller, as to the pregnancy status, foaling ability, or fertility of any Horse offered for sale, nor as to any agreements, contractual or otherwise, between a Seller of a broodmare in the sale and the owner of a stallion to which the broodmare is bred. Any agreements, contractual or otherwise, between a Seller of a broodmare in the sale and the owner of a stallion to which the broodmare is bred are strictly between the Seller of the broodmare and stallion owner, and the matter of ability of the Seller of the broodmare to assign any rights thereunder to a Buyer of a broodmare is strictly between the Seller and Buyer.

#### Recipient Mares

All recipient mares must be returned to the facility stated in the contract pertaining to the recipient mare in good condition by the earlier of the date required in the contract or December 1st of the year of foaling. Breeder's certificates for the resulting foal will not be provided until the recipient mare is returned. If the recipient mare is not returned, Buyer shall pay the owner of the recipient mare the greater of the fee stated in the contract or a \$3,500 recipient mare purchase fee, which must be paid prior to obtaining a breeder's certificate.

#### Multiple Embryos

Apex Auction Group is not responsible for providing information as to multiple embryos (i.e. foals of the same year) or frozen embryos out of mares or broodmares in the sale, nor shall it be liable in any way for Buyer's belated awareness of such information. Apex Auction Group makes no guarantees as to the accuracy of such information.

### Bidding, Purchasing, and Passage of Ownership

Subject to any pre-determined reserve being met, the highest bidder at the point in time where the bidding has closed online on a particular lot shall become the Buyer and ownership to that Horse passes immediately to Buyer at that point in time. **At that point in time, Buyer assumes all risk of loss and the responsibility for maintenance, care and expenses for the Horse purchased passes immediately from Seller to Buyer.**

**Upon the passage of ownership, the Buyer agrees to defend, indemnify and hold harmless Apex Auction Group and the Seller from all loss, cost and expense, including, but not limited to: the illness, injury or death of the purchased Horse; the loss or damage to property; and the injury or death to persons caused by the Buyer, its agents or employees, or the purchased Horse.** Ownership and all risks are assumed by the Buyer, whether or not delivery has been made.

Delivery of a purchased Horse shall be contingent upon the Buyer making a full settlement to Apex Auction Group as described in these terms and conditions and in the preceding Important Information.

Any Buyer who purchases a Horse, grants to Apex Auction Group a security interest in all Horses purchased and their proper certificates of registration and in any products and proceeds, in the amount of any outstanding sum owed to Apex Auction Group on Buyer's account.

### Settlement of Account

Upon the passage of ownership, all Buyers shall be responsible for the full purchase price, as stated, for the Horse purchased. Settlement for any purchase must be made in full and paid directly to Apex Auction Group within seventy-two (72) hours of the conclusion of the sale. Payment to any other source is prohibited and is not recognized as settlement. Settlement for any purchase must be made for the full purchase price with United States currency or funds from a U.S. bank in the form of a bank check, cash, certified check or travelers check, all of which methods must have been approved by Apex Auction Group prior to payment. Buyers who fail in any respect whatsoever to make settlement as described herein shall be in default. **Apex Auction Group shall not be responsible for Buyer's failure to make settlement.** Also, any person or entity issuing a check returned as "insufficient funds" or "payment stopped" or "account closed" or issuing a check that shall for any reason whatsoever not clear drawee's bank is subject to being prosecuted to the full extent of the law and is further subject to all legal and equitable remedies, including interest, court costs/arbitration fees and attorneys' fees incurred as a result.

### Post-Sale Care and Transport

A purchased Horse becomes the Buyer's responsibility immediately upon the passage of ownership as described herein. Buyer is also to arrange for transport of the Horse after purchase. Buyer is advised to contact Seller to arrange for the care of the Horse until such time as Buyer picks up the Horse. Unless Buyer and Seller agree otherwise, Seller agrees to keep the Horse for 10 days after purchase of Horse free of charge to the Buyer. When payment is deemed sufficient by Apex Auction Group, the Horse will be released for pick up. Buyer is responsible for making arrangements to pick up the Horse. Any arrangements and agreements made regarding after purchase care and transport of the Horse are strictly between the parties making those agreements. **In no instance will Apex Auction Group have any liability regarding after purchase care or transport.**

### Event Nominations and Stallion Subscriptions

Unless announced otherwise, all payments for event nominations, entry fees, and stallion subscriptions that become due after the date of sale are the responsibility of Buyer, who is also responsible for notifying the proper association of the change in ownership.

### Registration Certificates

All original registration certificates, transfer reports, breeder's certificates or breeder's certificate guarantees, and/or registration applications, will be held by Apex Auction Group until Buyer's full payment clears the drawee's bank and becomes unconditional credit. Upon payment clearance, all applicable paperwork will be forwarded directly to the proper breed association by Apex Auction Group. Seller shall be responsible for payment of all applicable transfer fees.

If a pending registration application is being processed by a breed registration agency at the time of the sale, the registration certificate will be sent from the breed registration agency to the Seller, who shall then deliver the registration certificate to Apex Auction Group, who shall then forward the registration certificate and transfer report to the proper breed association.

### AS IS, WAIVER, RELEASE, AND INDEMNIFICATION

**ALL HORSES SELL "AS IS," "WHERE IS" AND "WITH ALL FAULTS, EXISTING CONDITIONS, AND DEFECTS." BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT BUYER WILL HAVE, AS OF THE TIME OF BIDDING OR BUYING, THOROUGHLY INSPECTED AND**



**EXAMINED THE PHYSICAL AND NEUROLOGICAL CONDITION OF THE HORSE TO THE EXTENT DEEMED NECESSARY BY BUYER IN ORDER TO ENABLE BUYER TO EVALUATE THE PURCHASE OF THE HORSE. BUYER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT BUYER IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE PHYSICAL AND NEUROLOGICAL CONDITION OF THE HORSE BY BUYER AND THE ADVICE OF ITS OWN CONSULTANTS AND AGENTS, AND AT THE POINT IN TIME WHERE THE BIDDING HAS CLOSED ONLINE, WILL ACCEPT THE HORSE ON AN “AS IS,” “WHERE IS” AND “WITH ALL FAULTS, EXISTING CONDITION, AND DEFECTS” BASIS, WITHOUT REPRESENTATIONS.**

All Horses consigned to the sale are offered in accordance with the applicable laws of the State of Texas, including but not limited to the Texas Business and Commerce Code and Section 2.316(f) thereof providing that **THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS DO NOT APPLY TO THE SALE OR BARTER OF LIVESTOCK OR ITS UNBORN YOUNG.**

**THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR OTHERWISE MADE BY APEX AUCTION GROUP OR THE HORSE’S SELLER, AND NO EXPRESS WARRANTIES MADE BY APEX AUCTION GROUP, ITS AGENTS, MEMBERS, MANAGERS, OR REPRESENTATIVES. ANY EXPRESS WARRANTY OR GUARANTEE MADE ON THE SELLER’S BEHALF IN WRITING ARE MADE SOLELY BETWEEN THE SELLER AND BUYER.**

All Participants agree to release, hold harmless, indemnify, and defend Apex Auction Group, its members, agents, employees, managers, owners, representatives, or any person acting on its behalf from any and all liability, debt, claims, lawsuits, losses, damages, causes of action, judgments, costs, expenses, and attorney’s fees, related to or arising from: a breach or misrepresentation by Seller or Buyer; personal injury or death of any person (including, but not limited to, employees of Seller or Buyer) or any Horse, including, but not limited to, any claims arising out of injuries or damage (personal and property) caused by the Horse sold after the point in time where the bidding has closed online; or arising from any failure or defect in the sale website and platform. The foregoing shall apply whether or not the claim or liability in question results or is alleged to result in whole or in part from the sole, concurrent or comparative negligence or strict liability of Apex Auction Group, its members, agents, employees, managers, owners, representatives, or any person acting on its behalf, or any defect in the sale website and platform.

The indemnity obligations stated in this section are in addition to those stated elsewhere in these Terms and Conditions, in the Seller’s consignment contract,

or otherwise provided in writing.

### Dispute Resolution

If a dispute should arise between or among two or more bidders as to who won the bid and purchased the Horse, Apex Auction Group shall settle the dispute, and its decision shall be absolute and binding on all Participants. In such case, Apex Auction Group has the right to reopen the bidding procedure and ask for advanced bids, solely between the bidders having claimed the last bid. If there is no advance bid, the Horse shall be sold to the bidder from whom Apex Auction Group recognized the bid. If for any reason the bid should be reduced below the recognized bid at the beginning of such a dispute, Apex Auction Group may reopen the bidding to all bidders with the highest bidder becoming the Buyer regardless of whether or not the original bid exceeds the bid originally disputed. Any other dispute that arises shall be regulated according to the established customs and practices of professional auction sale companies and, as necessary, the following binding arbitration procedure. These Terms & Conditions shall be construed and enforced in accordance with the laws of the State of Texas without regards to its conflicts of laws principles.

**If a dispute should arise, all claims, disputes, controversies, differences or other matters in question pertaining to these Terms and Conditions or arising out of the sale, Apex Auction Group relationship to any Participants, or Apex Auction Group's services (including, but not limited to compensation for fees, expenses and/or commissions) shall be settled finally, completely and conclusively by binding arbitration in Weatherford, Parker County, Texas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, by an arbitrator chosen in accordance with said Rules; provided, however, Apex Auction Group shall be entitled to seek all legal and equitable remedies in order to enforce or foreclose its security interest, to recover Horses sold and not paid for in full and/or to collect payment for Horses. Arbitration shall be initiated by written demand of the party seeking arbitration. In the event a Participant fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the award, said Participant shall be liable for all costs of suit, including reasonable attorneys' fees for having to compel arbitration or defend or enforce the award and any and all arbitration / arbitrator fees. A decision of the arbitrator or arbitrators shall be final, conclusive and binding on the parties, and judgment may be entered thereon in a District Court of Parker County, Texas, to enforce such decision and the benefits thereof. The prevailing party shall be entitled to recover reasonable and necessary attorneys' fees and the costs of arbitration (including the arbitrators' fees) from the non-prevailing party. The "prevailing party" shall be deemed to be that party who obtains substantially the result sought, whether by dismissal or final award.**

Entire Agreement & Amendments

The entire agreement with Buyer regarding the sale and purchase of a Horse at the sale is contained in these Terms and Conditions. Apex Auction Group shall not be bound by any oral or written agreement or statement made between Buyer and Seller unless agreed to in writing and signed by an authorized representative of Apex Auction Group. Apex Auction Group reserves the right to amend these Terms and Conditions at any time by posting the revised Terms and Conditions on its website (<https://www.apexauctiongroup.com>). Participants continued use of the website, application, and services they provide, as well as Participants participation in the sale after revised terms and conditions have been posted signifies Participants' acceptance of same. No amendment of these Terms and Conditions will be binding on Apex Auction Group unless in writing and signed by a representative of Apex Auction Group or posted to the website.

The failure of Apex Auction Group to exercise one or more of its rights under these Terms and Conditions on one or more occasions shall not be deemed a waiver on its part to exercise such right(s) on one or more subsequent occasions. If any provision of these Terms and Conditions is found to be invalid for any reason, the other provisions shall not be affected and shall remain in full force and effect.

I have read the foregoing Terms and Conditions and agree to be bound by them in order to be a participant in the sale.

Signature \_\_\_\_\_

Date \_\_\_\_\_