

# Terms of Sale

The Westfälische Pferdestammbuch e.V., Sudmühlenstrasse 33, 48157 Münster, is the organizer of the "Preselection of two-year-old riding horse stallions" and of the "Main Stallion Licensing for riding horses" and of the "Stallion Market" in Münster.

By the registration for the "Preselection of two-year-old riding horse stallions for the Main Licensing" the party registering accepts the following terms and conditions of sale and ensures that the stallion is his free and absolute property. It may also not be encumbered by third party rights.

The Westfälisches Pferdestammbuch e.V. will carry out the following sales events and mediations:

- an auction on the occasion of the "Stallion Market"

In particular following terms of sale apply:

## A. General Terms

At the auction the stallions listed in the catalogue, which are used objects in the legal sense, shall be sold on behalf of the organizer and on account of the owner (commission business).

## B. Agreements on Properties and Condition

The stallions put up for sale will be sold as inspected. They shall have following characteristics, which also form the subject of the purchase contract:

### I. Physical characteristics:

Breeding, color and age as given in the catalogue. The breedings given in the catalogue are documented by pedigree papers, which are to be handed over to the buyer.

### II. Condition of health

The stallions have been examined before the event with regard to the following aspects:

- General examination (condition of care and nutritional status, skin and coat, mandibular lymph nodes, jugular veins, mucous membranes, teeth)
- External genital organs (testicular size and texture)
- Cardiovascular system (pulse, cardiac auscultation)
- Respiratory system (nasal discharge, cough, breath sounds)
- Eyes (conjunctivae, cornea, anterior chamber, iris, lens, vitreous body, ocular fundus)
- Examination of the locomotor system at rest and during movement

Radiological examinations have shown the following x-rays of each stallion:

- both front navicular bones OXSPRING method
- front feet lateral view (90°)
- hind feet lateral view (90°)
- both hocks two oblique views (45° and 115°) and anterior-posterior view (0°)
- stifle joint both sides lateral view (110°)

Concerning the clinical examinations there has been carried out a veterinary report to be looked at by interested buyers in the event office. X-rays can be inspected by the potential buyer and be interpreted by a veterinarian, if desired. The result of the report and, where required, the veterinarian's oral interpretation constitute the stallion's health condition. Additional veterinary

features of condition are not included in the agreement on quality. The buyer/association will not establish further features of condition according to accomplishments, health or other properties. Thus they are no subject of the sales contract.

When selling licensed stallions, there will be following agreement on the sexual suitability for breeding, above the agreement on quality defined in lit. B.II.:

- perfect condition of genitalia on palpation
- sexual mating ability
- fertilization capacity

### **C. Loss of Rights**

In case of a deficiency the buyer has to communicate (in written form) the deficiency within 8 weeks from the date of purchase to the Westfälische Pferdestammbuch e.V. or in case of brokerage business to the seller (date of post-mark as proof of date). Otherwise the buyer loses his rights regarding a deficiency (deviation from the agreement on quality defined in lit. B.). If the seller concealed a deficiency maliciously, the seller's rights regarding a deficiency would not expire. Apart from that the buyer will lose his rights regarding a deficiency of sexual suitability for breeding, if he does not communicate (in written form) a deficiency

1. of the perfect condition of genitalia within 8 weeks
2. of the mating ability within 6 months
3. fertilization capacity within 9 months

from the date of purchase to the Westfälische Pferdestammbuch e.V. or in case of brokerage business to the seller (date of post-mark as proof of date).

The aforementioned loss of rights shall not apply insofar as it is a sale of consumer goods defined by § 474 BGB (German Civil Code). In case of a dispute concerning the existence of a deficiency of the sexual suitability for breeding as defined above, the buyer can apply to the University of Veterinary Medicine Hannover for an expert's opinion within 2 weeks after refusal of the complaint to be prepared in writing beforehand. The respective parties have to submit to the resulting verdict according to the examination method "Warranty Periods in the Purchase of Stallions; a Uniform Procedure for the Testing of Sexual Suitability for Breeding" („Gewährsfristen beim Kauf von Zuchthengsten; einheitliches Verfahren zur Prüfung auf geschlechtliche Zuchtauglichkeit“) by Prof. Dr. Götze. If the buyer misses the deadline, he will lose the possible rights regarding the claimed deficiency. The seller will bear the costs of the proceedings, if the claim of deficiency is proven. Otherwise the seller will meet the costs of the proceedings.

### **D. Delivery and Passing of Risk**

After signing the contract of sale or the auction-agreement/ contract of sale following the auction, the buyer or his representatives are obligated to immediately take over the stallion. By signing the contract or on the fall of the hammer, which also substitutes the transfer of ownership, the risk of the purchased stallion is transferred to the buyer, even if the stallion remains in the seller's custody for the time being. This also applies, when the seller remains reserved owner. The ownership will be transferred not before full payment. The Westfälische Pferdestammbuch e.V. is liable for any kind of damage of the offered stallion, only if it is caused by intent or gross neglect. The same applies for damage caused by the offered stallion, except for personal injuries, where liability also applies in case of ordinary negligence.

### **E. Liability**

The exhibitor recognizes that the auction /event conducted by the Westfälische Pferdestammbuch e.V. is not a public auction in the legal sense. In the case of complaint after sale of an exhibited horse to a customer the liability rules for the sale of consumer goods apply. (No disclaimer; the shifted burden of proof is to the detriment of the association, if a reported defect is apparent within the first six months after delivery; reduction of statute of limitation period below one year for "used goods" is not possible). "

- I. Apart from the agreement on quality as shown in lit. B, the stallion shall be sold as inspected and by complete exclusion of any liability and warranty. The Westfälische Pferdestammbuch e.V. does not assume any liability or guarantee for specific properties or purposes. Regarding the quality the condition will be agreed contractually, as shown in lit. B.

- II. The disclaimer of warranty as defined in paragraph I. will not apply, if the liability-establishing circumstances are due to the seller's gross neglect and/or involve personal injuries. The aforementioned disclaimer of warranty does not apply in case of a sale of consumer goods defined by § 474 BGB (German Civil Code).
- III. Reasonable applications are limited to the substitution of inevitable feeding costs, necessary costs for a blacksmith and any necessary expenses made for a veterinarian. The seller will bear the costs for a return, only if these costs have incurred or may incur in the Federal Republic of Germany. The buyer will meet the costs for the transport to the border of the Federal Republic of Germany. The Westfälische Pferdestammbuch e.V. does not assume liability for additional costs especially for training, replacement purchase or any pecuniary losses (considering the defaults defined in paragraph II.).

#### **F. Term of limitation**

The buyer's claims of liability for material defects regarding entrepreneurial buyers (as defined in paragraph 14 BGB [German Civil Code]) will expire 3 months after the delivery of the stallion; regarding consumers as defined in § 13 BGB (German Civil Code) the claims of liability for material defects will expire 12 months after the delivery. Any claims for damages that are at least based on the negligent breaches of duty of the seller, his legal representatives or his agents, regarding life, body or health, are excluded from the facilitations of limitation. In case of any other damages the claims shall be based on at least gross neglect of breach of duty.

#### **G. Bidding**

The bidding for the stallions at the auctions is conducted in Euro. Bids must be at least 500€. When there are several bids, the award will be accepted by drawing lots or on allotment by the auction manager.

#### **H. Billing and Payment**

Within the commission business the buyer has to pay the purchase price and 6% of the award price as commission plus sales tax. The purchase price and the commission are to be paid immediately. The invoice total for the buyer in a commission business consists of the following components:

	award price
+6%	commission
=	net amount
+19%	V.A.T.
=	gross amount
+1%	insurance rate
	invoice total

The commission for sellers is 11, 13 or 17% (according to the valid scale of charges, item 10.1) of the award price plus sales tax.

The Westfälische Pferdestammbuch e.V. is authorized to receive the payments. Buyers, whose residence is not within the EU will not have to pay V.A.T., if the stallions are transported abroad immediately after the purchase. Buyers whose residence is within the EU have to pay the statutory German V.A.T. They do not have to pay V.A.T., if they can prove to the organiser, by submission of their value added tax identification number that the stallion is purchased on behalf of their enterprise.

In case of conflicts regarding the award these have to be stated to the auctioneer and the host immediately. The auctioneer will decide, whether s/he will have the concerning horse auctioned again. This would also be valid, if the buying agreement has already been signed.

The purchase price is to be paid immediately after the award. The purchase price including the commission has to be paid in cash or by cheque to the organiser's event office. In case of brokerage the owner or seller consents to a crediting as defined in § 393 III HGB (German Commercial Code).

The ownership will be taken over to the buyer not before full payment of the invoice total; in case of payment by cheque it will be taken over after the encashment of the cheque.

Cheque cancellation is precluded, even in case of a claim of the stallion. There are no claims, which justify the retention of the purchase price or of the surcharge except for claims that are undisputed or legally established.

### **I. AOB (any other business)**

The buyer has to sign a stabling contract with the Westfälische Pferdestammbuch e.V., if the stallion stays in the Westfälische Pferdezentrum. The stabling contract is established on the basis of the "general conditions for stabling horses in the Westfälische Pferdezentrum" („Allgemeine Bedingungen für die Unterstellung von Pferden im Westfälischen Pferdezentrum"), even, if the contract is entered into orally. These terms can be inspected in the sales office.

The salesperson and/or its representative has to ensure that a stable blanket remains with each sold horse. In case of negligence the Westfälische Pferdestammbuch e.V. will provide a suitable blanket and add the charges without consulting the salesperson

A stallion may not be removed from the premises until the payment has been settled. The removal of the stallion is only permitted after the submission of a certificate exhibited by the event office.

If desired the organiser will conduct the loading of the sold stallions for free but without liability. Addresses and loading stations are to be communicated to the office.

The buyer has to communicate claims to the Westfälische Pferdestammbuch e.V. in writing. The Westfälische Pferdestammbuch e.V. will then contact the owner. The conditions of sale will be hung out in the event office.

If individual regulations of the aforementioned conditions should be invalid, any other conditions will still be valid. Inoperative provisions are to replace with provisions that allow achieving the aimed economic success of both parties in a legal and practicable way.

German law/ choice of venue:

If the buyer does neither have a residence or place of business in Germany nor is s/he a German citizen, the parties will agree on the application of the German material and procedural right regarding the conduction of the contract. This also applies in case of a legal dispute. Provided both parties are entrepreneurs, the registered office of the Westfälische Pferdestammbuch e.V. will be agreed on as the place of jurisdiction.