

## **1. General – Scope**

Westfälisches Pferdestammbuch e.V., Sudmühlenstr. 33, 48157 Münster, Germany – hereinafter also simply "Organiser" – operates the auctioning of horses and ponies over the internet – hereinafter "online auction" – on behalf of and on account of the respective exhibitor (agency). These Online Auction General Terms and Conditions – hereinafter also simply "GTC" – shall form the basis for the purchase contract with the Buyer and for the legal relationship to the Bidder (hereinafter also "Participant" and "Buyer") and the Exhibitor.

The Exhibitor has already accepted these Online Auction General Terms and Conditions with the registration of the Exhibitor's horses/ponies. The Bidder accepts the Online Auction General Terms and Conditions with the participation in the bidding process. In the event of a successful bidding process, a purchase contract shall be concluded between the Exhibitor and the highest bidder only.

These GTC apply exclusively; any terms and conditions contrary to or deviating from these GTC shall not be recognised unless their validity is expressly agreed to in text form. These GTC also apply if the purchase contract is concluded without reservation in the knowledge that the Buyer's terms and conditions are contrary to or deviate from these GTC.

All agreements made between the Organiser and the Buyer for the purpose of executing a concluded contract are laid down in these GTC.

The Organiser retains the property rights and copyrights to illustrations, videos, drawings, descriptions, and other documents used by the Organiser for the auction. The Bidder, the Buyer and any third party must obtain the express consent of the Organiser in text form before passing these on to third parties.

These GTC apply principally in the same way towards entrepreneurs (§ 14 BGB) and towards consumers (§ 13 BGB), unless their validity is expressly limited with regard to individual clauses in their scope.

## **2. Structure and implementation of the online auction**

### **2.1 Registration and user account**

Participation in an online auction is open to any natural or legal person registered with the Organiser. Participants may only be allocated one account. There is no right of participation. When registering, all questions asked by the Organiser in the registration form must be answered truthfully and completely, and any requested copies must be included. Every participant must also submit whether they are a consumer as defined in § 13 of the German Civil Code (BGB) or an entrepreneur as defined in § 14 BGB. If the participant submits inaccurate information, the Organiser may terminate the contract of participation without notice. The Organiser and the vicarious agents commissioned by them for the implementation of the online auction are also authorised to store the Participant's IP address.

Representation and legal capacity

- (a) Natural persons may only register to use the platform if they are of legal age and have unlimited legal capacity.
- (b) Authorised representatives for natural persons of a legal person must be mentioned by name.
- (c) Registered users are given a password. Every user shall undertake to keep their password secret.

The Participant may cancel the contract of participation at any time, upon which their access via password will be deactivated after the auction has run its course. If the cancelling participant has submitted a bid in an online auction that has not yet finished by that time, that auction will be nevertheless concluded in accordance with the contract.

The Organiser is entitled to terminate the contract of participation without notice for good cause. This applies in particular if the Participant refuses without grounds to fulfil the contract concluded by way of the auction, or never intended to fulfil this.

The Organiser is entitled to exclude the Participant from further events.

## **2.2 Online auction procedure**

- (a) The online auction begins with an offer made by the Organiser on the internet platform. This is a declaration of intent by the Exhibitor to conclude a purchase contract. In the offer, the bidding time is specified through the information given under "end of auction". This offer cannot be accepted by a simple "yes", but rather involves an acceptance, declared in advance, of the highest bid. The Exhibitor shall only accept the highest bid effectively submitted by a bidder within the stated bidding period in accordance with the conditions of these GTC.
- (b) Bids may be given only through the interface installed on the platform for registered bidders and only online. Bids submitted by other means shall not be considered even if they reach the Organiser during the bidding period. A bid will also not be accepted if the Bidder has not declared that they agree to the validity of these GTC for the respective auction and acknowledge the cancellation policy. Bids entered which are submitted for the registered user under "Bid" before the end of the auction in accordance with these GTC, will only be considered if they are received by the Organiser before the end of the auction. Transmission is carried out at the Bidder's risk.
- (c) Each bid of each bidder shall be released subject to the submission of a higher bid. The Bidder is bound by the bid they submitted until the end of the bidding period. Bids entered under the minimum bid shall not be accepted, even if no higher bid is received by the Organiser before the end of the auction. The purchase contract for the auctioned horse shall be concluded by the effectively submitted highest bid of the registered Bidder (at the end of the bidding period) without a separate knockdown.

An effective bid must be equal to or more than the minimum bid as well as at least one bidding step above the previous bidder's bid.

- (e) The contract between the Exhibitor and the highest bidder for the purchase of the horse is concluded upon expiry of the auction period (also referred to as the "knockdown"). The Organiser is not responsible for technical delays – including overload of transmission paths.

(f) If the highest bid at the end of the auction is found to be invalid, this does not mean that the next-highest bid wins the auction. The Organiser can in this case reopen the auction and determine a new ending period. In this case, the starting price shall be the highest valid submitted bid up to that point.

### **2.3 Bidding phase**

(a) Maximum or highest bids may be submitted in the first bidding phase. Below €10,000, the price shall increase by increments of €250; from €10,000 and higher, the price shall increase by increments of €500 (hereinafter "increment"). Incoming bids are prioritised strictly according to the time of their receipt. If two or more identical highest bids are received at the end of the auction, the bid received first wins the auction. All times are determined by the system time of the server.

If a bid is submitted that includes a total or partial increment above the current bid, the current bid will change in relation to the newly submitted bid and all previously submitted competing bids. In other words, if the current bid is for €5,000 and a maximum bid of €7,500 is received, the current bid is raised to €5,250 (i.e., one increment higher than €5,000). If there is already a competing maximum bid of €6,000 at that time, the current bid rises to €6,250 – i.e., by one increment above €6,000.

If a maximum bid has been placed, the Participant will receive an email confirming their bid and informing them of the amount for which they are currently the highest bidder. As soon as the highest bid is exceeded, the Participant will receive another email in which they will be informed that they have been outbid.

(b) At the end of the auction, the maximum bid will be replaced by a bid up process. The respective increment as well as the final price will be shown directly to the Participant. During the last 300 seconds before the end of the auction, each bidding activity extends the countdown by 300 additional seconds.

(c) All placed bids are subject to applicable value-added tax.

(e) Notification of conclusion of contract: The bidder who has submitted the highest effective bid at the end of the auction shall be notified thereof in text form by email or by other means on a permanent data medium. The receipt of the notification is the confirmation of the already concluded purchase contract and not an additional condition for its conclusion. Bidders who did not place the highest bid will not receive notification. The highest bid will be provided without the bidder's name on the platform immediately after expiry of the bidding period.

(f) The Organiser is entitled at their dutiful discretion to block registered bidders for specific auctions of specific horses or for a certain period of time or in general, and thus to exclude them from participating in auctions on a limited or unlimited basis. This is only permitted if there is good cause for us to believe that a continuation of a legal relationship with the blocked person is no longer acceptable.

(g) The Organiser may stop an auction at reasonable discretion at any time before the end of the bidding period if there is an objective reason to do so. The organiser is also entitled to cancel the auction in the event of system failure due to technical issues. In this respect, the right of revocation of the respective online offer for individual horses is expressly reserved. The decision to discontinue will be communicated on the online platform with a

heading stating the reason. With notification, bids already placed will expire without substitution. In the case of an auction carried out in accordance with the announcement and concluded at the end of the bidding period, the reservation to revoke the offer to sell to the highest bidder shall expire at the end of the auction without requiring a separate declaration by the Organiser. Bidders may make no claims for damages in the event of technical problems in the execution of the online auction, in particular system failures, non-access to bids or their rejection for technical reasons.

(h) During ongoing auctions, the Organiser shall maintain a hotline which can be reached at the time stated on the online platform at the caller's expense and at the charges stated there. This hotline serves only to resolve transaction processing problems, and not to accept bids. No commitments shall be made nor any kind of contractual agreements concluded via the hotline.

### **3. Information on auction object**

#### **a) External qualities**

The horses/ponies offered for auction on the Organiser's platform are offered accompanied by the following information:

Name of horse, sex, age, colour, height and pedigree along with photographs and video.

This information presents merely a description of the auction object and is not the subject of a warranty with regard to a future purchase contract. Nor shall the visual depiction of the horse/pony as well as any comment or other spoken remarks about the classification of the animal with regard to its predominant talent as a horse for riding, sport and breeding, the description of its external appearance and performance as well as information on pedigree constitute an agreement as to quality, but rather these are statements of knowledge and based on the subjective impressions of the Seller, the Organiser or their agents.

The above-mentioned information does not imply any quality with regard to special sport or breeding abilities and performance of the horse/pony, neither now nor in the future.

#### **b) Condition of health**

(1) The horses and ponies presented in the online auction were examined both clinically and radiographically (x-rays) prior to the online auction. The radiographic examination consists of x-rays made to the following areas: Oxspring front left, Oxspring front right, digit front left, digit front right, digit hind left, digit hind right, hock left, hock right, knee left, knee right.

(2) Fertility/breeding ability or the existence of reasons which could prevent a stallion from being licensed were not part of the medical examination. The same applies to the breeding fitness of mares.

In this regard, the parties agree on an unknown and therefore imponderable condition as a contractual quality.

(3) A veterinary examination report has been drawn up on the clinical applicable radiographic examinations carried out on the horse/pony entered in the auction. This can be viewed by registered customers via link. The bidders may have the veterinary pre-purchase vetting report and x-rays examined by a veterinary surgeon of their choice at their own cost. It is strongly

recommended that the Bidder make use of this possibility. By participating in the bidding process, the Bidder confirms that they have acknowledged the instruction on the possibility to inspect the prepared examination documents.

The Bidder is furthermore aware that inspection of the horse/pony prior to participation in the bidding process and conclusion of the purchase contract was possible after prior coordination of the date with the Seller and/or Organiser.

(4) The veterinary examination report available for inspection does not become part of this contract as a health status agreement, because neither the Organiser nor the Seller can make binding statements about the health status of the horse/pony. Assessments and statements made by the vet do not have any legal effect for the parties.

#### **4. Purpose of use/guarantee**

The Seller assumes no guarantee, nor does the Association (also "Verband"). This also applies in particular to certain characteristics or purposes of use of the horse/pony.

The parties agree that the further development and capabilities of the horse/pony are not foreseeable. Any verbal statements made by the Seller or the Verband regarding the classification of the horse/pony as a riding, sport or breeding horse and regarding its predominant permanent suitability do not represent any characteristics of quality or guarantee promises, but are based on subjectively formed impressions of the Seller/Verband or their agents. They do not imply any quality or guarantee with regard to special sporting or breeding abilities or performance of the horse, neither now nor in the future.

#### **5. Prices and payment terms**

(a) All submitted prices and bids are subject to applicable value-added tax. The sales tax amounts to, depending on the taxation of the Exhibitor (Seller): 0% (private sale), 10.7% (flat-rate option for farmers) or 19% (commerce, etc.). The corresponding value-added tax rate is shown after the name of the Exhibitor on the auction page, in the offer for the respective horse/pony. The information on the value-added tax will be provided by the Exhibitor after notification. Westfälisches Pferdestammbuch e.V. assumes no liability for this information.

(b) For its mediation services, Westfälisches Pferdestammbuch e.V. will charge the buyer a sales fee of 6% of the final price (net) plus 19% value-added tax.

Westfälisches Pferdestammbuch e.V. has arranged obligatory insurance cover with Vereinigte Tierversicherung for the horse/pony sent to for auction and, for this purpose, collects from the Buyer a sum in the amount of 1.5% of the gross knockdown price plus gross fees in addition to statutory value-added tax.

(c) In light of this, the amount to be paid by the Buyer is calculated as follows:

1. Bill for horse/pony:

Purchase price (highest bid)

+ Exhibitor's individual value-added tax (0%, 10.7%, 19%)

= Gross invoice amount 1

2. Invoicing fees:

6% fees from purchase price

+ statutory value-added tax (currently 19%)

= Gross fees

+ 1.5% insurance premium (calculation from gross invoice amount 1 and gross fees)

+ statutory value-added tax (currently 19%)

gross invoice amount 2

The Bidder will receive the invoices indicating the price and VAT with the confirmation of the conclusion of the purchase contract.

Discount deductions are not permitted.

(d) The purchase price is due immediately and without discount. The statutory regulations concerning the consequences of default of payment shall apply. The auctioned horse will be handed over to the Buyer or to the carrier only after full payment of the purchase price and fees. The invoice amounts are to be paid immediately by bank transfer to the account of Westfälisches Pferdestammbuch e.V. at

Sparkasse Münsterland-Ost

IBAN: DE35 4005 0150 0045 0213 00

BIC: WELA DED1 MST

(e) The Buyer is entitled to offsetting rights only if their counterclaims are legally established, undisputed, or recognised by Westfälisches Pferdestammbuch e.V. The Buyer is only entitled to exercise a right of retention insofar as their counterclaim is based on the same contractual relationship.

(f) The Exhibitor remains owner of the respective horse until full payment of the invoiced amount to Westfälisches Pferdestammbuch e.V. in accordance with § 449 BGB. In the case of payment by cheque or bank transfer, the transfer of ownership shall take place at the time of the unconditional receipt of the invoiced amount into the account of Westfälisches Pferdestammbuch e.V.

(g) If the Buyer does not pay the calculated amount in five working days (including Saturday) after the end of the auction, the Seller may withdraw from the contract and sell the horse elsewhere. The original purchaser is hereby liable for any shortfall in proceeds and is also liable to pay damages to the Organiser.

(h) The Exhibitor irrevocably assigns the right to Westfälisches Pferdestammbuch e.V. to issue an invoice to the Buyer for its services.

(i) In the event that the Buyer comprises several persons for the purchase of a horse at auction, these persons shall bear liability, jointly and severally, to the Exhibitor for claims arising from the auction purchase (purchase price, acceptance, etc.). The Buyers are furthermore entitled to their own claims from the auction transaction as joint creditors, so that the Seller/Exhibitor is entitled to make payment to each of the Buyers.

(j) The value-added tax invoiced for buyers residing abroad cannot be refunded by farmers who use the flat-rate scheme (10.7%), as this tax is not payable by the Exhibitor to the tax authorities. The auction fee may be exempted from value-added tax upon presentation of the necessary documents. If the Exhibitor is a business or a farmer opting for 19% value-added tax, the exemption from sales tax does not change. The Buyer furthermore shall provide information on export and transport promptly after purchase.

## **6. Collection of horse/pony / place of performance / transfer of risk**

(a) The Buyer or their agents shall undertake to collect the horse/pony immediately after conclusion of the purchase contract. The horse/pony must be collected by the Buyer no later than two weeks after the end of the auction at the Organiser's place of business in Münster-Handorf, unless the Seller and the Buyer have agreed on the location of the horse/pony at the Seller's premises.

The Exhibitor shall bear the costs associated with the care of the horse/pony up to the expiry of the two-week period after the conclusion of the purchase contract, including farrier and veterinary costs. This does not include necessary veterinary costs due to illness/injury to the horse/pony that occurred after the transfer of risk. These shall be borne by the Buyer, subject to effective cancellation of the purchase contract.

(b) The Exhibitor and the Buyer may agree on a later transfer of the horse/pony, whereby the time of the transfer or receipt of the horse/pony shall be determined by the conclusion of the corresponding agreement. From this time onwards, the Buyer shall also bear all costs associated with the care of the horse/pony, which, unless otherwise agreed, shall be set at €25.00 plus applicable statutory value-added tax per day plus any incurred farrier/vet costs.

If the horse/pony is to remain at the stables of the Organiser or the Westfälisches Pferdezentrum, the Buyer shall undertake to conclude a subcontract with the Organiser for this purpose. The stabling contract, even if concluded orally, is based on the General Conditions for the Stabling of Horses at Westfälisches Pferdezentrum. This document may be viewed at the Auction Office.

(c) If the two-week period after conclusion of the purchase contract has passed without effect, the Buyer shall be in default with their obligation to collect the horse/pony, without requiring a reminder from the Seller/Organiser. At the same time, in this case, the date of the handover or receipt of the horse/pony shall be set for the expiration of the two-week period after conclusion of the purchase contract. Furthermore, from this point in time until the actual collection of the horse/pony, the Buyer shall also pay the Seller or Organiser, depending on the location of the horse/pony, costs amounting to €25.00 per day plus applicable statutory value-added tax in addition to any incurred farrier/vet costs. The same applies if the horse/pony cannot be handed over because the Buyer has not fulfilled their obligation to pay in full.

(d) Upon conclusion of the purchase contract, risk of accidental loss and/or deterioration shall be transferred to the Buyer, even if the horse/pony initially remains in the custody of the Seller or the Verband.

The horse/pony will be handed over with headcollar and lead.

The seller or the Verband shall only be liable for damages of any kind to the stabled horse/pony in case of intent or gross negligence.

## **7. Retention of ownership**

Ownership of the horse/pony is transferred to the Buyer only after full payment of the purchase price including sales fee and value-added tax as well as all additional costs. The right is reserved to transfer ownership until all due claims from the business relationship have been paid.

Prior to the transfer of ownership, no pledging, transfer by way of security, handling or transformation shall be permitted without the consent of the Organiser or Seller.

## **8. Insurance**

Westfälisches Pferdestammbuch e.V. has arranged an obligatory insurance cover through Vereinigte Tierversicherung for all horses/ponies participating in the auctions, with the following conditions:

- The insurance cover begins with the end of the online auction for the respective horse/pony.
- The insurance cover ends eight weeks after the auction.
- Transport of the horse/pony to the original purchaser's stable is insured within this period.
- The indemnity to be paid amounts to 80% of the sum insured (up to a maximum of €100,000.00) less any amount realised. Damages must be reported immediately to Westfälisches Pferdestammbuch e.V. and to the insurer.

## **9. Liability**

### (a) Seller's liability

1. If the seller is a consumer (§ 13 BGB) or both parties are entrepreneurs (§ 14 BGB), there shall be no rights regarding defects nor liability for material defects.

2. The exclusion of liability agreed in Item 1 above does not apply insofar as the Seller is liable for personal injury resulting from injury to life, body or health which is based on at least a negligent breach of duty on the part of the Seller or intentional or negligent breach of duty by the Seller's legal representative or vicarious agent. Neither does the exclusion of liability apply to other damages based on at least a grossly negligent breach of duty by the Seller or the Seller's legal representative or vicarious agent.

3. In the case of a defect, the Exhibitor is entitled to rectification. The Buyer has the option of rectification or subsequent delivery. The Seller is entitled to make a subsequent delivery if rectification of defects is unreasonable or impossible. If the Buyer effectively declares his withdrawal from the purchase contract, the Seller shall owe the repayment of the purchase price concurrently against handover and repossession of the horse. The Seller shall also owe compensation for any necessary costs pertaining to feeding and stabling, farrier services and necessary veterinary care. Costs for renting a place in a boarding stable are necessary in the amount of up to €7.00 per day. The Seller shall reimburse the costs of return transport within Germany. In this respect, transport costs are reimbursable in the amount of €0.50 per transport

kilometre driven. If the Buyer transports the horse outside of the country, the Buyer shall pay for the cost of return as far as the German border.

The Seller shall not be liable for damages, in particular in the form of expenses for training, replacement or other financial losses. This exclusion does not apply to the Seller's liability for personal injury resulting from injury to life, body or health which is based on at least a negligent breach of duty by the Seller or intentional or negligent breach of duty by the Seller's legal representative or vicarious agent. This exclusion likewise does not apply to liability for other damages based on a grossly negligent breach of duty by the Seller or on an intentional or grossly negligent breach of duty by the Seller's legal representative or vicarious agent.

The Exhibitor's right to demand the surrender of use and/or compensation for the value of the horse for any use, utilisation, sale, encumbrance, handling, transformation, deterioration or destruction of the horse shall remain unaffected by the above provisions.

#### (b) Liability of the Verband

1. Westfälisches Pferdestammbuch e.V. assumes no liability from the brokered purchase contract.
2. The above-mentioned liability exclusion does not apply to the extent that the Organiser is liable for personal injury resulting from injury to life, body or health based on at least a negligent breach of duty by the Organiser or intentional or negligent breach of duty by the Organiser's legal representative or vicarious agent. Neither does the exclusion of liability apply to other damages which are based on at least grossly negligent breach of duty by the Organiser or the Organiser's legal representative or vicarious agent.

### **10. Notification regarding complaints or material defects**

The Buyer must report any defects or other complaints and their possible revocation to the Seller in text form. In this regard, the contractual parties shall undertake to notify the Organiser accordingly in text form.

### **11. Statute of limitations**

(a) Any liability claims of the Buyer against the Seller for material defects shall become statute-barred in the case of a sale by an entrepreneur to a consumer within two years of the handover of the horse/pony. For all other sellers (sale by an entrepreneur to another entrepreneur; by a consumer to an entrepreneur; by a consumer to a consumer), any claims shall become statute-barred within eight weeks of the transfer of risk.

Excluded from the easing of the statute of limitations are all claims for personal injury based on at least negligent breach of duty by the Seller or the Seller's legal representative or vicarious agent. Neither does the easing of the statute of limitations apply to claims due to other damages based on at least a grossly negligent breach of duty by the Seller or the Seller's legal representative or vicarious agent.

(b) Any claims for damages against the Organiser shall become statute-barred within three months after conclusion of the brokered purchase contract. Excluded from the easing of the statute of limitations are all claims for personal injury based on at least a negligent breach of duty by the Organiser or the Organiser's legal representative or vicarious agent. Neither does

the easing of the statute of limitations apply to such claims due to other damages based on at least a grossly negligent breach of duty by the Organiser or the Organiser's legal representative or vicarious agent.

(c) If the Seller and Buyer are entrepreneurs in the legal context, the Buyer's claims for defects presuppose that the Buyer has duly fulfilled its obligations to inspect and give notice of defects in accordance with § 377 of the German Commercial Code (HGB).

## **12. Loss of rights**

The Buyer loses the rights to which they are entitled due to a defect if they do not notify the Exhibitor, or the consignor acting as seller, of the defect in text form no later than eight weeks from the time of the conclusion of the purchase contract, or send notification to them. No loss of rights occurs if the Seller has fraudulently concealed the defect.

## **13. German law – place of jurisdiction – data privacy**

All rights and obligations arising from and in connection with the contractual relationship shall be governed by non-uniform German law, namely the laws of the German Civil Code (BGB)/German Commercial Code (HGB). The UN Convention on Contracts for the International Sale of Goods (CISG) from 11/04/1980 shall not apply.

### Data privacy

For the business transaction, the necessary data from the auction participants is collected and stored. The legal regulations are observed when processing personal data. Further details can be found in the data privacy policy available on our website. On request, the Participant can obtain information about their stored personal data at any time.

## **14. Final provisions**

(a) These General Terms and Conditions are provided in the German and English languages. In the event of discrepancies, the German-language version alone shall apply; the German-language version shall also be the primary and authoritative source for the interpretation of the English-language version.

(b) The Organiser reserves the right to modify or supplement these online auction terms and conditions for the future. The approved bidders will be informed separately by email of any changes or additions to these conditions during ongoing auctions. The amended or supplemented conditions shall only apply if the bidder submits a new bid after receipt of the notification.

(c) The EU Commission has provided a platform ("ODR platform") for online dispute resolution. The ODR platform is intended for the extra-judicial resolution of disputes arising from contracts concluded online. The ODR platform can be found at the following link: <http://ec.europa.eu/consumers/odr>.

In accordance with § 36 VSBG, we inform you that we are neither willing nor obligated to participate in a dispute resolution process before a consumer arbitration body.

(d) Should any individual provisions of these General Terms and Conditions be or become invalid or unenforceable, the validity of the contract shall remain unaffected. Statutory provisions shall then apply in place of the invalid or unenforceable provision. The same applies accordingly in the event that the contract proves to be incomplete.