

**Auction conditions**  
**Auction / Stallion sales**  
(Commission business)



**A. General Terms**

1. The auction is organized by the Westfälisches Pferdestammbuch e.V., Sudmühlenstr. 33, D-48157 Münster.

It sales the horses listed in the catalogue under its own name and for the account of the exhibitors (commission business).

2. The auction is a publicly accessible auction (§ 312 g number 10 BGB), which is also conducted and carried out by a publicly appointed and sworn auctioneer in accordance with § 34 b para. 5 GewO (Trade Regulation Act) (§ 383 para. 3 BGB), in which the horses are sold as used items in a legal sense.

The regulations of the sale of consumer goods are thus not applicable according to § 474 para. 2 S. 2 BGB.

**B. Quality Agreement**

The offered horses, that are not intended to serve for food production, will be sold as seen and have featured the following essential characteristics at the time of delivery, which are also subject-matter in the contract of sale:

**I. External characteristics:**

1. The pedigree as stated in the catalogue.

The pedigrees stated in the catalogue are based upon the breeding certificate which is handed over to the buyer.

2. Sex, colour and year of birth as stated in the catalogue.

The representation of the horse in the auction catalogue, also the classification of the abilities of this horse as a dressage/show jumping/eventing horse, is not part of its characteristics of state. An assurance of any specific abilities of a particular horse is explicitly not given.

**II. State of health**

The horses offered for sale have been clinically examined and x-rayed within the time-frame given by the Westfälisches Pferdestammbuch e.V. – directly after the pre-selection – at which the “Veterinary Standards for Licensings for German Horse Breeding Populations” have been applied.

The following x-rays have been taken on the sedated horse without horse shoes and the side-indicator within the shot, according to the “Guidance for the radio-graphical evaluation during the Sale-examination of the horse” (Röntgen-Leitfaden 2018).

- Front extremities (each on both sides) (German notation according to aforementioned “Röntgen-Leitfaden 2018”)

Huf 90° / Zehe 90° / Huf 0° nach Oxspring (mit Abbildung des Fesselgelenkspaltes)

- Hind extremities (each on both sides) (German notation according to aforementioned “Röntgen-Leitfaden 2018”)

Zehe 90° / Sprunggelenk 0° / Sprunggelenk ca. 45° / Sprunggelenk ca. 135° / Knie ca. 90° / Knie 180°

Concerning the clinical exam a veterinary examination protocol has been made that may be viewed by prospect buyers in the auctioneer’s office, as well as with the responsible veterinarian.

The x-rays listed above will not be evaluated, however these are available throughout the licensing days to be viewed by prospect buyers as well as the clinical examination protocol.

Prospect buyers may have the x-rays evaluated by a veterinarian of their choices or by one of the auction veterinarians.

The results of the objective medical ascertainment, that consists solely on the protocol made during the clinical exam and is available to be viewed, as well as the visual state seen in the x-rays, represent the state of health of the horse. The buyer is informed, that the taken x-rays represent standardized shots, which cannot account for all radio-graphical findings.

Both parties agree, if the state of health is affected outside the depth of the clinical sales-examination, the state of health is an unknown and imponderable within the contractual characteristics.

Further characteristics with concern to performances, health or any further features of the horses are not part of the sale contract.

For the sale of licensed stallions an additional agreement on the state of health applies with concern for the sexual ability to breed as stated below:

- Immaculate condition of the sexual organs, measure by palpation record
- Sexual ability to mate
- Fertilisation capacity

III. The auctioneer will announce current health concerns and essential changes to the catalogue description of a horse on the auction day.

IV. The exhibitor / supplier as seller as well as the Westfälisches Pferdestammbuch e.V. explicitly carry no guarantee. This applies in particular to certain characteristics of the horse or purposes. The parties agree that the further development and further skills of the horse are not foreseeable. Any verbal statements made by the seller / association concerning the assignment of the horse as a riding, sporting and breeding horse and with regard to its predominant enduring suitability do not represent any quality features but are based on subjective impressions. A condition or guarantee with regard to particular competitive or reproductive abilities and performances is not given now or in the future. The parties agree that the health conditionality agreement concluded in B. II. is conclusive and comprehensive.

## **C. Forfeiture**

### **I. Horses**

The buyer shall forfeit his rights justified from the absence of guaranteed qualities (deviation from the quality agreement under B) if he fails to notify the Westfälisches Pferdestammbuch e.V. in text form of such deficiency within eight weeks counted from the day of the auction or dispatches text form notification within this period of time.

Such forfeiture does not apply if the seller has fraudulently concealed this deficiency.

Apart from that the buyer will lose his rights regarding any deficiency of sexual ability for breeding (see B. II.), if he does not notify of any deficits regarding

1. the immaculate condition of the sexual organs within eight weeks
2. the ability to mate within six months
3. the ability to fertilise within nine months

from the date of purchase to the Westfälische Pferdestammbuch e.V. in text form or dispatches the notification within this time-frame.

In case of a dispute concerning the existence of a deficiency of the sexual suitability for breeding as defined above, the buyer has to apply to the University of Veterinary Medicine Hannover ("Stiftung Tierärztlichen Hochschule Hannover, reproduktionsmedizinische Einheit, Kliniken für Pferde") for an expert's opinion within two weeks after refusal of the complaint to be prepared in text form beforehand. The requirements for this examination as well as the interpretation of the result meet the recommendation of the FN (Deutsche Reiterliche Vereinigung) regarding the warranty ascertainment for covering stallions (Gewährschaftsbestimmungen für Besamungs- und Deckhengste des Jahres 2013). The report will be binding for all involved parties. If the buyer misses the deadline, he will lose his possible rights regarding the claimed deficiency.

The seller will bear the costs of the proceedings, if the claim of deficiency is proven. Otherwise the buyer will bear the costs.

## **D. Delivery and Passing of the risk**

### **I. Horses / licensed stallions**

The buyer or his representative is required to take possession of the horse immediately after conclusion of the sales contract.

With the knock-down that substitutes for the change of possession, the risk has passed to the buyer, even if the horse remains in safe-keeping of the association at first. The ownership rights will only change to the buyer when the payment has been issued in full. This applies, when the supplier remains reservation owner. The grooms must care for the horse's well-being until the horse is loaded and they will assist loading the horse.

The horses will be given out with a head collar and rope.

The association can only be made liable for any damages of the horse that has been caused by purpose or gross negligent.

## **E. Liability/Warranty**

I. With the exception of the quality agreement stated under B. the horse/licensed stallion is sold as seen with any further liability/warranty excluded. The Westfälisches Pferdestammbuch e.V. does not take on any liability or warranty for certain characteristics or purposes.

In respect of the condition the state described in under B. is contractually agreed.

II. The exclusion of liability as prescribed in figure I. is not applicable if the reasons and conditions justifying liability are on the part of the supplier or a matter of gross negligence/or in case of personal injury. In case of personal injury liability stands, even at simple negligence.

III. Necessary outlays are limited to the reimbursement of necessary feeding costs and stabling costs, farrier costs as well as veterinary support. The costs for re-transportation will be reimbursed by the seller, as far as this occurred or will occur within the Federal Republic of Germany. The buyer is responsible for transport costs up to the borders of the Federal Republic of Germany. For further costs, namely training, replacement as well as possible financial losses the Westfälisches Pferdestammbuch e.V. cannot be held liable as stated in the standards given under figure II.

## **F. Limitation of liability in time**

The buyer's warranty claims shall become time-barred three months after delivery of the horse/licensed stallion with the exception of possible defects in the form of sexual fitness for breeding in the case of stallions, for which the periods listed in letter C continue to apply. Excepted from this limitation of warranty are all damage claims based on at least gross negligence of duty by the seller, his legal representative or a person he has employed, concerning life, body or health or a gross negligence of duty in other claims.

## **G. Bidding**

I. The biddings on the horses are counted in Euro.

Only biddings of at least 500.00 Euros will be accepted.

II. The bids are made by hand signals using a bidder card and/or in electronic form. The latter requires that the bidder has previously registered and authenticated himself with the organizer for participation in the bidding procedure. The registration takes place via the domain of the organizer - [onlineauction.westfalenpferde.de](http://onlineauction.westfalenpferde.de).

The auction will be broadcasted live on the Internet. By participating in the bidding procedure in electronic form, the prospective buyers present at the event and additionally those not present at the event location are granted the opportunity to participate in the bidding procedure in real-time in electronic form (Onlive). Participation in the bidding procedure in the onlive procedure is not an online auction in the legal sense. Accordingly, the purchase contract is concluded by the auctioneer's acceptance of the bid at the venue.

III. The knock-down prices are net prices plus VAT.

IV. In case there are several biddings on hand, the auction management will decide on who receives the knock-down; it can be decided by batch or by allocation.

In case there are differences of opinion arising concerning a knock-down, which must be declared straight away, the bidding may be restarted by decision of the auction management. This can also be done, even though a sales slip has been signed already.

## H. Invoice and Payment

- I. The knock-down prices are net prices. The buyer must pay a commission fee of 6 % of the knock-down price for each horse together with the purchasing price, as well as the statutory VAT.

Furthermore, the insurances fee (service and insurance premium), that is closely explained in this catalogue, amount of 1.5 % of the knock-down price and has to be paid by the buyer as well as the commission fee and the statutory VAT. With the conclusion of the sales contract, the buyer authorises the Westfälisches Pferdestammbuch e.V. to close this insurance in his name and at his expense.

The buyer receives an invoice by the Westfälisches Pferdestammbuch e.V. that consists of the following assests:

Invoice:

Knock down price
<u>+ 6 % commission charge of knock down price</u>
= net price
<u>+ VAT (currently 16 %)</u>
subtotal
<u>+ 1.5 % insurance costs (service feature and insurance premium) + VAT (currently 16 %)</u>
= invoiced amount (after fees and taxes)

- II. The Westfälisches Pferdestammbuch e.V. is authorized to accept the payments by the buyer in its own name, but on account for the seller.

Buyers residing or located in non-EU countries can have VAT reimbursed if the horses are moved directly after purchase into the foreign country. The required booking and receipt verifications have to be handed in to the association.

Buyers residing or located in other EU countries pay the legal German VAT (currently 16 %). The VAT can be reimbursed, if the buyer can hand-in the turnover tax identification number to the association, that they purchased the animal for their company and that they export the horse immediately after purchase. If the buyer with residence or location in an EU-country is not an entrepreneur by law, it may be necessary in individual cases to account the VAT lawfully valid in that location. In this case, the buyer is obliged to issue that amount additionally. The buyer with residence or location in EU-countries is required to inform the Westfälisches Pferdestammbuch e.V. unasked about possible acquisition thresholds and discharges the Westfälisches Pferdestammbuch e.V. of any liability for damages, that result from omitted or inapplicable information.

Horses may be transported within EU countries , if they received officary veterinarian traces (Guidelines 2009/ 156 EG). The issuance of the traces by the responsible officary vetenarian will be arranged by the Westfälisches Pferdestammbuch e.V., if the buyer informs us at least two days before the planned loading and hands in an official transport plan. The cost for these legally required traces will be generally estimated with 100.00 Euros plus VAT and invoiced to the buyer. The cost for exporting horses into non-EU countries will be charged according to expenditure to the buyer.

- III. The purchase price must be paid immediately after the knock-down.

At the pay desk in the auctioneer's office the invoiced amount must be paid in cash or via checks or have to be balanced via bank transfer instantly. The acceptance of cash is limited to an amount up to 8,000.00 Euros.

The ownership only changes after the payment has been balanced in full by the buyer; in case the payment has been issued via check, ownership changes once the check has been encashed. A check order stop is excluded, even if there is a complaint of any kind of the horse.

The right of retention because of the settlement amount is barred. Same applies for compensations with counterclaims, except when these are lawful and unquestioned.

- I.** If the horse/licensed stallion remains at the Westfälisches Pferdezentrum for any reasons, the buyer is required to conclude a respective boarding agreement with the Westfälisches Pferdestammbuch e.V.  
The boarding agreement is based on the „General Terms and Conditions for the Boarding of Horses at the Westfälisches Pferdezentrum“ which is valid even if it is a verbal agreement. The terms and conditions can be viewed in the auctioneer’s office.
- J.** No horse/licensed stallion may leave the premises, before the payment has been issued. Transportation can only be granted when a certificate issued in the auctioneer’s office can be shown.
- K.** On request the organizer will carry out the loading of the sold horses/licensed stallions free of charge but does not carry any liability for any possible damages during the process.
- L.** In the case of any complaints or defects as to quality, the buyer has to notify the seller immediately.
- M.** On the day of the auction the terms and conditions of the auction will be posted publicly in the auctioneer’s office.
- N.** German Law/agreement on the place of jurisdiction  
If the buyer has neither a residence nor a business in Germany or is not a German citizen, then the parties agree on implementation and handling of this agreement according to German procedural and substantial law. This is also valid in the case of a lawsuit. In the case that both parties are entrepreneurs from a jurisdictional point of view, they agree on the headquarters of the Westfälisches Pferdestammbuch e.V. as place of jurisdiction.
- O.** Should one or several of the preceding regulations are or become partially or fully invalid, the validity of the remaining regulations stays unaltered. Invalid regulations are to be replaced with regulations which support the desirable economical success of all parties involved in a lawfully effective and practicable manner.

In case of doubt the German conditions of sale shall apply.

October 2020