

## CONDITIONS OF SALE

**FIRST** - APPLICABLE LAW; LIMITATIONS OF WARRANTY; VENUE; AND WAIVER OF JURY TRIAL: The sale and purchase of all horses in this sale, and all matters incidental thereto, shall be governed by the laws of the State of Indiana. Venue and jurisdiction for all legal proceedings arising out of the sale and purchase of any horse sold by Midwest Equine Sales Company or out of the construction, interpretation or enforcement of these conditions of sale and the rights, remedies and duties of the parties hereto, in which Midwest Equine Sales Company or the auctioneer (hereinafter collectively "MES") is a party shall be solely and exclusively in Madison County, Indiana. THE CONSIGNOR, PURCHASER AND MES AND THEIR RESPECTIVE AGENTS, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION ARISING FROM OR CONNECTED WITH THIS SALE OR ANY REPRESENTATIONS, STATEMENTS OR ACTIONS OF THE PARTIES RELATIVE TO ANY HORSE, HORSES OR CONDUCT.

**THERE IS NO WARRANTY EXPRESS OR IMPLIED BY THE MES, OWNER, OR CONSIGNOR, AS TO ANY CONDITION OF ANY HORSE INCLUDING BUT NOT LIMITED TO THE SOUNDNESS, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY HORSE OFFERED IN THIS SALE. ALL HORSES ARE SOLD "AS IS" WITH ALL EXISTING CONDITIONS AND DEFECTS EXCEPT AS SET FORTH IN CONDITION SEVENTH BELOW.**

**SECOND** - BIDDING PROCEDURE: Unless waived by announcement, there shall be an upset price of \$1,000 on any horse entering the sales ring. If an opening bid of the upset price is not immediately forthcoming to the auctioneer's call, the horse shall be passed out as unsold. Minimum acceptable increases in bidding are \$50 up to \$2500, \$100 increases up to \$25,000 and \$1,000 thereafter. The highest bidder shall be the buyer. The successful bidder shall forthwith sign the Acknowledgement of Purchase; should the Acknowledgement of Purchase not be presented to him for signature prior to commencement of bidding on the next lot offered, he shall forthwith identify himself to auctioneer as purchaser, and sign the Acknowledgement of Purchase when presented. The right of purchase of a successful bidder is not impaired in the case of signing of the Acknowledgement of Purchase by another, provided that such a bidder acts in accordance with THIS CONDITION OF SALE and CONDITIONS OF SALE THIRD below. The right to bid is reserved for all consignors unless otherwise announced.

**THIRD** - BIDDING DISPUTES: Should any dispute arise between two or more bidders, the auctioneer shall forthwith adjudicate the dispute, and his decision shall be absolute, final, and binding on all parties. Bids received after the fall of the hammer are not grounds for dispute. Bids acknowledged by bid spotters employed by MES are recognized as if tendered to auctioneer, but in case of a dispute the bidding on the horse shall be forthwith reopened for advance bids, and if there be no advance, the horse is sold to the person from whom the auctioneer recognized the last bid. In the case of such a dispute, advance bidding shall be restricted to the contending parties, but should the recognized bid be reduced below the bid of commencement of dispute, then the bidding is reopened to all bidders, regardless of whether or not the final bid exceeds the bid which was disputed. The auctioneer reserves the right to reject any or all bids.

**FOURTH** - TITLE, RISK AND DELIVERY: TITLE PASSES TO THE PURCHASER AT THE FALL OF THE AUCTIONEER'S HAMMER, AND ALL RISK OF LOSS OR INJURY THEREAFTER SHALL BE THAT OF THE PURCHASER. Purchaser shall be responsible for the care, custody, control and security for the horse and for all expenses relating thereto. Both consignor and purchaser agree to release, defend, indemnify and hold MES, and the owners and/or operators of the facilities and their directors, officers, employees, agents and representatives, harmless from all losses, damages, expenses, claims, causes of action or attorneys' fees arising out of or related to the possession, care, custody, control or maintenance of any horse either sold or purchased by them, including but not limited to any claims arising out of injuries or damage caused by the horse

after the fall of the hammer, including those injuries or damages caused by the negligence, active or passive, of MES or any of its directors, officers, employees, agents or representatives.

Solely as an accommodation to purchaser, physical possession of each purchased horse shall be retained by consignor until purchaser makes settlement as provided in CONDITION FIFTH below and purchaser requests physical possession of the horse, WHICH REQUEST SHALL BE MADE NO LATER THAN Two (2) HOURS AFTER THE CONCLUSION OF SALE. Delivery of the horse will be by means of a "stable release" that will be provided by MES upon settlement, which release shall be presented to MES's designee in order to allow removal of the horse from the sales premises. Upon taking physical possession, purchaser shall cause horse to be removed promptly from the sales premises, or shall be subject to stable charges as determined by MES. In addition, should purchaser fail to cause horse to be removed promptly, MES, or any of its directors, officers, employees, agents, representatives or any other persons at the direction of MES, may cause the horse to be moved, for any reason, from one location to another, including the removal and boarding of the horse off the premises of MES, at purchaser's risk and expense. MES shall not be liable in any way for any injury or damage to the horse or any third person as a result of such care, handling or movement of said horse due to its own negligence, active or passive or the negligence of third persons. Upon taking physical possession, purchaser shall cause horse to be removed promptly from the sales premises, or shall be subject to stable charges as determined by MES. In addition, should purchaser fail to cause horse to be removed promptly, MES may cause horse to be removed from the sales premises and boarded at purchaser's risk and expense.

**FIFTH** - TERMS FOR SETTLEMENT: Purchaser shall make settlement immediately upon request by the MES, but in no event no later than sixty minutes after the conclusion of the sales session in which the horse is sold, for the full purchase price, including sales tax, if applicable. Such settlement shall be in U.S. funds in the form of U.S. currency, or an **approved** bank check, certified check, or cashiers check

**SIXTH** - DEFAULT: Any purchaser who fails to sign an Acknowledgment of Purchase when required to do so, or fails in any respect whatsoever to make settlement in accordance with CONDITION FIFTH above, shall be in default. Any person in default shall immediately become liable to MES for the full amount of the purchase price of all horses purchased, applicable sales tax, and any costs incurred by MES in the collection thereof, including reasonable attorney's fees. Although it shall not be obligated to do so, MES shall have the right to re-sell any horse in default at any public or private sale selected by MES in its sole discretion, including any session of this sale, without prior notice, for the defaulter's account. Any amount realized from such sale, after deducting the costs incurred in the re-sale shall be credited to the defaulter's account, with the defaulter being liable for any deficiency.

**SEVENTH** - LIMITATIONS OF WARRANTIES: **UNLESS OTHERWISE ANNOUNCED BY THE SALES COMPANY AT TIME OF SALE, OR PROVIDED FOR HEREIN, THERE IS NO GUARANTEE OF ANY KIND AS TO THE SOUNDNESS OR CONDITION OR OTHER QUALITY OR FOR ANY PARTICULAR USE OF ANY HORSE SOLD IN THIS SALE EXCEPT THAT CONSIGNOR HAS THE AFFIRMATIVE DUTY TO DISCLOSE ANY OF THE FOLLOWING INFORMATION IF KNOWN:**

**(1) ANY HORSE WHICH POSSESSES ANY DEVIATION FROM THE NORM IN THE EYES, OR IS A "CRIBBER" (AEROPHAGIA) MUST BE SO ANNOUNCED. (2) ANY HORSE WHICH HAS UNDERGONE ANY ABDOMINAL SURGERY WITHIN TWO YEARS OF THE SALE (EXCEPT TO REPAIR A RUPTURED BLADDER IN A NEWBORN FOAL) OR THE RESECTION OF ANY ABDOMINAL ORGAN AT ANY TIME MUST BE SO ANNOUNCED. (3) ANY HORSE WHO IS A DESCENDENT OF THE STALLION IMPRESSIVE, AQHA #0767246, CONSIGNOR SHALL SUBMIT THE RESULTS OF TESTING FOR HYPP GENETIC CONDITION (Hyper-Kalemic Periodic Paralysis) (4) ANY HORSE WHO BOTH PARENTAGE ARE DESCENDANTS OF POCO BUENO, KING P-234 OR ZANTONON SHOULD BE SO DNA TESTED FOR GBED (Glycogen Branching Enzyme Deficiency) GENE (5) WHICH HAS HERDA (Hereditary Equine Regional Dermal Asthenia) (6) ANY HORSE WHICH IS AFFLICTED WITH LOCOMOTOR ATAXIA IS SUBJECT TO RETURN TO CONSIGNOR AS PROVIDED FOR AT CONDITION EIGHTH BELOW. (7) ANY HORSE WHICH HAS AN INJURY TO OR DISEASE OF THE BONE STRUCTURE, OCD (Osteochondrosis Dessecans)**

**RINGBONE, NAVICULAR, WHICH IN THE OPINION OF THE EXAMINING VETERINARIANS WILL HAVE AN ADVERSE, CHRONIC AND MATERIAL AFFECT ON ITS RACING OR PERFORMANCE SOUNDNESS, MUST BE SO ANNOUNCED OR BE SUBJECT TO RETURN TO CONSIGNOR AS PROVIDED FOR AT CONDITION EIGHTS BELOW. (8) ANY HORSE DIAGNOSED WITH ACUTE LAMINITIS WITHIN EIGHT (8) HOURS FROM THE FALL OF THE HAMMER AND PRIOR TO REMOVAL FROM THE SALES PREMISES, SHALL BE SUBJECT TO RETURN TO CONSIGNOR AS PROVIDED FOR AT CONDITION EIGHTH BELOW: (6) ANY HORSE SOLD AFTER JULY 1 OF ITS YEARLING YEAR WHICH ON ENDOSCOPIC EXAMINATION IS FOUND TO HAVE ANY OF THE FOLLOWING CONDITIONS MUST BE ANNOUNCED AT TIME OF SALE OR BE SUBJECT TO RETURN TO CONSIGNOR AS PROVIDED FOR AT CONDITION EIGHTS BELOW: (A) EPIGLOTTIC ENTRAPMENT; (B) LARYNGEAL HEMIPLEGIA (INABILITY TO FULLY ABDUCT THE ARYTENOID CARTILAGE); (C) SEVERE ARYTENOID CHONDRITIS OR DEFORMATION OF THE ARYTENOID AS A RESULT OF PREVIOUS CHONDRITIS; (D) SUB-EPIGLOTTIC CYST; (E) PERSISTENT DORSAL DISPLACEMENT OF THE SOFT PALATE; (F) ROSTRAL DISPLACEMENT OF THE PALATOPHARYNGEAL ARCH; (G) CLEFT PALATE; (H) ANY OTHER ANATOMICAL AND/OR FUNCTIONAL LESION WHICH OBSTRUCTS AIR FLOW. FOR THE PURPOSE OF THE CONDITION, A LESION IS DEFINED AS ANY PATHOLOGICAL OR TRAUMATIC DISCONTINUITY OF TISSUE OR LOSS OF FUNCTION OF A PART. A HORSE SHALL NOT BE RETURNABLE FOR ANY OTHER PHYSICAL OR PERFORMANCE RESPIRATORY PROBLEM INCLUDING BUT NOT LIMITED TO: (A) LARYNGEAL DISPLACEMENT OF THE SOFT PALATE. IN ADDITION, ANY HORSE SOLD AS A YEARLING OR HORSE OF RACING AGE WHICH IS NERVED (NEURECTOMY), IS A "BLEEDER" OR IS CURRENTLY ON THE STARTERS, STEWARD'S OR VETERINARIAN'S LIST IN ANY STATE MUST BE SO ANNOUNCED AT TIME OF SALE. ANY HORSE SOLD IN THIS SALE WHICH IS DESCRIBED AT TIME OF SALE AS A COLT, AND DOES NOT AT SUCH TIME HAVE TWO TESTES COMPLETELY PALPABLE BELOW THE EXTERNAL INGUINAL RING; OR IS DESCRIBED AS A GELDING AND IT IS AT SUCH TIME A COLT OR RIDGLING, OR IS DESCRIBED AT TIME OF SALE AS A FILLY OR MARE AND HAS AT SUCH TIME BEEN SPAYED; MUST BE SO ANNOUNCED OR BE SUBJECT TO RETURN TO CONSIGNOR AS PROVIDED FOR AT CONDITION EIGHTH BELOW. **EXCEPT** THAT WARRANTY WITH RESPECT TO DESCENDED TESTES DOES NOT APPLY TO ANY HORSE SOLD PRIOR TO July 1 of its yearling year. **ANY OTHER CONDITION, DEFECT, DAMAGE, IMPAIRMENT OR LIMITATION WHATSOEVER NOT SPECIFICALLY LISTED HEREIN IS EXPRESSLY NOT WARRANTED OR SUBJECT TO RIGHT OF RETURN. BUYERS HAVE A DUTY TO INSPECT EACH HORSE THEY MAY PURCHASE AND WILL BE ASSUMED TO HAVE KNOWLEDGE OF ANY DEFECT THAT A REASONABLE INSPECTION WOULD REVEAL AND WILL BE SOLELY RESPONSIBLE FOR THE SUFFICIENCY AND COMPLETENESS OF THEIR INSPECTION. THE AUCTIONEER WILL NOT REVIEW ANY INFORMATION REGARDING SO ENTERED HORSE AND MAKES NO WARRENTIES.****

**EIGHTH - RIGHT OF RETURN:** Any horse sold in this sale whose condition must be announced, and is not so announced, or is warranted as provided for in CONDITION SEVENTH above, shall be subject to return to consignor with a full refund of the purchase price; provided, however, as a condition precedent to such right of return the purchaser must have fully complied with the provisions of this paragraph. Consignor shall retain possession at the sales premises of each horse sold for a period of up to eight (8) hours after the fall of the hammer, during which time purchaser shall have the opportunity to inspect and examine, by veterinarian or otherwise, each horse he has purchased. **IMMEDIATELY UPON LEARNING OF ANY CONDITION EXISTING AT THE FALL OF THE HAMMER WHICH WOULD ENTITLE PURCHASER TO A RIGHT OF RETURN, PURCHASER SHALL NOTIFY MES, IN WRITING, OF SUCH CONDITION. SUCH NOTIFICATION MUST BE ACCOMPANIED BY A VETERINARIAN CERTIFICATE ATTESTING TO THE CONDITION, AND SUCH NOTICE AND CERTIFICATE MUST BE DELIVERED TO MES WITHIN EIGHT (8) HOURS FROM THE FALL OF THE HAMMER,** except for horses that are cribbers (aerophagia), bleeders, have undergone abdominal surgery, or are afflicted with locomotor ataxia, in which case the time period of notification shall be seven (3) days from the fall of the hammer. In addition, except for cribbers (aerophagia), bleeders, those which have undergone abdominal surgery, or those afflicted with locomotor ataxia, all rights of return shall terminate and all sales shall be ratified and made final upon purchaser taking physical possession of the purchased horse. All warranties of any horse of racing age shall terminate immediately when such horse starts in a race, whether or not eight (8) hours have elapsed from date of sale, except that the warranty on "bleeders" shall remain in effect for the duration of that race only. Further, any use of any horse of racing age "under tack" or "ponying" by purchaser or his representative after learning of any condition of such

horse which would permit its return to consignor as provided herein, shall void all right of return, ratify, and make final the sale of such horse. **UPON REQUEST FOR RETURN AS PROVIDED ABOVE, THE CONSIGNOR HAS THE RIGHT TO SEEK THE OPINION OF A SECOND VETERINARIAN. IN THE EVENT SAID CLAIM REMAINS UNRESOLVED DUE TO A CONFLICT OF FIRST AND SECOND VETERINARY OPINIONS, SAID CLAIM SHALL BE SETTLED BY BINDING VETERINARY ARBITRATION AS PROVIDED FOR IN CONDITION NINTH BELOW.** The right of return as provided in this paragraph shall be purchaser's sole remedy. MES shall not be liable for consequential damages.

**NINTH - BINDING VETERINARY ARBITRATION: A PANEL OF THREE (3) VETERINARIANS, SPECIALIZING IN EQUINE MEDICINE, SHALL BE SELECTED TO EVALUATE AND RESOLVE ANY CLAIM MADE BY OR ON BEHALF OF BUYER UNDER THE PROVISIONS OF CONDITION SEVENTH ABOVE. THE MAJORITY OPINION OF THE PANEL SHALL BE ACCEPTED AS FINAL, BINDING AND CONCLUSIVE BY BOTH BUYER AND CONSIGNOR AND SHALL NOT BE SUBJECT TO ANY FURTHER REVIEW. THE SALES COMPANY SHALL PROVIDE A LIST OF NOT LESS THAN (6) VETERINARIANS FROM WHICH THE PANEL WILL BE SELECTED. BUYER OR HIS VETERINARIAN SHALL HAVE THE FIRST STRIKE OF THE VETERINARIAN DEEMED MOST UNACCEPTABLE TO HIM, AND CONSIGNOR OR HIS VETERINARIAN SHALL HAVE THE SECOND STRIKE. FROM THE REMAINING VETERINARIANS ON LTHE LIST, THE SALES COMPANY SHALL DETERMINE, BY LOT, THREE (3) VETERINARIANS WHO SHALL AGREE TO SERVE AS MEMBERS OF THE PANEL. THE CONSIGNOR AND THE BUYER ACKNOWLEDGE THAT THE SELECTION PROCESS IS FAIR AND REASONABLE TO EACH OF THEM. All expenses of the panel shall be the responsibility of the non-prevailing party. Consignor shall be solely responsible for expenses incurred by him, including his veterinarian, and buyer shall be solely responsible for expenses incurred by him, including his veterinarian.**

**TENTH - AUTHORIZED AGENTS:** Persons acting as agents must file notarized letters of authorization from the principal stating the agent is acting in their behalf and that said principal will be responsible for the agent's sales or purchases. These letters must be on file with the sales office prior to the start of the sale. FAILURE TO COMPLY WITH THIS CONDITION OF SALE WILL IMPOSE PERSONAL LIABILITY UPON SUCH AGENT FOR PURCHASES OR SALES BY SAID AGENT ON BEHALF OF SAID PRINCIPAL; PROVIDED HOWEVER, THAT THE FAILURE OF MES TO OBTAIN SUCH WRITTEN AUTHORIZATION SHALL NOT PRECLUDE MES FROM ALSO PROCEEDING AGAINST THE PRINCIPAL.

**ELEVENTH - CATALOGUE AND ANNOUNCEMENTS: THE ACCURACY OF ALL INFORMATION ON THE CATALOGUE PAGE(S) IS THE SOLE RESPONSIBILITY OF THE CONSIGNOR.** Consignor shall have the affirmative duty to examine the catalogue page(s), on which horses consigned by him or her appear, prior to sale and report any inaccuracies to MES so that it may make an appropriate announcement at time of sale. While certain information may have been procured by MES from third parties on behalf of consignor, it is nonetheless solely the responsibility of consignor to verify the accuracy of such information and to notify the undersigned of any corrections prior to sale. **STAKES ENGAGEMENTS, PRODUCE RECORDES AND ALL OTHER INFORMATION SO LISTED ARE AS REPRESENTED BY THE CONSIGNOR, TO WHOM ONLY THE PURCHASER SHALL LOOK FOR REDRESS IN CASE OF ERRORS OR OMISSION.** ANY CLAIM REGARDING INACCURACY OF SUCH INFORMATION NOT OTHERWISE PROVIDED FOR MUST BE PRESENTED IN WRITING TO THE SALES COMPANY WITHIN THIRTY (30) DAYS OF THE DATE OF THE SALE AFTER WHICH BUYER SHALL HAVE NO RIGHT TO MAKE SUCH CLAIMS.

**TWELFTH - SALES TAX:** An Indiana sales tax of six percent (6%) of total price WILL BE CHARGED ON ALL HORSES, WITH EXCEPTION FOR THOSE BUYERS WITH A VALID RETAIL MERCHANTS CERTIFICUT WHICH COPY THERE OF MUST BE PRESENTED & FORWARD TO MES UPON FILLING OUT BUYERS REGISTRATION PRIOR TO SALE COMMENCMENT.

**THIRTEENTH - SALES COMPANY CAPACITY:** Unless otherwise announced, MES is acting solely as an agent and not as a principal in the sale of all horses presented at this sale.