

VP AUCTION CONDITIONS PRINSJESDAG ONLINE 2020

general conditions

1. Foal Auction Prinsjesdag (hereafter: 'VP') will auction embryo's through the website www.embryoauction.com (hereafter: 'the auction').
2. The legal relationship between VP and the vendor is an agreement by order.
3. Where in these conditions is mentioned embryo, it also has to be understood as the surrogate mare of the embryo when needed.
4. These auction conditions apply to the legal relationship between VP and the vendor and VP and the bidder/purchaser. Both the vendor and the bidder/purchaser take part in the auction entirely at their own cost and risk. VP is not responsible for any obligations to the vendor and/or bidder/purchaser other than those outlined in these conditions.
5. A sales agreement is exclusively between the vendor and the bidder/purchaser. VP is not bound by agreements between the vendor and the bidder/purchaser. Under no circumstances can VP be regarded as a vendor or bidder/purchaser.
6. All stipulations in these conditions of auction are also made for the benefit of all persons who have been or are employed by or have been or who are employed on behalf of VP. These (legal) persons can invoke the stipulations of these auction conditions, as if they were VP.
7. Participation in the auction will be seen as acceptance of these conditions of auction, with the exclusion of any conditions applied by the participant him/herself.

the auction

8. VP as well as a selection committee appointed by VP will examine and select the embryos that qualify for participation in the auction. Decisions taken by VP/the selection committee are binding. VP/the selection committee is entitled to seek advice from third parties but has the right at any time to refuse an embryo without having to state reasons, even when an embryo has already been selected for the auction. VP/the selection committee will never be liable, on whatever basis, to compensate for costs accrued by the vendor.
9. The selected embryos will be sold outright, without proceedings or recompense, in the condition they have at the time of sale. The embryos entered for the auction will be sold to the highest bidder. If no opening bid is made, VP is authorized to lower the starting bid. If there is still no bid, the embryo is not sold. VP is entitled to change the order of the embryos to be sold or, without stating reasons, refuse a person as bidder/purchaser.
10. Bidders/purchasers are expected to have full legal capacity and to be in full possession of their mental faculties. Each bidder/purchaser is considered to have made the bid for him/herself and shall be bound by his/her bid until a higher bid is definitely accepted. Each bidder/purchaser is, along with his/her eventual principal, fully liable for any failure in the compliance with his/her obligations. A vendor who appears to have bought back his/her own embryo is also considered a bidder/purchaser and for the vendor as here meant all the provisions (including all (payment) obligations) in these auction conditions concerning bidders/purchasers shall also apply.
11. The risk concerning the embryos, by which is also understood yet not limited to the damage to or damage caused by the embryos are transferred immediately from the vendor to the purchaser at the moment of allotment. As long as VP has not received full payment from the bidder/purchaser the vendor remains owner of the embryo. The bidder/purchaser is immediately responsible for the care and responsible for the damage to or caused by the embryo at the moment of allotment.

information

12. VP has tried to compose the sales information regarding the embryo's with the utmost care. The information about the pedigrees has the aim to give an impression of the quality of the embryos, without having the pretention to be complete.
13. It is the responsibility of the vendor to check the accuracy of the information in the catalogue and to notify VP in writing before the auction of any mistakes or inadequacies, thereby indicating in as much detail as possible which changes or additions should be made.
14. The vendor is obliged to have a veterinary report regarding the pregnancy available to VP before the commencement of the auction which has been drawn up by a veterinary appointed by him/herself. On the day of the auction, a duplicate of this veterinary report can be seen. VP will not hold a veterinary inspection and/or test before, during or after the auction.
15. The bidders/purchasers are obliged, at the request of VP, to supply information concerning their financial solvency, in which case they must show VP documentation proving their solvency. By making a request for participation in the auction, bidders/purchasers authorize VP to obtain information concerning their solvency from third parties.

costs and payment

16. The registration fee to be paid by the vendor per embryo is € 1,000 excl. VAT
The commission to be paid for the vendor is 10% excluding VAT over the purchase price.
The minimum deposit amount of € 1,000.00 excl. VAT is due by the vendor from the moment that the vendor has signed an order to sell. The entry fee is settled with the commission due by the vendor when the embryo is sold;
17. When the minimum amount of the entry fee becoming payable by the vendor to VP in accordance with the provisions of item 16, the vendor shall ensure that the aforesaid amount is transferred, within 14 days, into the bank account number of VP and additionally stating the entry number. The vendor and his/her embryo/embryos are only admitted to the auction after having provided documentation indicating that the mentioned amount has been paid in full.
18. The bidder/purchaser shall immediately pay the purchase price, increased with a 10% premium over the purchase price, with VAT (if appropriate), the cost of the host mare (and if appropriate the VAT), and the cost of insurance (if appropriate), in euros to VP, without reduction or retention.
19. In the event that the purchaser fails to do so, VP has the right to immediately re-auction the embryo, in which case the bid of the original purchaser will no longer be accepted. The original bidder/purchaser is obliged to pay the difference of his/her bid and a possible lower purchase price, as well as the costs of re-auction, to the VP. The bidder/buyer will not have any claims in the event of a higher purchase price upon re-auction.
20. Payment to any other person other than VP does not release bidders/purchasers from their payment obligations towards VP. As long as VP has not received payment in full from the bidder/purchaser the vendor remains the owner of the embryo.
21. In the event where VP has not received payment in full from the bidder/purchaser within 14 days after the sale, the bidder/purchaser will be legally in default. The bidder/purchaser is then, in addition to any other payment obligations, obliged to pay a compensation of an amount of 12% including VAT of the purchase price augmented by an interest of 1.5% per month over the total sum owed, to be calculated from the date of the auction until the date of full payment.
22. In the event that VP has not received full payment from the bidder/purchaser within 14 days after the auction, VP also has the authority, on behalf of the vendor and without his/her permission, to consider the sale as not binding. In such cases, the vendor and the bidder/purchaser remain obliged to comply with all their payment obligations to VP as laid down in these auction conditions in as far as these concern compensation due to VP.
23. If the bidder/purchaser or the vendor are in default concerning the compliance with any (payment) obligations towards VP, all judicial and extra judicial costs accrued by VP as a result of these circumstances shall be for account of the bidder/purchaser and/or the vendor, whatever the case may be, with a minimum sum of € 1000.
24. Only if and when all (payment) obligations towards VP have been complied with, by both the vendor and the bidder/purchaser, shall VP, at the latest 10 days after the vendor has reported the delivery as meant in item 28, complete payment of the sale owing to the vendor. In the case where the bidder/purchaser reports to VP a deficiency or stable vice as in accordance with and as specified in

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items 30 up to and including item 32, and there is disagreement about such, VP is nevertheless not bound to paying the vendor, nor bound to the reimbursement to the bidder/purchaser. VP is in the first instance bound to the meant payment to the vendor or the meant reimbursement to the bidder/purchaser when and as soon as the aforementioned difference, among other things, corresponds with the regulations in items 30 up to and including item 32, are settled to the benefit of the purchaser and/or respectively the bidder/purchaser.

absence of embryos at the auction

25. An embryo that has been selected must participate in the auction; in failure thereof, the vendor shall owe, in addition to his/her other obligations of payment to VP, a compensation to them of € 10.000 including VAT, augmented by a 1.5% interest per month over the total owed sum, to be calculated from the date of auction until the date of full settlement.
26. If an embryo in the opinion of the vendor, is unable to participate in the auction because of health reasons, the vendor should notify VP thereof in writing, in good time, giving an as detailed as possible description of the impediment to VP, after which a veterinarian appointed by the will assess the nature of the impediment. The conclusion of the veterinarian is binding. If the vendor fails to offer any and/or sufficient opportunity to the aforementioned veterinarian, whose judgment will be binding, to have the embryo examined (in time), or, if the embryo passed examination by the aforementioned veterinarian and nevertheless fails to take part in the auction, the vendor shall owe VP the compensation referred to in item 25 above.
27. If an embryo, after examination by the aforementioned veterinarian, does not participate in the auction, the vendor shall in any case compensate VP for the (veterinary) costs incurred by VP in that connection, with a minimum sum of € 1.000.

allotment, removal and delivery of embryos

28. Delivery of embryos by the vendor to the bidder/purchaser must take place immediately and in any case not later than 10 days after the bidder/purchaser has complied with his/her payment obligations (as in agreement with the regulation in item 18 concerning payment to the VP). VP will inform the vendor as soon as possible of the aforementioned payment by the bidder/purchaser and the vendor will inform VP as soon as possible in writing of the 'prove of delivery'. Each delivery other than the aforesaid and otherwise specified in these auction conditions is at the full responsibility and risk of the vendor.
29. The vendor will deliver the embryo to the bidder/purchaser by issuance of ownership by delivering to the address of the bidder/purchaser within the country borders. The costs of this are the responsibility of the vendor. Delivery will take place within the time limits as set by these conditions of auction. Barring specific situations concerning manner of delivery and delivery times as mentioned in these conditions of auction. Costs of the transport across country borders come at the expense of the bidder/purchaser.

stable vices and deficiencies

30. Vendors are under obligation to deliver their surrogate mare(s) free of stable vices; to allow their host mares to be auctioned, and to submit and give in an accorded guarantee. In the case where the law and/or jurisprudence demand that the meant guarantee, and/or duration of such, require other conditions, then these other demanded conditions shall apply.
31. In the event that the bidder/purchaser detects that the mare purchased has a stable vice, the bidder/purchaser shall notify VP in writing within 7 days after delivery to the new owner, with a description, in as much detail as possible, of the nature of the stable vice. In that case VP will move the mare to a location of its choice and have the mare examined by a veterinarian of its choice in connection with the alleged stable vice as described by the bidder/purchaser. The aforementioned veterinarian's conclusion about the cause and seriousness of the alleged stable vice shall be binding. If the veterinarian finds that the mare has the stable vice as described by the bidder/purchaser, the vendor is obliged to pay the costs accrued to VP, including costs of stabling, transport and veterinarian's fee. If the veterinarian finds that the mare does not have the stable vice, the bidder/purchaser must also pay the said costs to VP. The vendor must take the embryo and surrogate mare back immediately and at his own expense, against reimbursement of the purchase price, if the purchase is legally dissolved or annulled.
32. When the bidder/purchaser does not notify in the manner required the aforementioned stable vices of the purchased host mare within 7 days after delivery and/or the above-mentioned veterinary does not detect stable vices, the right of the bidder/purchaser to make the purchase unbinding is void, as is the right to bring a case of absence of consensus ad idem.

dissolution and annulment

33. In the event that the sale is legally dissolved or annulled by the bidder/purchaser, the vendor and the bidder/purchaser shall nevertheless comply with all their payment obligations, as mentioned in these conditions of auction, towards VP, in as far as compensation to be paid to VP is concerned. A sale can be dissolved or annulled in due observance of the relevant current legal provisions, in as far as not deviate from in these auction conditions in a legally valid way.

liability

34. VP is not liable for the accuracy of the sales information regarding the embryo.
35. VP is not liable for the accuracy of the information contained in the veterinarian's report and/or any information provided during the auction.
36. VP is not liable for any damage incurred or caused by persons, goods or embryos, before, during or after the auction.
37. VP will not take out insurance for horses or other matters on behalf of vendors and bidder/purchasers. As vendors and bidder/purchasers take part in the auction for their own account and risk, the VP advises that they take out such insurance themselves.
38. VP is not liable for the failures of third parties, including bidder/purchaser's failure to pay.
39. VP is not liable for anything whatsoever, except in cases of willful intent or willful recklessness on the side of VP and/or those who work on behalf of, or have worked on behalf of VP.
40. Anyone causing damage to goods and/or buildings (or those used by) VP, and/or those who work for or have worked for VP, shall be liable for such damage.

other matters

41. In the case where a bidder/purchaser in requesting the transfer of auctioned embryos to another member state of the European Union has an invoice with a zero-rated VAT, the bidder/purchaser must comply with all the necessary conditions attached to a lawful intercommunity transaction.
42. If application of a certain VAT- tariff, no matter what the circumstances (subsequently), appears to be incorrect, the bidder/purchaser is, at that time, still obliged to pay a sum to the amount that would be owed in the case the correct VAT-tariff would have been applied. At the request of VP, the bidder/purchaser is obliged to immediately repay the above-mentioned sum to VP. In any case, the bidder/purchaser is liable for, and indemnifies VP from, any damage that may result from non-compliance of the conditions of part 41. As well as this, the bidder/purchaser is liable for all judicial and extra judicial costs made by VP with a minimum sum of € 1000 including VAT.
43. All costs, tariffs, commissions and reimbursements are based on the current tax legislation in force on 1st of January 2019. If the legislation changes at any time, VP is authorized to adapt costs, tariffs, commissions and reimbursements as necessary.

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conversion

44. When one or more of the provisions of these auction conditions prove to be legally invalid or will become invalid in the future, this will not in any way affect the validity of any of the other provisions. In that case the legally invalid provision will be replaced by a new, legally valid provision which is as similar as possible to the old provision as far as contents, scope and objective thereof are concerned.

disputes

45. In the event of a difference of opinion, during the allotment, about which person has made the last bid, or in the event of other difficulties, confusion or dispute in connection with bids and/or allotment, VP is authorized to give its binding view. In the case of the aforementioned difference of opinion regarding the last bid, VP is authorized to continue the sale by way of bidding.
46. In the event that VP calls in the notary public to make a decision, this decision shall be binding and irrevocable for all parties. During the auction the notary public is also authorized to make decisions about disputes of another nature than those regarding bids and allotment.
47. The legal relationship between VP, the bidder/purchaser and the vendor are exclusively ruled by Dutch law, with full exclusion of the Vienna Sales Treaty (CISG). Disputes, other than those subjected to the decision of VP or the notary public in virtue of items 45 and 46 shall exclusively be settled by the competent judge of Amsterdam.

These conditions are a translation from the Dutch language. In case of dispute only the original Dutch version is binding.