



## Auction Terms & Conditions

*HX Auctions - Online edition 2021*

### 1. DEFINITIONS

In these General Terms & Conditions, the following terms shall be understood to mean:

- a. **Auction Amount:** an amount offered by the Bidder at an Auction for a horse;
- b. **Bidder:** the person who is logged in with a created account on the [hxauctions.nl](http://hxauctions.nl) website and who bids during the Auction;
- c. **Consumer:** a natural person who is not acting for purposes related to the exercise of a trade, business, craft or professional activity;
- d. **Consumer Purchase:** purchase regarding movable property, which is concluded by a Seller acting in the exercise of a profession or business, and a Buyer, a natural person, who is not exercising a profession or business;
- e. **Participant:** a Participant in the Auction, in the capacity of Bidder, Buyer or Seller;
- f. **Right of Withdrawal:** the Right of Withdrawal to the Buyer is entitled at an Auction, as referred to in Article 230o of Book 6 of the Dutch Civil Code;
- g. **Buyer:** the Bidder to whom the bid is allocated by the WeAuction server;
- h. **Seller:** the natural person or legal entity who has instructed Hendrix Events BV to sell one or more horses through an Auction in the name of and for the account of the Seller;
- i. **Auction:** the online Auction of a horse via the Auction Website;
- j. **Auction Website:** the website through which Hendrix Events BV offers its Auction service, being [hxauctions.nl](http://hxauctions.nl).
- k. **Terms & Conditions:** these General Terms & Conditions.

### 2. GENERAL PROVISIONS

- 2.1 HX Auctions [a trade name of Hendrix Events BV] (hereinafter referred to both separately and jointly as HXA), organises online Auctions of horses and/or foals in its function of intermediary between Sellers and Buyers.
- 2.2 The Auctions take place on the website [hxauctions.nl](http://hxauctions.nl). The Auctions shall be held from 17 December 2021 until 20 December 2021.
- 2.3 A purchase agreement is concluded between the Buyer and the Seller. A purchase agreement is concluded exclusively between the Seller and the Buyer. The Buyer is obliged to sign the written record of the purchase agreement, whereby HXA acts exclusively as an intermediary.
- 2.4 These Terms & Conditions will be announced prior to the start of the Auction and can be found on the website.



### **3. APPLICABILITY**

- 3.1 These General Terms & Conditions shall apply to every Auction held under the name HX Auctions and to all purchase agreements concluded during the Auction regarding horses offered through HXA, as well as all agreements resulting from this.
- 3.2 The Participant is deemed to have accepted the applicability of these General Terms & Conditions. By registering as referred to in Article 5.7 of these Terms & Conditions and by participating in an Auction, the Bidder indicates (i) that they are familiar with the Terms & Conditions, (ii) that the Terms & Conditions have been made available to them before they have made a bid or concluded a purchase agreement and (iii) agree to (the content of) the Terms & Conditions. In the case of a Consumer Purchase, the Bidder, by agreeing to the Terms & Conditions, also indicates that the legal information obligations as referred to in Sections 2A and 2B of Title 5 of Book 6 of the Dutch Civil Code have been satisfactorily fulfilled and agrees to the information provided being made available digitally.
- 3.3 The applicability of other General Terms & Conditions is excluded.

### **4. AUCTION HORSES**

- 4.1 The horses offered in the Auction are identified by parentage, sex, colour and year of birth, as indicated on the website. HXA excludes liability regarding the health, performance and/or purposes of use of the horses to be auctioned.
- 4.2 The horses that shall be sold through the Auction have been found radiographically and clinically in order 2 months prior to the Auction at the latest. A customary clinical (sports horse) inspection shall have taken place again 2 days before delivery to the Buyer.
- 4.3 HXA offers the Bidder the opportunity, if desired, to view horses offered for Auction prior to the Auction, to give the potential Buyer the opportunity to form an opinion about the horse and the extent to which the horse is suitable for their wishes in view of the potential specific uses intended by the Buyer. If necessary or desired, the Buyer must obtain independent advice from experts.

### **5. SALE/AUCTION**

- 5.1 HXA shall organise and facilitate the Auction and shall auction one or more horses on behalf of the Seller, without being or becoming a party to purchase agreements that are to be or have been concluded.
- 5.2 HXA shall determine the dates and times on which the Auction takes place. The Auction shall close on a date and at a time specified on the website.
- 5.3 HXA shall show the horses and/or foals prior to the Auction on the website [hxauctions.nl](http://hxauctions.nl) by means of a picture, video and text.
- 5.4 The horses shall be auctioned in the order determined by HXA.

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- 5.5 The horses shall be sold by auction in euros, unless stated otherwise, with a minimum opening bid of €8,000.
- 5.6 Between €8,000 and €10,000, bidding shall take place in €500 increments. From €10,000 to €30,000, bidding shall take place in €1,000 increments. From €30,000, bidding shall take place in €2,000 increments.
- 5.7 Every potential Buyer shall create an account via the website [hxauctions.nl](http://hxauctions.nl). The person who is logged in with this account and makes bids, shall be bidding for themselves and be bound by their bid until a higher bid is accepted.
- 5.8 If the Bidder is awarded the bid by the WeAuction server, the Buyer in question shall be obliged to pay the invoice amount, as calculated in Article 6.
- 5.9 The Auctions shall take place under supervision of a notary to be appointed by the organisation. The notary shall make a binding decision on any disputes that arise during or around the bidding.

### **6. SETTLEMENT AND PAYMENT**

- 6.1 The Buyer shall owe a purchase price after the conclusion of the purchase agreement.
- 6.2 HXA shall send the Buyer an invoice by email. The Buyer must pay the invoice amount to HXA within seven days of the invoice date by transfer to the bank account number of Hendrix Events BV. Settlement of any counterclaims is excluded.
- 6.3 If the Buyer does not comply with this, HXA shall be in default by operation of law and HXA shall be entitled to not recognise the bid, to dissolve the purchase agreement and to auction the purchased horse again, or to allocate the purchased horse to the next highest Bidder. In that case, the Buyer shall be obliged to compensate HXA for the damage caused as a result, without prejudice to the other rights of HXA.
- 6.4 The invoice amount is calculated as follows:
- |                                          |
|------------------------------------------|
| Auction price +                          |
| 8% commission +                          |
| Insurance premium (optional)             |
| -----                                    |
| Invoice amount excl. 21% Dutch sales tax |
- 6.5 HXA shall be permitted to obtain information about the financial soundness of a relevant Bidder/Buyer and to make participation in the Auction and the conclusion of an agreement with the relevant Bidder/Buyer dependent on the information obtained.

### **7. DELIVERY AND TRANSFER OF OWNERSHIP OF THE HORSE/FOAL**

- 7.1 Until the actual delivery, the risk and costs of the horse shall remain at the expense of the Seller. Immediately after the Seller delivers to the Buyer, the risk and costs in respect of the horse shall be transferred to the Buyer.

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- 7.2 The delivery of the purchased horse takes place through take-up. The take-up shall consist of the Buyer collecting the purchased horse. The take-up can only take place after the Buyer has paid the full purchase price and any other amount due. If the Buyer refuses or fails to provide information or instructions necessary for the take-up, the purchased horse shall be removed by HXA and stabled at the Buyer's expense and risk. In that case, the Buyer shall be obliged to reimburse all additional costs, including in any case the storage costs, to HXA.
- 7.3 If the horse is purchased by a foreign Buyer, the Buyer shall, except in the situation in which the Buyer intends to exploit the horse in the Netherlands, and with due observance of a reasonable period necessary to arrange the transport formalities abroad, arrange for immediate transport of the purchased horse abroad.
- 7.4 Ownership of the purchased horse shall be transferred (if all conditions of a legally valid transfer have been met) to the Buyer at the time of delivery, as referred to in this article, but no earlier than after the Buyer has paid the full purchase price and any other amounts the Buyer owes to HXA, which is acting on behalf of the Seller.

### **8. RIGHT OF WITHDRAWAL FOR CONSUMER PURCHASE**

- 8.1 If the Buyer is a Consumer, the Buyer can dissolve a purchase agreement regarding the purchase of a horse via an Auction during a reflection period of a maximum of 14 calendar days without stating reasons, based on the legal Right of Withdrawal of Article 6:230o et seq of the Dutch Civil Code. The Seller may ask the Buyer about the reason for the withdrawal but cannot require the Buyer to state the reason(s). The reflection period referred to in this article shall commence on the day after the Buyer, or a third party designated by the Buyer in advance, who is not the carrier, has received the purchased horse.
- 8.2 If the Buyer makes use of the statutory Right of Withdrawal, the Buyer shall notify the Seller and HXA of this in an unambiguous, written manner within the reflection period. As soon as possible, but within 14 calendar days from the day following the notification referred to in this article, the Buyer shall then return the horse or hand the horse over to the Seller. This shall not be necessary if the Seller has offered to collect the horse themselves. The Buyer shall in any case be deemed to have observed the return period if the horse is sent back before the reflection period has expired.
- 8.3 The Buyer shall return the horse with all accessories supplied and in accordance with the reasonable and clear instructions provided by the Seller.
- 8.4 The risk and burden of proof for the correct and timely exercise of the Right of Withdrawal shall rest with the Buyer.
- 8.5 The costs associated with the return shall be for the Buyer's expense.
- 8.6 During the reflection period and return, the Buyer shall handle the horse with care and in accordance with the Seller's instructions, if provided.
- 8.7 If the Buyer exercises their Right of Withdrawal, all additional agreements shall end by operation of law.

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- 8.8 HXA shall refund the purchase price to the Buyer immediately or within 14 calendar days at the latest following the day on which the Buyer reports the withdrawal.
- 8.9 HXA shall use the same means of payment for the refund that the Buyer has used, unless the Buyer agrees to a different method. The refund shall be free of charge for the Buyer.
- 8.10 If the Buyer has opted for a more expensive method of delivery than the cheapest standard delivery, HXA shall not be obliged to reimburse the additional costs for the more expensive method. The Seller shall refund the standard delivery costs to the Buyer.

### **9. NON-CONFORMITY**

- 9.1 If a Buyer is of the opinion that the purchased foal/horse does not comply with the Agreement after actual delivery, the Buyer can no longer invoke this if they do not inform the Seller (with a copy to HXA) within three weeks of discovery by registered letter.
- 9.2 The Seller guarantees that the horse purchased by the Buyer, unless communicated prior to the sale, shall not suffer from the stable vices wind-sucking, systematic weaving or crib-biting for a period of 48 hours after actual delivery to the Buyer.
- 9.3 If a veterinarian who is registered as an inspection veterinarian for horses or equine veterinarian, states in writing that, in their expertise, one of the stable vices referred to in Article 9.2 existed before the date of actual delivery, the Buyer shall have the right to dissolve the purchase agreement with all the consequences this entails.

### **10. LIABILITY**

- 10.1 HXA shall exclude, to the extent permitted by law, any liability towards the Buyer, Sellers and third parties and in particular, but not limited to, with regard to the following cases:
- 10.2 HXA shall exclude any liability when a horse selected by HXA is ultimately not offered for Auction;
- 10.3 HXA shall exclude any liability with regard to the health condition and/or any stable vices of the foals/horses to be auctioned. More specifically, liability shall be excluded with regard to osteochondrotic abnormalities in the knee and spring joints of the horse, based on DNA testing (genome selection) and/or other defects;
- 10.4 HXA shall exclude any liability with regard to the transport of the horse;
- 10.5 HXA shall not be liable for any accident or any form of damage that happens to someone in or near the grounds or buildings where there is an opportunity for viewing or where the purchased foals/horses are collected. Entering these sites and buildings shall be at everyone's own risk;
- 10.6 HXA shall not be liable for damage occurring prior to, during and/or after the Auction caused by or to persons and/or by or to goods and/or by or to horses;
- 10.7 HXA shall not be liable for damage caused by the provision of incorrect and/or incomplete information, regardless of the nature and extent of that damage and of

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that information and regardless of the origin of that information. If the incorrect and/or incomplete information originates from the Seller, the Seller must indemnify HXA against all claims from (a) third party or parties in this regard;

- 10.8 HXA shall not be liable for damage, direct or indirect and irrespective of nature and scope, as a result of a shortcoming in the fulfilment of an obligation by a third party or third parties, including, but not limited to, shortcomings in the correct fulfilment of obligations. from buying and/or Seller and/or as a result of any act or omission of the Participant;
- 10.9 HXA's exclusion of liability does not apply in the event of intent or gross negligence on the part of HXA attributable to HXA;
- 10.10 Any liability of HXA shall at all times be limited to a maximum amount of €10,000.

### **11. DISPUTES AND APPLICABLE LAW**

- 11.1 The legal relationship between HXA and the Participant as well as the Legal Seller between the Seller and Buyer shall be exclusively governed by Dutch law, with the complete exclusion of applicability of the Vienna Sales Convention (CISG).
- 11.2 All disputes – including those that are regarded as such by only one of the parties – which arise as a result of the purchase agreement concluded at the Auction or as a result of these Auction Terms & Conditions with HXA, shall be settled by NAI arbitration (Netherlands Arbitration Institute Rotterdam), or in the event that the Buyer is a Consumer, at their request in accordance with the Dutch Civil Code, by the regular civil court, in which case only the District Court of Limburg shall have jurisdiction in the first instance.
- 11.3 If the Seller or HXA wishes to initiate proceedings, they shall, if the Buyer is a Consumer, give them the opportunity during one month to make their choice as referred to in Article 11.2 above known in writing. In case of urgent interests (summary proceedings), the Seller and/or HXA may shorten the term to five working days.
- 11.4 In the event of a protracted dispute, HXA shall always initiate mediation between the Buyer and Seller in its own right, whether or not, at its own discretion, at its own expense. It may be decided to have such mediation take place in accordance with the NAI mediation regulations.