



TOBA JAMAICA.COM

Thoroughbred Owners & Breeders Association of Jamaica

CONDITIONS OF SALE

1. Every Vendor and Bidder shall be deemed to have full knowledge of these conditions and to be bound by them.

PART 1.

CONDITIONS REGULATING THE CONDUCT OF THE SALE

2. (a) If any person brings to the sale premises any animal which he could reasonably have known to be dangerous, or any animal the exposure of which in any market, fairground or sale premises is for the time being forbidden by law, he shall be liable for all injury, damages, costs, losses or expenses which the Thoroughbred Owners & Breeders Association of Jamaica (hereinafter called the TOBA) or any person may sustain, incur or be put to either directly or indirectly as a result of his so doing.
(b) The TOBA reserves the right to exclude from or put out of the sale premises any animal which in its opinion shows signs of any disease, whether infectious, contagious or not, or any serious fault, or of being dangerous.
(c) Any decision of the TOBA as to any animal shall be binding and conclusive, and the TOBA shall not be liable in any way to the owner of such animal or to any other person for any act reasonably done by it in the exercise of such discretion, or for any consequences resulting from any such act.
3. The TOBA shall not be responsible for any accident (not arising out of its negligence) which happens to any person while on the sale premises.
4. (a) Upon payment of the relevant Entry Fee each lot shall be entered in its owner's name, and the name and address of the owner of each lot shall be given to the TOBA and shall be declared by the Auctioneer, if required, when the lot is put up for sale, and whether or not a purchaser takes advantage of such an opportunity for obtaining information, the TOBA shall for all purposes be deemed to sell as agent for a disclosed principal.
(b) All lots are accepted for sale on the terms that the Vendor warrants his right to sell the same and undertakes to indemnify the TOBA against all actions, proceedings, claims, demands, costs, charges and expenses to which it may be exposed or which it may incur by reason of any defect in the Vendor's title.
5. If a lot entered for sale is specifically advertised in the catalogue of sale provided by the TOBA and the person entering it fails without good reason to bring such lot for sale on the day or days mentioned in such advertisement, he shall be liable to pay to the TOBA a fair and reasonable proportion of the expenses incurred in and about such advertisement.
6. No lot entered or advertised for sale by the TOBA is to be sold by the Vendor privately within sixty (60) days prior to the commencement of the sale for which the lot has been so entered or advertised. The TOBA is not to be under any liability for any breach of this Condition by the Vendor.
(a) If a person who enters or advertises a lot for sale sells the lot privately within sixty (60) days immediately prior to the commencement of the sale for which the lot has been so entered or advertised, or upon the days of the said sale within the sale premises either before it has been offered for sale by auction or it is not sold at the auction, within seven (7) days afterwards, the TOBA reserves the right to charge and recover from such person the sum of \$10,000, or the commission which would have been payable pursuant to Condition 15 if the lot had been sold at the sale, whichever is greater.
(b) In any such case the Vendor shall book the transaction with the TOBA and the purchase money shall be paid in full to the TOBA immediately. If the TOBA exercises the aforesaid right, it shall deduct the said sum of money or the said Commission in full before accounting to the Vendor.
(c) If a Vendor fails to comply with the provisions of the last preceding paragraph of this Condition, he shall be liable to pay to the TOBA the said sum of money or the said Commission in full.
7. If a person who enters or advertises a lot for sale withdraws the lot from the said sale within sixty (60) days immediately prior to the commence-

ment of the sale for which the lot has been entered or advertised or upon the day of the said sale, then, SAVE AND EXCEPT in the case where a veterinary surgeon certifies that the animal is suffering from disease or any other defect and in consequence ought to be withdrawn from the sale, the TOBA reserves the right to charge and recover from such person the sum of \$10,000. within seven (7) days of the day of the said sale.

8. (a) A lot which is entered or advertised for sale and is sold at the sale automatically qualifies for entry in the Supreme Ventures two year old Triple Crown Series.

(b) A lot which is entered or advertised for sale and is unsold at the sale or a lot which is entered or advertised for sale and is sold privately or is withdrawn from the sale can qualify for entry in the races referred to in the last preceding paragraph of this condition by the payment of the relevant nomination fees.

PROVIDED FURTHER THAT all sums of money to be paid to the TOBA in accordance with Conditions 6 or 7 hereof have been paid.

9. Each lot must be delivered to the sale premises at least two (2) hours prior to the commencement of the sale. The TOBA reserves the right to refuse to offer for sale any lot delivered to the sale premises after the prescribed time and the Vendor will not incur any liability herein.

10. The Auctioneer reserves the following rights:-

- (a) To accept bids in Jamaican currency.
- (b) To refuse to accept the bids of any persons without giving any reason therefor.
- (c) To sell without reserve unless orders to the contrary are sent before the sale in accordance with Condition 11 hereof.
- (d) To bid by himself up to the reserve price.
- (e) To vary the order of the sale.

11. A Vendor who wishes to fix a reserve price on any lot shall deliver to the TOBA not later than 9:00 a.m. on the day of the sale, a sealed envelope containing a notice in writing in that behalf on the form provided by the TOBA signed by the Vendor or his agent, and a sum of money comprising five percent (5%) of the reserve price.

A Vendor who fails to comply with the provisions of the last preceding paragraph of this Condition shall have no claim against the TOBA for selling below the reserve price.

The said envelope will not be opened by the Auctioneer until immediately prior to the commencement of the sale of the said lot.

The said sum of money shall be refunded in full to the Vendor in the event that the said lot is sold at a price greater than the reserve price.

12. The maker of the highest bid which is accepted by the Auctioneer for each lot shall be the purchaser thereof. The Vendor may bid for any lot owned by him either personally or through his agent or through the Auctioneer as many times as he may think fit on giving notice in that behalf to the Auctioneer within thirty (30) minutes of the conclusion of the sale of the said lot.

Any persons who are indebted to the TOBA from previous sales or are on the Forfeit List or are in default under the Revolving Loan Fund will not be eligible to make a bid for any lot at the sale.

Bids acknowledged by bid spotters employed by the TOBA are recognised as if tendered to the Auctioneer.

13. If a dispute arises as to any bidding then, at the discretion of the Auctioneer, whose decision shall be final, in the case of a dispute between two (2) bidders the lot in respect of which the dispute arises shall be immediately put up for sale again and if there be no advance bid by either of the contending bidders, the lot will be sold to the bidder from whom the Auctioneer recognised the last bid SAVE AND EXCEPT that should the last recognised bid be lower than the bid at the commencement of the dispute, then the bidding on the lot will be re-opened to all bidders, regardless of whether or not the final bid is higher than the disputed bid.

14. No lot shall be removed from the sale premises until the Purchaser presents a written delivery order given by the Auctioneer or the TOBA which order will be issued on payment in full of the purchase money for the said lot, or on the approval by the TOBA of the Purchaser's financial responsibility.

15. The Vendor shall pay to the TOBA:-

- (a) a Commission of five percent (5%) of the sale price of each lot sold whether or not the said lot is sold to the Vendor or his agent, or
- (b) a Commission of five percent (5%) of the reserve price of each lot sold, in the event that the Vendor has fixed a reserve price on the said lot in accordance with Condition 9.

PART II CONDITIONS BETWEEN VENDOR AND PURCHASER

16. A Contract of Sale shall be deemed to have been completed on the fall of the Auctioneer's hammer between the Vendor of the lot and the Purchaser thereof. The TOBA and/or the Auctioneer shall not be a party to or liable in any way whatsoever on such Contract. The Vendor and the Purchaser shall have no legal rights of action except against each other in respect of any matter arising out of the sale or the legal ownership of the lot. The name and address given by the Vendor pursuant to Condition 4 will be furnished by the TOBA to the Purchaser on request.

17. Any person who makes a bid for any lot which is accepted by the Auctioneer agrees in consideration of the Auctioneer accepting his bid that the Conditions contained herein shall govern his rights against and his liabilities to the TOBA and/or the Auctioneer and to the Vendor.

18. The Purchaser of each lot shall:-

- (a) give his full name and address to the Auctioneer of the TOBA when required.
- (b) On the fall of the hammer immediately sign the Acknowledgement of Purchase form (which form, if signed by another bidder shall not have the effect of invalidating the right of purchase of the bidder recognised by the Auctioneer) and pay to the TOBA the purchase price for the lot purchased which payment is to be in cash in Jamaican currency or by way of approved bank cheque or certified cheque or traveller's cheque SAVE AND EXCEPT where the financial responsibility- of the Purchaser has been approved in advance by the TOBA the Purchaser shall pay to the TOBA the said purchase price within three (3)

days of the conclusion of the sale.

- (b) On the payment in full of the purchase price, take delivery and remove from the sale premises at his expense the lot so purchased by 4:00 p.m. on the day of the sale in accordance with Condition 14 when the transfer of possession from the Vendor to the Purchaser is deemed to have been accepted by the Purchaser.

19. Upon failure to comply with Condition 18, the TOBA may, without notice to the Purchaser, rescind the Contract of Sale on behalf of the Vendor and the lot may be resold by public or private sale, the deficiency (if any) attending such re-sale together with the expenses thereof and interest on the purchase price calculated at the prevailing commercial rate shall represent damages attributable to the Purchaser's breach of contract and be forthwith recoverable by the TOBA or the Vendor by action.

20. If any person shall purchase a lot and not pay for it within the time limited by Condition 18 nothing contained in Condition 19 shall prevent the TOBA from compelling the Purchaser to pay for it if the TOBA of the Vendor shall so think fit.

21. The Vendor shall be entitled to receive the purchase money of each lot sold less the Commission due to the TOBA on the Friday, three (3) weeks following the sale provided that the TOBA shall then have received the purchase money and delivered the lot out of its custody, but not before. Delivery of a lot by the owner or his agent without a written delivery order from the Auctioneer or the TOBA pursuant to Condition 14 shall not be deemed delivery by the Auctioneer or the TOBA within the meaning of this Condition. The TOBA is not obliged to advance the purchase money to the Vendor if the Purchaser fails to pay for any lot purchased by him.

22. Each lot is at the Vendor's risk of any damage or injury whether by disease, accident or otherwise from the time of arrival for the period the lot shall be in the TOBA'S custody, unless such lot shall have been sold, in which case such lot shall be at the Purchaser's risk in all respects from the fall of the hammer. The TOBA shall not be responsible for any lot or liable for any damage or injury thereto at any time whilst in its possession, custody or control nor shall the TOBA be liable for any loss, damage or injury caused by any lot whether by disease, accident or otherwise, and either to the servant or person in charge of the said lot or to third parties whilst the said lot is in its possession, custody or control at any time.

23. The description, pedigree and engagements of lots are supplied by the Vendor, who alone is responsible for their accuracy.

24. Save in the case of any statements made by the TOBA or the Auctioneer without the authority of the Vendor, the TOBA and the Auctioneer shall not incur any liability to any Purchaser in respect of any announcement or statement relating to or affecting any lot offered for sale, nor shall they incur any liability in relation to any dispute between any Purchaser and Vendor. Save as aforesaid and without prejudice to any liability of the Vendor, it shall be deemed that no condition or warranty expressed or implied has in any circumstances been given by the TOBA or the Auctioneer whether as to title, the quality of any lot sold or otherwise.

25. Each lot is sold in its actual state at the time of the sale and no lot is returnable on account of any defect in the lot. No condition or warranty is implied with regard to any such defect.

PART III GENERAL

26. (a) Time shall be of the essence of all Conditions in which time limits are prescribed, provided that where the time limited for any person to do anything expires on a Sunday or public holiday, or on a day following next after any such days, then such Sunday or public holiday shall be excluded from the computation of the time.
- (B) In the computation of any period of time before or after the sale or any other event, the next day of the sale or other event (as the case may be) shall be excluded.
- (c) All periods expressed as a number of days shall be taken to refer to that number of clear days, and similarly for any other period of time.

27. (a) Notwithstanding anything in the foregoing Conditions, but subject as hereinafter mentioned, any notice under any of these Conditions may be served on the person to whom it is to be given either personally, or by leaving it for him at his last known place of abode or business during ordinary office hours, or by sending it through the post in a prepaid letter addressed to him there, or by sending it by prepaid telegram addressed to him there, and any such letter of telegram shall be deemed to have been received by him at the time at which it would be delivered in the ordinary course of post or telegraphic delivery respectively.

- (b) Provided always that any written notice required by any of these Conditions to be given by a Purchaser to a Vendor may be given by such Purchaser to the TOBA on behalf of the Vendor, either by leaving it at the office of the TOBA or by sending it through the post in a prepaid letter addressed to the TOBA there, or by sending it by prepaid telegram addressed to the Auctioneer there and any such letter or telegram shall be deemed to have been received by the Vendor at the time at which it would be delivered to the TOBA in the ordinary course of post or telegraphic delivery respectively.

- (c) The TOBA on receiving any such notice as aforesaid shall as soon as reasonably practicable communicate (by post or otherwise) the contents of such notice to the Vendor.

- (d) Except as aforesaid, all communications and negotiations with reference to any dispute between any Purchaser and Vendor

with reference to any lot sold under these

Conditions shall

take place directly between the Purchaser and the Vendor respectively, and the TOBA shall not be concerned therewith.

28. TOBA its Servants, Agents or Assigns, shall not be liable in any manner whatsoever for any loss, howsoever caused, arising from persons attending the TOBA Sale. Further, TOBA shall not be liable for any damage, injury or loss sustained by any animal as a result of such animal being entered in any

TOBA Sale.

29. In these Conditions of Sale, except where the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:-

Thoroughbred Owners and Breeders Association of Jamaica

means the body which promotes, facilitates and conducts the auction sale of lots entered in the Select, Regular and Mixed Sales.

Auctioneer

means the person who conducts the auction sale on behalf of the TOBA

Vendor

means the owner and any other person duly authorised by the owner, who offers a lot for sale.

