



## *Swaeneven Select Sale* *Conditions of auction 2008*

### **General conditions**

1. Ted Kop Jansen BV (hereafter: 'TKJ') is organizing, on Saturday 11 October 2008, the Swaeneven Select Sale (hereafter: 'the auction') in Event Centre 't Swaeneven in Wapse. The auction will take place under the supervision of a notary.
2. The relationship between TKJ and the vendor is an agreement by order.
3. These conditions of auction apply primarily to the relationship between TKJ and the vendor and the relationship between TKJ and the bidder/purchaser. By vendor and bidder/purchase is also meant any legal successor/procurer.
4. TKJ is not bound to agreements between the vendor and the bidder/purchaser unless stated otherwise in these conditions of auction.
5. All stipulations in these conditions of auction are made for the benefit of all those who work for and have worked for, or work and have worked on the behalf of, TKJ. The stipulations in these conditions of auction apply directly to these persons as if they were TKJ.
6. Participation in the auction will be seen as acceptance of the conditions of auction, with the exception of contingent conditions to be handled by the participant him/herself.

### **The auction**

7. The horses will be sold outright, without proceedings or recompense, in the state in which they were allotted.
8. The auctioneer retains the right to change the order of sale of the horses to be sold and, without giving reasons, to deny participation by persons as bidder/purchasers.
9. Bidder/purchasers are expected to be fully commercially competent and to be in full possession of their mental faculties. Each bidder/purchaser is expected to have bid for him/herself and will be held to his/her bid until a higher bid has been definitely accepted. A bidder/purchaser is, along with his/her eventual principal, fully responsible for non-fulfillment of his/her obligations. A vendor who appears to have bought his/her own horseback, will also be seen as bidder/purchaser and all conditions (under which is also meant all obligations of payment) of auction are considered applicable concerning bidder/purchasers for the meant vendor.
10. Risks concerning the horses by which is meant among other things, yet not limited to, damage to and damages caused by horses, are transferred immediately from the vendor to the bidder/purchaser at the moment allotted. As long as TKJ has not received full payment from the bidder/purchaser, the vendor remains owner of the horse.
11. Immediately after allotment, the bidder/purchaser shall, on production of identification, sign a written agreement of sale. If the agreement of sale is not immediately offered for signing to the bidder/purchaser, then he/she must, directly after the auction, report to the TKJ administration office.

### **Information**

12. TKJ has strived to compile the catalogue as accurately as possible. Pedigree information aims to give an impression of the quality of the horses without pretending to be exhaustive and therefore gives no guarantees.
13. It is the responsibility of the vendor to control the accuracy of the information in the catalogue that concerns the horse that he/she has put on offer and to write to TKJ in good time before the auction in the event of any mistakes or inadequacies and bring to the notice of such, thereby acquainting TKJ, in as much detail as possible, with any changes or additions that are needed.



14. A duplicate of the veterinary report as well as X-rays can be seen, on request, seven days before the auction and on the day of the auction itself. The contents of the veterinary report, the X-rays and any other possible veterinary communications by the veterinary surgeon as appointed by TKJ, is binding for TKJ, the vendor and the bidder/purchaser.
15. The bidder/purchasers are obliged, if requested by TKJ, to supply information concerning the adequacy of their financial circumstances, in which case they must show documentation proving the substance of their finances to TKJ. By requesting participation in the auction, the bidder/purchasers authorize TKJ in the obtaining of information concerning their financial circumstances from third parties.

#### **Registration, costs and payment**

16. The bidder/purchaser must make cash payment to the administration office of TKJ at the auction, that is; the purchase price augmented by 20% agio including VAT, in Euros, without any discount or deduction.
17. In the event where the bidder/purchaser is deficient herein, TKJ has the right to immediately re-auction the horse, whereby the bid of the original bidder/purchaser may no longer be accepted. The original bidder/purchaser will be obliged to pay the difference between his/her bid and the final, lower purchase price, as well as the re-auctioning costs, to TKJ. The bidder/purchaser will have no claims in the case where there is a higher purchase price after the re-auction.
18. Only with permission obtained from TKJ prior to the auction has a bidder/purchaser the right to pay with a transfer account whereby he/she must transfer payment within 7 days after the auction to the bank account number of TKJ (as corresponding to part 18). TKJ will, in such cases, oblige the bidder/purchaser to have the horse insured, which will take effect immediately and will be at the cost of the bidder/purchaser, with EFO horse insurance. This insurance must be for a period of a maximum of one week with a premium of 1.0% of the purchase price or for the maximum of one month with a premium of 1.5% of the purchase price whereby, in the case of damage, the bidder/purchaser will be also charged an annual premium of 4% of the purchase price. This short summary of the aforesaid insurance is not considered to be complete thus the bidder/purchaser cannot derive any legal rights from such. The bidder/purchaser can obtain a copy of the conditions of insurance on the day of the auction from the administration office of TKJ.
19. TKJ also has, amongst other things, the right to withhold the above-mentioned permission in the event that the bidder/purchaser's financial circumstances, according to TKJ judgment, by means of bank guarantees or suchlike, do not show, or fall short of, sufficient means. TKJ has the right to withdraw its given permission at any time in case doubts arise, in their opinion, as to the financial adequacy of the bidder/purchaser or to the securities that have been supplied by him/her.
20. Payment to any other person other than TKJ does not release the vendor or the bidder/purchaser from payment obligations toward TKJ.
21. In the event that TKJ has not received the payment in full from the bidder/purchaser within 7 days after the auction, the bidder/purchaser is, according to the law, in omission. The bidder/purchaser is then obliged to pay to TKJ, as well as his/her other obligations of payment, an indemnity to the sum of 12% (including VAT) of the purchase price excluding VAT. The total sum that the bidder/purchaser is indebted from his/her obligation of payment will be augmented by an interest of 1.5% per month to be calculated from the time of auction until the time of full payment.
22. If TKJ does not receive, from the bidder/purchaser, full payment within 7 days after the auction, TKJ has the right, without notification of default, on behalf of the vendor and without his/her permission, to consider the sale as not binding. In such cases, the vendor and bidder/purchaser remain obliged to fulfill all their payment obligations toward TKJ as laid out in the conditions of auction as far as these concern an indemnity on behalf of TKJ.



23. If the bidder/purchaser is in default of fulfilling his/her payment obligations towards TKJ, all judicial and extra judicial costs accrued by TKJ by these circumstances will be charged to the bidder/purchaser with a minimum sum of € 1,000.00 including VAT.
24. When, and only when, all payment obligations towards TKJ have been fulfilled by both the vendor and the bidder/purchaser, will TKJ then complete payment of all money owed to the vendor within 30 days.
25. Settling of mutual claims by the vendor or the bidder/purchaser in regard to TKJ is out of the question. TKJ is, at all times, authorized to settle mutual claims.

#### **Selection and inspection of horses for the auction**

26. TKJ will decide the criteria by which horses that are to be selected for the auction must fulfill.
27. All horses older than three years old, are three months before the auction, clinically tested as well as having X-rays made. Copies of the veterinary report, as well as the X-rays, are available for inspection on Thursday 9<sup>th</sup>, Friday 10<sup>th</sup> and Saturday 11<sup>th</sup> October before the commencement of the auction. All horses younger than three years old are only clinically tested.

#### **Delivery and removal of horses**

28. The bidder/purchaser is responsible for the care of the horse immediately after it has been allotted and liable for any damage to the horse, or caused by the horse.
29. The bidder/purchaser must remove, at his/her own cost, the horse from the grounds of the auction, at the latest, 2 hours after the auction has finished. If the bidder/purchaser has not removed the horse in good time, he/she is in default in the law. TKJ then has the right to have the horse removed and stabled elsewhere, whereby the bidder/ purchaser will be charged for the costs accrued, as considered reasonable in the judgment of TKJ. The bidder/purchaser remains responsible for the care of the horse and is liable for damage to the horse or caused by the horse.
30. When, and only when, the bidder/purchaser has fully complied with his/her obligations of payment, under which is meant obligations of payment concerning reimbursement to TKJ, can the bidder/purchaser take delivery of the horse, whereby he/she will receive the necessary documents. TKJ is not obliged to deliver the horse in the event that the bidder/purchaser has not fully complied with his/her payment obligations.

#### **Stall vices and deficiencies**

31. In the event where a bidder/purchaser detects stall vices in the horse purchased, whether crib-biting, weaving or wind-sucking, the bidder/purchaser must, within 7 days after the auction, notify TKJ in writing with a description in as much detail as possible of the nature of the stall vice. In such cases, TKJ will remove the horse to a location of their choice with the aim of having the horse examined by a veterinary surgeon assigned by them in order to have the stall vice, as described by the bidder/purchaser, examined. The veterinary surgeon's conclusion of the nature of the stall vice is binding. In the event where, in the judgment of the veterinary surgeon, there is such a stall vice as described by the bidder/purchaser, then the vendor is obliged to pay the costs accrued to TKJ, among which those concerning the stabling, the transport costs and the veterinary surgeon's fee. The bidder/purchaser is obliged to pay the said costs accrued to TKJ in the case where, in the judgment of the veterinary surgeon, there is no stall vice as described by the bidder/purchaser.
32. The specific part, part 39 as above, is also applicable, in the event where the bidder/purchaser detects defects in the horse purchased, other than the stall vices mentioned.
33. In the event that the bidder/purchaser, within the term of 7 days after the auction, does not notify TKJ in the manner as mentioned above, of the stall vices in question



or other defects, and/or in the event where the above-mentioned veterinary does not establish that there are stall vices or other defects, the bidder/purchaser does not have the right to annul the sale nor make a claim of absence of consensus ad idem.

### **Annulment and quashing**

34. In the event where the legal sale is annulled or quashed by the bidder/purchaser, the vendor and the bidder/purchaser will remain bound to all their obligations of payment toward TKJ, as mentioned in the conditions of auction, as far as these concern indemnities to TKJ. The sale can be annulled or quashed if the valid legal conditions concerned are taken into consideration, insomuch as they do not deviate in law from the conditions of auction.

### **Liability**

35. TKJ cannot be held liable for the accuracy of the information in the catalogue, the information supplied at the auction grounds or any information made available during the auction. The vendor indemnifies TKJ from all damages resulting from inadequacy in the obligations of checking and the obligations of statements made by the vendor concerning the catalogue as meant in part 14.
36. TKJ cannot be held liable for the accuracy of the information contained in the veterinary report, the veterinary information supplied at the auction grounds or any information made available during the auction.
37. TKJ cannot be held liable for any damage before, during or after the auction, sustained or perpetrated by any person, goods or horses.
38. TKJ will not take out an insurance concerning horses or other matters, on behalf of the vendors and bidder/purchasers. As vendors and bidder/purchasers take part in the auction at their own cost and at their own risk, TKJ advises that they take out the meant insurance themselves.

In the event of the death of a horse on the day of the auction and while the vendor or bidder/purchaser concerned does not receive any compensation on grounds of any insurance he/she may have taken out for him/herself, then TKJ will refund the registration fee of € 2,000.00 including VAT to the vendor concerned or will repay the agio to the bidder/purchaser concerned. The aforementioned refund is a service granted by TKJ to vendors and bidder/purchasers without acknowledgement of any liability on the part of TKJ, now or in the future.

39. TKJ is not liable for the failings of third parties; under this is also classified the case of non-payment by the bidder/purchaser.
40. TKJ is not liable unless in the case of foul play or gross negligence by TKJ.
41. Anyone who perpetrates damage to goods, or goods used by TKJ, are liable for such damage.
42. Both vendors and bidder/purchasers are liable for any damage they may have perpetrated. Both vendors and bidder/purchasers indemnify TKJ from any liability toward third parties by which is meant other vendors and/or bidder/purchasers or visitors concerning this matter.

### **Other matters**

43. In the event where, in the business of transferring the auctioned horses to another member state of the European Union, at the request of the bidder/purchaser an invoice is sent with zero VAT, the bidder/purchaser puts him/herself under obligation, in the member state of destination, to fulfill all necessary conditions demanded and in so doing to actualize an intra-community legal transaction.
44. If application of the VAT zero rating tariff, no matter the circumstances, appears to be impossible (subsequently), then the bidder/purchaser, at that time, is still obliged to pay a sum to the amount that would be owed in the case of a domestic delivery of the horse concerned. At the request of TKJ the bidder/purchaser is required to pay the aforementioned sum to TKJ immediately. In such cases, the refund will be



reimbursed only when and not before, the bidder/purchaser has complied with the conditions of part 51. The bidder/purchaser indemnifies TKJ in all cases from damages that result from the non-compliance of part 51. Therein the bidder/purchaser is liable for all judicial and extra judicial costs accrued by TKJ with a minimum sum of € 1,000.00 including VAT.

#### **Conversion**

45. In the case where one or more of these conditions of auction are not, or become, no longer lawful, the remaining conditions remain lawful. In such cases, a new lawful condition will come in the place of the no longer lawful condition; in which the new condition will resemble, concerning content, range and aim, as much as possible the old, no longer lawful, condition.

#### **Disputes**

47. If, at allotment, a difference of opinion arises to the question as to whom had made the last bid, or in the event that other difficulties, confusions or disputes arise at the time of bidding and/or allotment, the auctioneer is authorized to have final say herein which is binding. In the case where the aforementioned difference of opinion concerns the last bid made, the auctioneer is authorized to continue the sale by way of bidding.
48. In the event that the auctioneer calls in the notary to make judgment, the notary shall, binding and irrevocably, decide for all parties. During the auction, the notary is also authorized to make judgment in disputes in other matters than those regarding that of bidding and allotment.
49. The legal relationship between TKJ and the bidder/purchaser and the vendor are subject solely to Dutch law, with the complete exclusion of the Vienna Sales Treaty (CISG). Disputes, other than those specifically in pursuance of parts 54 and 55, which are subject to the judgment of the auctioneer and the notary, shall be settled exclusively by the qualified judge in Meppel.

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