

**The Lusitano Collection International Horse Auction  
Terms and Conditions of Sale  
2011**

**FIRST**

**THESE CONDITIONS GOVERN THIS SALE:** This sale is governed by these Conditions of Sale and by all announcements from the auctioneer's stand or otherwise ("Announcements"). Interagro Lusitano Collection USA, Inc. (the "Seller") and all buyers, prospective buyers, veterinarians, and all other interested parties and all sales are therefore bound by and subject to the provisions of the Conditions of Sale and Announcements. The auctioneer is Tom Biederman ("Auctioneer"). The Auctioneer's Florida Auctioneer license # is **4661064**. *This is a **BINDING, ENFORCEABLE CONTACT.***

**Presale Exam:** All prospective purchasers are urged to carefully examine and/or ride the horses in which they may be interested in, either personally and/or by their agents, representatives, or veterinarians of their choosing **BEFORE bidding** as they are accepting any horse purchased with all faults, including all conditions and defects.

**Agent:** All prospective buyers who utilize agents are further urged to reach an agreement with the agent concerning the agent's apparent or real conflicts of interest and disclosure of the agent's compensation, if any, from whatever sources, directly or indirectly, relating to or arising out of, the agent's services. *It is unlawful to pay or receive money or any item of value in connection with the sale or purchase of a horse except with full disclosure and written consent of both purchaser and seller; provided, however, this prohibition shall not be applicable where the agent is acting solely for and compensated solely by his principal.*

**SECOND**

**RESERVES:** All horses are being sold **WITH RESERVE**. Should a horse not reach its reserve that is determined solely by the Seller prior to the time which the horse enters the auction ring, Seller shall maintain ownership and control of the horse.

**THIRD**

**WARRANTY DISCLAIMER:** **THERE ARE NO WARRANTIES EXPRESS OR IMPLIED BY THE SELLER OR THE AUCTIONEER AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY HORSE OFFERED IN THIS SALE. ALL SALES ARE MADE ON AN "AS-IS" BASIS, WITH ALL FAULTS AND DEFECTS. PURCHASER UNDERSTANDS, AGREES AND ACCEPTS THAT ALL HORSES ARE BEING SOLD WITH ALL QUIRKS, IDIOSYNCRASIES, PERSONALITY TRAITS, AND ALL PHYSICAL OR MENTAL CONDITIONS (KNOWN OR UNKNOWN), WITH NO WARRANTIES OF ANY KIND, AND THAT SAID PURCHASER IS RELYING SOLELY UPON THE REPRESENTATIONS AND ADVICE GIVEN BY HIS/HER OWN VETERINARIAN, ADVISOR, OR AGENT IN MAKING A DECISION TO PURCHASE ANY HORSE FROM THIS AUCTION.**

**FOURTH**

**RESOLUTION OF BIDDING DISPUTES:** Should any dispute arise between or among two or more bidders, the Auctioneer shall forthwith adjudicate the dispute, and his decision shall be absolute, final, and binding on all parties. The bid recognized at the conclusion of any bidding dispute shall be deemed the sale price and Seller shall not be entitled to any amount over this amount, but for taxes as set forth below. The Auctioneer reserves the right to reject any or all bids. In the event the bidder who had the highest and last bid at the fall of the hammer fails or refuses to sign the Auction Bill of Sale ("Bill of Sale") when presented to said bidder by the Auctioneer, bidspotters or Seller designees, the Seller may elect, at its sole discretion, to either re-enter the horse or withdraw the horse entirely from the sale.

## **FIFTH**

**PASSING OF TITLE; RISK OF LOSS; DELIVERY:** Except as provided in this Condition FIFTH, title and risk of loss pass to the Purchaser at the fall of the Auctioneer's hammer, at which time Purchaser shall be responsible for the care, custody, control and security of the horse and for all expenses relating thereto. The highest, winning bid at the fall of the Auctioneer's hammer shall be known as the "Hammer Price" or "Purchase Price." A "Purchaser" is defined as the person who made the highest, winning bid. All Purchasers are required to make payment or provisions for payment at the "Sales Office" before leaving the auction.

The horse will be held for Purchaser by Seller until Purchaser makes settlement of his/her account as provided at Condition SIXTH below. All purchasers must pay the Purchase Price in full, including the Sales Tax Payment (defined in Condition SIXTH ) not later than 11:59pm on Saturday, February 28, 2011.

**After payment has been received in full by Seller, Seller shall execute a "Buyer's Invoice and Stable Release" for each horse purchased (the "Buyer's Invoice"). Such Buyer's Invoice shall indicate each horse's hip #, name, color, sex, and Purchase Price, and shall also state the Purchaser's name and that the Purchaser has paid in full. All Purchasers must present a Buyer's Invoice prior to removing any purchased horse from the Stables or auction site. No Purchaser may remove a purchased horse from the Stables or auction site without a fully executed Buyer's Invoice.**

**Stable Release:** All auction horses will be kept at the site of the auction (Jim Brandon Equestrian Center) on the day of the sale and through 12:00pm on Monday, February 28, 2011. After 12:00pm on Monday, February 28, 2011, all auction horses will be stabled at Martin Downs Equestrian Center and International Dressage Academy, IDA (collectively referred to as the "Stables" or individually as the "Stables"). Purchasers are required to make their own transportation arrangements for removing the horses they purchased from the Stables. All horses purchased must be removed from the Stables by Friday March 4, 2011 or they will be deemed abandoned.

## **SIXTH**

**BIDDING; TERMS FOR PAYMENT; REMEDIES UPON DEFAULT:** **Bidding Paddle:** All purchasers shall complete a registration application with the Seller not less than 30 minutes prior to the start of the auction in order to obtain a bidding paddle. No person shall be allowed to bid on a horse unless s/he has a bidding paddle registered in his/her name, or the name of his/her principal. All prospective purchasers understand and acknowledge that the Auctioneer will not recognize any bid unless it is obtained by a bidding paddle.

**Terms and Forms of Payment:** Immediately following the fall of the hammer, the Auctioneer, bidspotter or Seller designee shall present a Bill of Sale to the purchaser which shall state the horse purchased (by catalogue entry number), the Purchase Price, and the Seller's lien on the horse and its registration papers pending payment in full. Purchaser shall sign said Bill of Sale, and then take said Bill of Sale to the place designated to make payment. Purchaser shall make all payments to the Seller's designee for the purchase of any horse at this auction. Payment for any horse purchased may only be made by way of cashier's check, credit card, cash or some other form approved by Seller in writing not less than 30 minutes prior to the start of the Auction.

Pursuant to Florida law, all Purchasers are subject to having to pay sales tax (the "Sales Tax Payment"). At the Seller's discretion, the Sales Tax Payment may be made separately from the payment of the Purchase Price or contemporaneously and/or combined thereto. If the State of Florida requires the Seller to collect and pay sales tax for any horse purchased at the auction, the Seller shall be entitled to deposit the Sales Tax Payment into the Seller's account and utilize such Sales Tax Payment to comply with the tax laws of the State of Florida. If the State of Florida does not require the Seller to collect and pay sales tax for any horse purchased at the auction, the Sales Tax Payment shall be returned to the Purchaser of that horse after receipt by Seller of written evidence of the arrival of the purchased horse to its final destination and presentation to Seller of a bill of lading, and receipt of the balance of the Purchase Price by Seller (if applicable). The payment office shall remain open until 11:59pm Saturday, February 28, 2011 to process all deposits, payments and sales tax collection.

Failure to make payment in accordance with the terms above shall be deemed a default under these conditions. Should a Purchaser default, Purchaser shall immediately have the horse returned to the Seller's care, custody and control at the location specified by the Seller. Should the Purchaser fail to timely return the Horse to the Seller, Seller shall be entitled to liquidated damages in the amount of the Purchase Price and Sales Tax Payment as reasonable compensation for the Seller's loss of use of such animal.

Any Purchaser who has purchased a horse from the auction grants to the Seller a "Security Interest" in all horses purchased and their breed certificate(s) of registration ("Registration Certificates") and in any products and proceeds, to secure payment of any outstanding sums owed to the Seller on the Purchaser's account.

#### **SEVENTH**

**DEFAULTERS:** In the event any Purchaser fails to sign the Bill of Sale or fails to make payment in accordance with the terms above, then the Purchaser shall be deemed a defaulter and the horse, at the Seller's sole discretion, may re-enter the auction ring and then be sold with the prior attempted sale being void or the Seller may keep the horse.

#### **EIGHTH**

**PAYMENT OF EXPENSES; RESOLUTION OF DISPUTES; WAIVER OF JURY TRIAL:** For any dispute or controversy arising out of the auction or these Conditions of Sale, the parties shall first attempt to resolve their dispute through the use of a neutral, third-party mediator. As a condition precedent to any legal remedies that may otherwise be available to a Purchaser, the Purchaser shall first submit written notice to the Seller describing with particularity the issues by which the Purchaser has allegedly been aggrieved. This written notice must be delivered to the Seller within one week of the issues giving rise to the claim having come to the attention of the Purchaser or the Purchaser waives any legal remedies related hereto. The parties shall thereafter select a neutral, third-party mediator who can be an attorney, judicial officer, or other qualified person such as a veterinarian. The parties shall evenly split the cost of the mediator. The parties shall be solely responsible for any expert or veterinarian expenses retained by them. During the period of determining whether the sale shall be rescinded, risk of loss shall be borne by the non-prevailing party. Boarding and care of the horse during this period shall be arranged for by the Seller. The parties shall be responsible for their own attorneys' fees and costs during this initial mediation.

In the event that mediation does not resolve the parties' dispute, the parties may bring suit in accordance with Conditions Thirteenth and Fourteenth below. The prevailing party in any litigation or lawsuit shall be entitled to recover its attorneys' fees and costs, including any expert or veterinarian expenses incurred for the purposes of prosecuting or defending one's claim, including those fees and costs incurred during mediation. The Seller shall be entitled to recover any and all expenses incurred for the maintenance and health care of the horse incurred during the pendency of the dispute in the event it is determined by the mediator or court that the Purchaser is not entitled to rescind the sale.

**Time is of the essence** for all matters as set forth in this and all other Conditions of Sale.

If the Purchaser is unwilling to take possession of the horse which is the subject matter of the controversy, all interested parties agree that the Seller shall take all such steps as it deems advisable in the maintenance and care of such horse, including, without limitation, board, veterinary care, and any other reasonable expenditures such as insurance coverage. Furthermore, the Seller shall have the sole discretionary right, but shall be under no obligation, to sell the horse in controversy at any sale, public or private, during the pendency and resolution of any dispute between a Purchaser and the Seller. If the Seller chooses to sell the horse that is the subject of the dispute, the Seller shall be entitled to recover from the defaulting Purchaser the reasonable expenses incurred for the maintenance, health and well-being of the horse incurred by the Seller from the date of the auction through the date the horse is sold to a third-party.

**Rescission of the sale shall be Purchaser's sole and exclusive remedy.** In all other respects the as-is nature of this sale remains in full force and effect.

The Seller, Auctioneer and Purchasers, and their respective agents, assigns, heirs, and affiliates, 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 the auction or these Conditions of Sale.

#### **NINTH**

**REGISTRATION CERTIFICATES:** The Seller or Seller's designee will hold all Registration Certificates in escrow. After a horse has been sold through the auction, the Seller will execute any and all documents, and pay any and all transfer fees required by the breed registry to ensure that the horse's Registration Certificates are transferred into the name of the Purchaser. Purchaser recognizes and acknowledges that in order to effectuate the transfer of ownership in a horse from Seller to Purchaser, Seller may be required to submit the horse's original Registration Certificate to the breed association for final transference, a process which could take several weeks.

The Seller reserves the right to withhold delivery of all Registration Certificates for all horses bought by a Purchaser until such time as the Purchaser's account has been paid in full. In order to secure payment of the Purchase Price, Purchaser hereby grants to Seller, and its successors, designees and assigns, a security interest and lien upon the subject horse's registration certificates relating thereto until such time as the Purchase Price and Sales Tax Payment are paid in full.

#### **TENTH**

**CATALOGUE; ANNOUNCEMENTS:** The Seller shall report to the Auctioneer any inaccuracies in the Catalogue of which the Seller is aware not later than thirty (30) minutes prior to the beginning of the auction. Notwithstanding any remedies the Purchaser may have as against the Seller, in the event of an inaccuracy or mis-description of any horse listed in this catalogue (including, without limitation, the wrong identity), the Purchaser's sole remedy shall be a refund of the Purchase Price paid which, if applicable at all, shall only be applicable upon return of the subject horse, but only if such mis-description or inaccuracy is one of a factual nature and not based on hyperbole or sales puffery.

#### **ELEVENTH**

**AGENTS:** Persons acting as agents for principals, irrespective of whether the principal is in attendance at the auction, must submit to Seller or Seller's designee, no later than Wednesday, February 23, 2011 notarized letters of authorization from the principals stating that the agent is acting on their behalf and that said principal will be responsible for agent sales or purchases. Failure to comply with this Condition of Sale will result in the agent being deemed to be a co-obligor with the principal with respect to all matters in connection with or arising out of the auction and impose joint and several personal liability upon such agent for any default. The Seller or Seller's designee may, in their sole and exclusive direction, elect to accept an authorization, whether notarized or not.

All persons acting as agents for principals also are responsible for ensuring that the principal makes settlement for the full Purchase Price and Sales Tax Payment. By signing the Bill of Sale, regardless of the form of the signature, a person acting as agent agrees to be personally liable with the principal, for the full Purchase Price and Sales Tax Payment if the principal either does not have approved credit or fails and refuses to make payment in full.

#### **TWELFTH**

**LIMITATIONS OF ACTIONS:** Any cause of action arising out of the purchase and sale of any horse, or interest therein at this sale, whether it is based in contract or tort, shall be commenced in **not more than six months after the auction**. Provided, however, this limitation of action shall not apply to an action for the recovery from the Purchaser of the Purchase Price, plus interest and expenses, and including repossession of any horses purchased at this sale.

#### **THIRTEENTH**

**GOVERNING LAWS; VENUE AND JURISDICTION:** The laws of the State of Florida shall govern the construction of these Conditions of Sale and the rights, remedies and duties of the parties hereto. **In the event of any litigation arising out of these Conditions of Sale or the transactions contemplated hereby, the parties agree that any action or suit shall be brought exclusively in the state courts of Palm Beach County, Florida, and the parties hereby consent to the exclusive venue and jurisdiction of such courts.**

**FOURTEENTH**

**SELLER CONTACT INFORMATION:** Should any Purchaser have any questions, comments, concerns, or otherwise need to communicate with the Seller regarding the Sale or any horse purchased, please contact: Interagro Lusitano Collection USA, Inc., c/o Steven L. Cantor and/or Lowry Brescia, 1001 Brickell Bay Drive, Suite 3112, Miami, FL 33131; Telephone: 305-374-3886; Facsimile: 305-371-4564; Email: [steve@cantorwebb.com](mailto:steve@cantorwebb.com) or [lowry@cantorwebb.com](mailto:lowry@cantorwebb.com).

**FIFTEENTH**

**INSPECTIONS:** All purchasers shall inspect fully each horse that they may purchase. As provided in the Conditions of Sale and otherwise, purchasers are accepting any horse purchased with all defects. Purchasers that fail or refuse to inspect for any reason, including a lack of opportunity for inspection, purchase the horse at their own risk.

**It shall be the sole responsibility of the Purchaser to determine the sufficiency, quality and completeness of the available inspection, including any veterinarian examinations. All horses are sold on an as-is basis, with all faults and defects, with no warranties attached.**