**Online Auction Terms and Conditions**

**Equivision.co.nz**

1. Acceptance of Terms and Eligibility
	1. **Introduction:** This Website and the Website Services are owned and provided by Patrick McCarten (“**we**”, “**us**” or “**our**”). These online auction terms and conditions (**Terms**) apply to your use of the Website and Website Services provided by us and affect your legal rights and obligations. In these Terms, “**you**”, “**your**” and “**Website user**” means the individual accessing and using the Website, or the organisation on whose behalf you do so.
	2. **Compliance with Laws:** By accessing or using, or continuing to access or use, the Website or the Website Services you agree you have read, understood and accept these Terms and agree to be bound by all applicable laws and regulations governing the Website and the Website Services. If you do not agree to be bound by these Terms and such laws, please do not access or continue to access or use the Website or the Website Services.
	3. **Ban, Suspension or Termination**: If you have previously been banned, suspended or prohibited from using the Website or the Website Services, you will be illegible to use the Website and Website Services until such time that the ban, suspension or prohibition has been lifted (as applicable).
	4. **Amendments:** We may amend these terms and conditions from time to time. You are responsible for ensuring you have read the most up-to-date version as your continued use of the Website represents your agreement to be bound by these Terms.
2. Definitions and Interpretation
	1. **Definitions**: In these Terms, and in addition to the definitions set out above, unless the context otherwise requires:

**Auction** means a Listing for the sale of Horses and/or Gear listed on the Website by a Seller, and carried out in an online auction format in accordance with these Terms, with a start time and close time as determined by the Seller on commencement of the Listing;

**Bid** means a bid on an Auction made by you, regardless of whether or not the Bid was personally made by you, and **bidding** and **bidder** are to be construed accordingly;

**Buyer** means a Buyer who purchases Horse(s) and/or Gear from an Auction which is listed on the Website, or who places a Bid on any Auction (regardless of whether that Bid is accepted or not);

**Gear** means any horse gear which is offered for sale and purchase on the Website under an Auction;

**Governing Body** means the organisations and entities which govern horse racing in New Zealand, including but not limited to New Zealand Thoroughbred Racing Inc. or Harness Racing New Zealand Inc., from time to time;

**GST** means goods and services tax payable pursuant to the Goods and Services Tax Act 1985;

**Horse** means a horse which is offered for sale and purchase on the Website under an Auction;

**Listing** means a listing placed on the Website by a Seller, through which that Seller may offer, negotiate, sell or advertise any Horse or Gear, and through which a Buyer may purchase any Horse or Gear;

**Security Interest** has the meaning given to it in the Personal Properties Security Act 1999;

**Seller** means a person who places a Listing on the Website;

**Success Fees** has the meaning given to it in clause 13.2;

**Website** means this website http://www.equivision.co.nz;

**Website Services** means the online sale and auction services offered by us from the Website through which Buyers and Sellers may list, sell and buy Horse(s) and Gear (as applicable); and

**Working Day** means a day other than a Saturday, Sunday or Public Holiday (as defined in the Holidays Act 2003) in New Zealand.

* 1. **Interpretation**: In these Terms, unless the context otherwise requires:
		1. headings are for ease of reference only and will not be deemed to form any part of the context or affect the interpretation of these Terms;
		2. expressions defined in the main body of these Terms bear the defined meanings in the whole of these Terms;
		3. another grammatical form of a defined word or expression has a corresponding meaning;
		4. the singular includes the plural and vice versa;
		5. references to one gender includes the other genders;
		6. a reference to:
			1. a statute is to a New Zealand statute and includes all regulations, orders, bylaws, codes and notices made under or pursuant to such a statute and includes references to all amendments to that statute whether by subsequent statute or statute passed in substitution for the statute; and
			2. *dollars* or *$* is a reference to New Zealand currency; and
		7. the use of the words *including*, *includes* and *include* followed by a list of items or matters do not in any way limit the generality of the subject matter which goes before them or to which they refer; and
		8. anything required to be done on a day which is not a Working Day will be done and be valid if done on the next Working Day.
1. Provisions relating to the Website
	1. **Ownership:** The Website, its content, features and functionality are either owned by us, the people we licence such material from, or the provider of such material and are protected by New Zealand law. Any material provided by a third party may be governed by a different jurisdiction and subject to the laws of that jurisdiction. No right, title or interest in or to the Website or any content, features or functionality of the Website is transferred to you. Any use of the Website not expressly permitted by these Terms is a breach of these Terms and may also violate copyright, trademark and other laws.
	2. **Licence to use:** Subject to these Terms, we grant to you a non-exclusive, non-transferable, limited right to access our Website, to view the Website content and to use the Website Services for the purposes of bidding on Auctions or Listing Horse(s) or Gear.
	3. **Prohibitions:** Except as provided above, you are not permitted to copy, reproduce, alter or modify any content from our Website or without our prior express written permission.
	4. **Interference:** You are not permitted to do or use anything that interferes or, may interfere, with our Website, including introduce any virus, malware or other similar malicious code, modify, frame or reproduce our Website, or create a link to our Website (other than where we expressly permit you to do so).
2. Website Services
	1. **No Agency:** We do not act as an agent for any Buyer or Seller in any Auctions, nor do we participate in any way in any transaction between the Buyer and Seller, other than to provide:
		1. a venue through which bidders and Sellers can Bid on and sell Horses and/or Gear; and
		2. functionality to enable the Buyer and Seller to complete obligations arising from the Auction.
	2. **Closing of Auctions:** Where a Bid is submitted two minutes before the closing time for an Auction, the Auction will automatically extend in two minute increments until such time that no further Bids have been placed. The concept of “sniping” (where bidders place Bids immediately prior to the closure of an Auction) is not tolerated by us.
	3. **Auctions Parties:** You accept we are not party to any transaction between the Buyer and the Seller and agree not to involve or attempt to involve us in any dispute relating to the Auction (including as to payment or the accuracy or completeness of the description of the Horse or Gear). Our obligations are solely as set out in these Terms.
3. Auctions and Listings
	1. **Accuracy of Listings**:Listings must be accurate, complete, and include all relevant information about the Horse and/or Gear, the terms of sale, payment terms, shipping methods and allocation of costs.
	2. **Advertising and Fair Conduct**: You must ensure that any Listing you make complies with all advertising and fair conduct terms contained in these Terms.
	3. **Legal Entitlement to Sell**: You must only list Horse(s) and/or Gear that you are legally entitled to sell and/or provide which must be in your control at the time of posting the Listing.
	4. **Control**: We have no control over the existence, quality, authenticity, accuracy, safety or legality of any Horse and/or Gear on any Listing hosted on our Website. We also have no control over whether any other Buyer or Seller will complete any transaction and accept no responsibility for the failure of either a Buyer’s or a Seller’s failure to do so.
4. Registration
	1. **Registration:** Registration is not required to browse the Website. In order to be able to list an Auction, you need to register and create a username and password by clicking the “Register” link. Bids placed by a non-registered user are not permitted. As part of the registration process we may require proof of your identity and address.
	2. **Account Information:** You warrant that the information provided in creating your account is accurate and correct and not misleading. You must maintain and update your information to ensure it is correct at all times.
	3. **Account Responsibility:** You are responsible for the activity that occurs on your account. You must keep your account log in details and password secure and confidential and must not share them with any other person or permit any other person to use or access your account, including any other person within your organisation. Other persons in your organisation must use their own account.
	4. **Unauthorised Use:** You must immediately notify us of any unauthorised use of account details or passwords or any other breach of security by a Website user (or in relation to their access) or any other unauthorised access to the Website or Website Services. You will be responsible for any unauthorised use of your account and you agree not to use anyone else’s account without the relevant authority.
	5. **Breach of Terms:** We reserve the right to determine whether the use of your account breaches these Terms. We may, without prior notice and at our sole discretion terminate or suspend your account (including the accounts of any other individuals within your organisation) for any breach of these Terms (in our reasonable opinion), if we consider it necessary to protect the Website, the Website Services or the security of our technology systems delivering the Website or the Website Services, or for any other reason.
	6. **Subscription:** From time to time we will send you electronic mail relating to your account, transactions, Listings and Auctions that may be of interest. The electronic mail will contain instructions on how to unsubscribe from receiving such electronic mail if you no longer wish to receive them.
5. Obligations for Website Use
	1. **Age and Authority:** By using the Website and the Website Services to list or Bid on Horse(s) and/or Gear, you warrant that:
		1. you are at least 18 years old and able to enter a legally binding contract;
		2. if you are using the Website and the Website Services on behalf of an organisation, you have the authority to bind that organisation.
	2. **Legitimacy:** You must not access the Website and/or use the Website Services if you have no legitimate reason to do so.
	3. **Good Faith Conduct:** When accessing the Website and the Website Services you must:
		1. make all submissions, Bids or communications through the Website and the Website Services in good faith;
		2. ensure your access to the Website and the Website Services:
			1. complies with all relevant laws; and
			2. does not infringe our rights or the rights of any third parties, or inhibit or restrict other Website user’s use of the Website and the Website Services; and
		3. pay for any Horse(s) and/or Gear purchased by you at the close of an Auction, other than where the Seller materially alters the terms of the sale after your Bid or where the Horse(s) and/or Gear are not as described or where the Seller’s identity cannot be clearly authenticated.
	4. **Access to Website:** When accessing the Website and the Website Services you must not:
		1. list or Bid, if to do so would cause us to be in breach of any laws in any country;
		2. reverse engineer or decode the Website or the Website Services, or study the Website or the Website Services for the purpose of developing any software that is intended to replicate the functions of the Website;
		3. obtain or seek to obtain information from the Website that has not been made publically available;
		4. advertise any Gear which infringes any third party intellectual property rights;
		5. use information obtained on the Website to send spam, promotional or advertisement emails;
		6. deliberately attempt to mislead or deceive bidders and/or Buyers (including by omitting relevant information);
		7. make any unsubstantiated claim in respect of any Listing (i.e. a claim that you do not have reasonable grounds for making at the time the claim is made);
		8. manipulate the bidding process or price of any Horse and/or Gear, including (but not limited to) bidding on your own Auctions (unless you are a part owner/own a share or percentage of that Horse and/or Gear and you intend to purchase the Horse and/or Gear outright); and
		9. avoid payment of the Success Fees and/or purchase price at the completion of an Auction.
6. Listing and Auction Process
	1. **Buyer’s Warranty**: Before bidding on a Horse and/or any Gear under any Listing, a Buyer must ensure that they have the required finance to purchase the Horse and/or Gear. By placing a Bid, Buyers warrant that they have the financial means to purchase the Horse and/or Gear for the amount provided on the Listing or, in the case of an Auction, for the amount that Buyer’s Bid is for and that in either case they will complete the purchase if required.
	2. **Reserve Price**: In the case of an Auction, Sellers may set a reserve price, which must be met on an Auction before that Horse and/or Gear will be sold. Any Bid that is not greater than the reserve price will still be accepted, but it will not result in the Horse and/or Gear being sold at the conclusion of the Auction. When the reserve price has been met or exceeded, the Listing will state “Reserve Met” to indicate that the Horse and/or Gear will be sold at the conclusion of the Auction.
	3. **Change of Reserve Price**: Sellers may amend the reserve price of any Auction at any time during the course of the Auction as they see fit, by amending the Listing details, provided that the reserve price has not already been met.
	4. **Reserve Not Met**: If the reserve price has not been met at the conclusion of the Auction and the Listing does not state “Reserve Met”, the Horse and/or Gear will not be sold to the highest bidder and the Listing will close without a sale resulting. The Seller may re-list the Horse and/or the Gear in their sole discretion.
	5. **Successful Buyer**: If you successfully win an Auction, we will contact you by email to let you know that you have arranged for that purchase or have won that Auction and are now required to purchase the Horse and/or the Gear (as the case may be).
7. Title, Risk and Possession
	1. **Title:** Title to the Horse and/or Gear will pass to the Buyer from the Seller on full payment of the purchase price to the Seller and of the Success Fees to us.
	2. **Risk:** Risk in the Horse and/or the Gear passes to the Buyer at completion of the Auction. The Buyer will be responsible for arranging and effecting insurance for the Horse and/or Gear to take effect from the time that risk passes to the Buyer.
	3. **Possession:** On taking of possession, the Buyer (with reasonable assistance from the Seller) must take all steps to transfer ownership of the Horse with the Governing Body (where applicable).
	4. **Our Liability:** We will not be liable for a Buyer’s failure to effect insurance under clause 9.2 or transfer ownership under clause 9.3.
8. Seller’s Undertakings, Warranties and Information
	1. **Title:** The Seller undertakes and warrant to us and any prospective Buyer that it has clear title to the Horse(s) and Gear and confirm that all requirements of the Governing Body have been complied with and that the Horse(s) and Gear is located in New Zealand.
	2. **Description:** The Seller undertakes and warrants to us and any prospective Buyer that it has appropriately and adequately detailed the description and parentage of the Horse (if applicable in the case of Auctions relating to standardbred and/or thoroughbred Horse(s)).
	3. **Seller’s Agreement:** In Listing a Horse or Gear for Auction, the Seller:
		1. confirms that it has executed all documents and done all deeds necessary to transfer ownership of the Horse or the Gear;
		2. has disclosed whether or not there is more than one registered owner of the Horse;
		3. confirms that it has the relevant authority to Auction the Horse and proceed with the sale; and
		4. warrants that all information it has given in relation to a Horse or Gear is true and accurate in all respects, not misleading or deceptive.
	4. **Information:** A Seller must include, in each Auction disclosure of all information in relation to a Horse which a reasonable buyer would want to have knowledge of in order to form an opinion of the Horse, including but not limited to, whether the Horse:
		1. requires ongoing veterinary treatment;
		2. is pregnant or has a foal at foot;
		3. has been treated with any medication, including steroids, sedatives or pain suppressants (including as to whether any weanling, yearling, untried horse, or racehorse on Auction has been administered any anabolic steroids or selective androgen receptor modulators);
		4. is a stallion colt or a cyrptorchid (rig);
		5. is a windsucker (aerophagia) or a wobbler;
		6. is or has been subject to any bans, embargoes or other restrictions (for bleeding, barrier behaviour or other reasons) imposed by a Governing Body; or
		7. has any health conditions including but not limited to:
			1. suffering any respiratory issues;
			2. impaired vision;
			3. has string halt, tendon, muscle or neurological damage;
			4. having gone any form of surgical procedure;
			5. any bone fractures or chips;
			6. suffers from laminitis; and
			7. other health issues not listed.
9. Examinations
	1. **Veterinary Examinations:** Prior to the end of an Auction, a Seller agrees to make available a Horse to a prospective buyer for:
		1. an examination by a veterinarian:
			1. for an endoscopic examination; or
			2. for an upper respiratory examination; or
			3. for a pregnancy examination; and/or
		2. inspection by the proposed Buyer,

in each case, at the cost of the proposed Buyer.

* 1. **Appointment of Veterinarian**: We reserve the right to require a Horse to be examined by a veterinarian (for whatever reason) with a veterinarian of our choosing, at the Seller’s sole cost, prior to, during or after the end of an Auction.
1. Buyer’s Responsibilities
	1. **Own Skill and Judgement:** The Buyer agrees that any purchase of a Horse or Gear is made in reliance of its own skill and judgement, assessment, enquiry and inspection of the Horse and/or the Gear.
	2. **Reliance:** In proceeding with a sale, the Buyer acknowledges that it has not relied on any statement made by us and that we have not made any guarantee, representation or warranty of any kind as to the fitness for purpose, condition or quality of the Horse and/or Gear (as the case may be).
	3. **Warranties Excluded:** You acknowledge and agree that all implied warranties, conditions, guarantees and statutory rights and remedies are excluded to the maximum extent permitted by law.
	4. **Veterinary Examination:** You understand that failure by you to obtain a veterinary examination prior to the purchase of a Horse will be at your sole risk and the consequences and liability for that failure will be solely borne by you.
2. Fees, Payment and Possession
	1. **Listing Fees:** It is free of charge to list an Auction on the Website (**Listing Fees**).
	2. **Success Fees:** We charge a commission fee of 4% on each successful Auction (**Success Fees**).
	3. **Amendments to Fees**: We reserve the right to amend the Listing Fees and the Success Fees at any time. Any changes to either the Listing Fees or the Success Fees will only apply once we have provided you with 10 Working Days’ notice of any changes.
	4. **GST**: All Auctions are quoted inclusive of GST.
	5. **Payment**: As soon as practicable following the close of an Auction, a successful Buyer must pay us the relevant Success Fees. Upon receipt of the Success Fees by us, we will release the Seller’s contact details to you in order to complete the sale and purchase. Payment to the Seller must be made no later than five Working Days at the end of an Auction.
	6. **No Set-off or Deduction:** Payments made pursuant to clause 13.5 must be without set-off or deduction and in the manner allowed by the Auction.
	7. **Possession:** The Seller and Buyer agree to give and take possession of the Horse and/or Gear within 10 Working Days of payment to the Seller and to us being made in accordance with clause 13.5.
	8. **Conditions to Possession:**
		1. The Seller must give possession at the location agreed by the Buyer.
		2. The Buyer is responsible for arranging the meeting and costs of taking possession.
		3. The Horse and/or Gear must be free of all liens, charges, encumbrances and/or other Security Interests.
		4. If the Buyer fails to take possession, the Seller will be entitled to re-offer the Horse and/or Gear for sale and the Buyer will not be entitled to a reimbursement of the Success Fees.
	9. **Default:** The Buyer will be deemed to be in default if:
		1. the Success Fees are not paid in accordance with clause 13.5;
		2. the full purchase price is not paid in accordance with clause 13.5; or
		3. the Buyer fails to take possession as set out in clauses 13.7 and 13.8,

and the Seller will be entitled to enforce its remedies at law and/or re-offer the Horse and/or Gear for sale.

1. Indemnity and Limitation of Liability
	1. **Indemnity:** You indemnify us against any losses, costs (including solicitor and client costs), expenses, demands or liability, whether direct, indirect, consequential, or otherwise, which we may suffer or incur, and whether arising in contract, tort (including negligence), or equity or otherwise, any breach of these Terms by you, or arising out of your use of the Website and the Website Services.
	2. **Release**: In the event that you have a dispute with any other person over any Listing, Auction or otherwise, you agree to release us (and our officers, directors, shareholders, agents and employees) from any claims, losses, demands or damages which may result in any way from such disputes.
	3. **Liability:** To the maximum extent permitted by law, we are not liable or responsible to you or any other person for any direct, indirect or consequential loss, or any exemplary, incidental, special or punitive damages or any loss of profits, revenues or business opportunities that you may suffer or incur as a result of your access or use of the Website or the Website Services or any Bid on an auction or which otherwise arises in connection with the Website or the Website Services. This exclusion applies regardless of whether our liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.
	4. **No Loss or Damages:** Without limiting the above, to the maximum extent permitted by law, we will not be liable or responsible to you or any other person for any loss or damage you suffer or incur in connection with:
		1. the Website or the Website Services being unavailable (in whole or in part) or performing slowly;
		2. any error in, or omission from, any information made available through the Website or the Website Services;
		3. any misconduct, unlawful or fraudulent behaviour of a Website user;
		4. any reliance placed on any information made available through the Website by you, or by anyone who may be informed of any of its contents; and
		5. any exposure to viruses, malware or other malicious code when you access or use the Website, the Website Services or in any electronic mail sent to you by the Website.
	5. **Website Protection:** You are responsible for ensuring the process by which you access and use the Website, the Website Services and electronic mail sent to you by the Website protects you from viruses, malware or other malicious code.
	6. **Bids:** We will have no liability for any Bid that is not processed or accepted due to technical error or any other reason, nor will have any liability for any failure to receive or action any electronic communications by a Buyer or Seller nor for any damage, harm, virus or other detriment suffered by any person resulting from the use of the Website Services.
	7. **Consumer Guarantees Act:** To the maximum extent permitted by law, we exclude all warranties that may be implied into these Terms by statute or otherwise. You agree that the Consumer Guarantees Act 1993 does not apply where you use the Website or the Website Services for the purposes of your business.
2. Access
	1. **Availability:** The Website is provided on an “as available” basis. While we will use our reasonable endeavours to ensure the availability of the Website and Website Services, we do not warrant that:
		1. the Website and Website Services will be uninterrupted, timely, secure, or error-free;
		2. the quality of any services, information, or other material provided to you through the Website and the Website Service will meet your expectations; or
		3. any errors on the Website or in relation to any Auctions will be corrected.
	2. **Our Rights:** We reserve the right to remove any Listings, Auctions or any Bids, or suspend, discontinue or restrict access to the Website or the Website Services for any reason whatsoever without notice or liability. We reserve the right to change, correct or remove any error on the Website or in relation to any Auctions, including if such a change results in a change to a Bid or any starting or reserve price for a Horse and/or Gear.
3. Disputes
	1. **Good Faith:** Where any disputes arise between a Seller and a Buyer in relation to a Listing or an Auction, the Seller and Buyer will resolve the dispute between them in good faith, without the need to involve us, provided that where we are required to be involved, our decision will be final and binding on the parties.
	2. **Governing Body:** We reserve the right to involve the Governing Body where we consider it appropriate.
4. General
	1. **No Auctioneer**: While these Terms and the Website refer to the use of an auction process, we are not an auctioneer under the New Zealand Auctioneers Act 2013 or otherwise.
	2. **Privacy**: Any information you provide to us for the purposes of any Auction is subject to our Privacy Policy, which can be found on the Website.
	3. **Notices:**
		1. Any notice given pursuant to these Terms will be sufficiently given if it is in writing and delivered in accordance with this clause 17.3.
		2. Notices may be delivered to us at our address or email address as set out in these terms, or such other address as may be notified:

**Attention:** Patrick McCarten

**Address: PO Box 9334, Greerton, Tauranga**

**Email:** contact@equivision.co.nz

* + 1. Notices may be delivered to Sellers by us at the email address entered by the Seller at the time of Listing the Auction. Notices may be delivered to bidders (including Buyers) by us at the email address entered by the bidder at the time of account registration.
		2. Any notice or other communication under these Terms will be taken to be duly given or made:
			1. in the case of delivery in person, when delivered;
			2. in the case of delivery by post, three Working Days after the date of posting if posted to an address in the same country, or ten Working Days after the date of posting if posted to an address in another country;
			3. in the case of electronic mail, at the time the sender’s email system records that the email was successfully dispatched to the named recipient, provided that the sender's computer system has not received an automated response that the email has not been delivered. Where such delivery or transmission occurs after 5.00 pm on a Working Day or on a day which is not a Working Day, delivery will be deemed to occur at 9.00 am on the next following Working Day.
	1. **No Warranty**: To the maximum extent permitted by applicable law we make no warranty that any available in any Listing is fit for any particular purpose or that either the Buyer or Seller will fulfil their obligations under these Terms.
	2. **Survival**:Some clauses of these Terms, by their nature are designed to survive ad continue after suspension or termination of your account with us, such that they will continue to apply to you notwithstanding that your account may have been suspended or terminated.
	3. **Entire Agreement:** These Terms set out the entire agreement and understanding between you and us, unless otherwise agreed in writing.
	4. **Force majeure**: We have no liability for any failure of the Website or Website Services, or any failure to comply with these terms and conditions if such a failure is due to an act, event or cause which is beyond our reasonable control, including acts of God, war, sabotage, riot, national emergency, fire, lightening, flood, cyclone, earthquake, landslide, storm, explosion, power shortage, strike or other labour difficulty.
	5. **Waiver**: No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.
	6. **Severance**: If any provision of these Terms becomes invalid or unenforceable that provision shall be severed from the remaining Terms and the remaining Terms will continue if full effect.
	7. **Governing Law and Jurisdiction**: These Terms, and your use of the Website and the Website Services, shall be governed by and construed in accordance with New Zealand law, and you agree that the Courts of New Zealand have the exclusive jurisdiction to hear and determine any proceedings brought in relation to these Terms, and your use of the Website and the Website Services. If you access the Website or the Website Services from a country outside New Zealand you do so at your own risk and are responsible for compliance with local laws and regulations.