

# Consignment Contract

Seller (Consignor herein) and Midwest Equine Sales, (Sales Management herein) hereby enter into this Consignment Agreement for the horse specified in the sale application pursuant to the following terms and conditions:

**1. ENTRY FEE.** Consignor shall pay the entry fee stated in the Sale Application with return of this contract as a condition of entry in the sale. The entry fee is applicable to processing, catalog layout, and general administrative expense and is not refundable after acceptance by Sales Management. **ABSOLUTE SALE (AS) Reduced Entry Fee.** Indicates that specified sale horses sell with NO RESERVE per special agreement with consignor. See [complete addendum to contract](#).

**2. COMMISSION.** Consignor shall pay Sales Management a commission equal to seven percent ( 7%) on the first \$5000 sale amount and four percent ( 4%) on sale amounts between \$5001-\$10,000, or \$100.00 flat fee, whichever is greater of the final bid recognized by the auctioneer for a sale to a bona fide buyer. At this 2006 Winter Classic commission will only be charged on amounts up to \$10,000 amounts in excess of the \$10,000 target will not be charged a commission thereon. The commission is in addition to the entry fee.

**3. DUTY TO SELL AT AUCTION.** Consignor acknowledges that Sales Management relies upon entries for advertising, catalogs, and other sale promotions intended to stimulate marketability of the horses. After the Sale application is received by Sales Management, Consignor has a duty to present the horse for sale at auction.

Upon Consignor's breach of the duty to present the horse at auction to Sales Management, Consignor shall pay a twenty percent (20%) refusal fee based on (a) the private sale price as verified with the purchaser, or (b) if a sale is not verified within ten (10) days of Consignor's breach or repudiation, said refusal fee shall be based upon Sales Management's opinion of the value of the animal. Sales Management may use the insured value, if any, as evidence in forming an opinion on value. The **minimum refusal fee** regardless of sale price or value is \$500.00.

**4. NO-SALE FEE.** Consignor shall pay a No-Sale Fee in an amount which is the greater of: (a) \$75.00 or (b) three percent ( 3%) of the final bid or reserve bid (if applicable) whichever is greater. [See reserve bid form for further information.] The No-Sale Fee is in addition to the entry fee. The No-Sale Fee is applicable if the reserve is not achieved; provided however, if Consignor sells the horse on the sale grounds after the horse is presented for auction Consignor is responsible for the 7 % sale commission on complete sales amount.

**5. INFORMATION/DISCLOSURE.** Consignor shall complete the sale application and shall in good faith provide accurate information regarding the use, suitability, and condition of the animal. The objective of the disclosure requirement is to enable potential bidders to make an informed judgment regarding the horse and to prevent disputes over the condition of the horse. Sales Management does not conduct an independent examination or express an opinion regarding the condition of the animal. Consignor is solely responsible to the purchaser for completeness and accuracy of the information. Consignor's failure to disclose a known, material defect (vice or unsoundness) may be cause for a Purchaser to revoke acceptance.

Consignor has the affirmative duty to disclose with particularity any of the following specified conditions of the horse, if known to exist:

a. **Vices** - (1) cribbing, (2) windsucking, or (3) weaving;

b. **Unsoundness** - (1) chronic lameness or impairment of natural gait regardless of cause, including osteoarthritis of a joint, osteochondrosis dissecans (OCD), bone abnormality, navicular disease, or ringbone, (2) nerving, (3) wobbler, (4) Equine Protozoal Myeloencephalitis (EPM), (5) blindness or functionally impaired vision, (6) laminitis (founder), (7) chronic bleeding, (8) Parrot Mouth, (9) cryptorchid, or (10) winded condition. For breeding stock Consignor shall additionally disclose, if known to exist, the following (1) as to a stallion, infertility or permanent incapacity to breed, and (2) as to a broodmare, infertility or other condition which prevents the broodmare from carrying and delivering a viable foal through normal gestation. Consignors are advised to provide relevant breeding history to Sales Management.

For any horse which is the lineal descendant of the stallion IMPRESSIVE, AQHA Registration No. 0767246, Consignor shall submit the results of testing for **HYPP** genetic condition (Hyper-Kalemic Periodic Paralysis). The tested condition will be printed in the catalog and will be announced. If the condition has not been tested the designated "Not tested for **HYPP**" will be disclosed. For any horse which is lineal descendant of Poco Bueno, King P-234 through Zantanon on both its sire and dam pedigree should be tested for the genetic "mutany" allele, Glycogen Branching Enzyme Deficiency, GBED, if so tested results shall be disclosed if not tested will so be disclosed.

Unless disclosed by Consignor the horse must be sold **drug free**. Any foreign or controlled substance administered to the horse must be disclosed regardless of therapeutic benefit or other purpose, including e.g., phenylbutazone (bute), regumate (progesterone), or acetazolamide. Consignor consents to Sales Management drug testing any horse on the sale grounds within thirty (30) minutes after being presented for auction.

The horse must be sold free from contagious disease, or intervening **unsoundness** or injury unless such **supplemental condition** is disclosed and announced at the time of the sale. Consignor has a continuing duty to provide information to Sales Management regarding the condition of the horse.

**6. ONSET OF INJURY OR DISEASE.** Consignor shall notify Sales Management within twenty-four (24) hours if the horse develops a **serious** injury or **serious** disease after consignment, which impairs its suitability for sale. Upon such occurrence Consignor may submit a request to Sales Management to withdraw the horse from the sale. Consignor shall make the request for withdrawal in writing as soon as practicable after the onset of the condition and Consignor determines that the horse is not suitable for sale. Consignor shall provide the affidavit of a licensed veterinarian which (1) states the date the animal was first examined for the condition, (2) specifically identifies the condition of the animal, and (3) states an opinion to a reasonable degree of scientific and medical certainty that the animal is suffering from **serious** injury or **serious** disease which renders the horse unfit for transportation and sale. The Consignor shall submit the request for withdrawal and veterinarian's affidavit to Sales Management **not later than** twenty-four (24) hours prior to commencement of the first session of the sale.

If Sales Management consents to withdrawal and releases the horse from sale, Sales Management will retain the entry fee. Sales Management in its sole discretion may allow Consignor to enter a substitute for the withdrawn horse, upon payment of a \$50.00 substitution fee (or \$75.00 for Select Session). If Consignor fails to comply with the notice and withdrawal requirements, Sales Management will impose the **minimum refusal fee** of \$500.00.

**7. OWNERSHIP/FREE TRANSFERABILITY.** Consignor warrants clear title to the horse to be freely transferable at the time of auction upon compliance with breed association rules. If the horse is subject to any security interest (UCC financing statement) or lien (e.g. stableman's lien or stallion service lien).

Consignor shall disclose the name, address, phone number, and tax identification number of the interest holder to Sales Management and shall provide a written payoff letter. Consignor further warrants that Consignor is not subject to any association suspension or restraining order, judgment, or decree impairing Consignor's authority to transfer ownership and possession. Sales Management may deduct from Consignor's proceeds any amounts necessary to satisfy a security interest or lien, plus reasonable expenses including necessary attorney fees, and Sales Management's administrative fees. **Prior to sale**, Consignor shall furnish Sales Management with Registration Certificate (or Application for Registration on foal/s) executed certificate from the owner of record, and **breeding certificate**, and fully executed **stallion service contract** with assignment of rights, if applicable, suitable to transfer ownership. Consignor has the duty to disclose any irregularities or limitations which could adversely affect the ability to transfer ownership in a timely (within 30 days of sale) and unimpeded manner, or horse is subject to return with all sales and Buyer expense due. Consignor is responsible for ordinary transfer fees.

In the event of dispute over ownership, right of transfer, existence of or priority of security interests, or liens, or violation of breed association rules, Consignor consents to Sales Management withholding the entire proceeds until the dispute is resolved.

**8. CONDITION AT SALE.** For each horse presented at sale Consignor shall provide (a) a satisfactory, official veterinary health certificate in compliance with the regulations of the states of origin and of Sale dated within ten (10) days of sale, and (b) a current negative Coggins Test certificate [negative for Equine Infectious Anemia (EIA) drawn within 180 days of the sale date]. Consignor is responsible for any non-conformity in the horse's condition. If the horse is sold without a current negative Coggins test certificate and thereafter tests positive for EIA within thirty (30) days after the sale, Purchaser may revoke acceptance and Consignor is responsible for accepting return of the horse, together with Purchaser's expenses, and Sales Management's commission and expenses as if the sale was concluded.

For a broodmare, Consignor shall also provide a veterinary certificate based upon rectal palpation or ultrasound within ten (10) days, if applicable, stating the condition of the mare and status of pregnancy including (a) last breeding date, (b) absence of apparent infection in the reproductive tract, and (c) any reproductive unsoundness which could compromise the pregnancy or reproductive capacity of the mare.

The successful bidder of any horse stated to be a broodmare may have her examined by a licensed veterinarian acceptable to management within twenty-four (24) hours after commencement of the applicable sale session and prior to removal from the sale premises. If the conditions are determined to be materially inconsistent with the condition of the broodmare and pregnancy, if applicable, stated at the time of sale, Sales Management may permit the successful bidder to revoke acceptance and return the broodmare to Consignor, and Consignor shall nevertheless be responsible for the veterinary charges applicable to the examination, the entry fee, the sales commission, and any other reasonable expenses incurred by Sales Management.

Sales Management encourages Consignor to present the horse well nourished, conditioned, and fitted for sale. The horse must be free of contagious disease, known lameness, and drug-free unless Consignor declares such as a Supplemental Condition. Sales Management reserves the right in its absolute discretion to reject any horse which it determines is unfit, unsuitable for sale, or which is inhumanely treated and in any such event Consignor forfeits the entry fee and is responsible for a No-Sale Fee.

**9. SUPPLEMENTAL CONDITIONS.** Prior to commencement of sale Consignor shall disclose on the form prescribed by Sales Management any Supplemental Conditions, including changes in condition, or corrections regarding the horse together with disclosure of any drug treatment or administration.

The form must be received by the Sale Clerk **not later than** commencement of the sale session for the horse and a copy must be posted at the horse's assigned stall with the horse.

Supplemental Conditions will be announced. Consignor agrees to be present in person or to designate an authorized representative to present the horse for sale and to make representation regarding the condition of the horse. Consignor authorizes such designated representative to execute the Supplemental Condition form if Consignor does not attend the sale. Announcements of Supplemental Conditions at the time of sale supersede catalog information and are binding upon Consignor.

**10. DISPUTES OVER CONDITION.** The horse is sold subject to the Purchaser's **limited** right to revoke acceptance [within 72 hours from applicable sale session] due to (1) Consignor's non-disclosure of a known material defect in the condition of the horse i.e., a **vice or unsoundness** as defined herein (2) detection of undisclosed drug, (3) non-conforming condition of the broodmare, or (4) undisclosed injury, illness, or other non-conforming condition. The horse is sold subject to the [Terms and Conditions of the Sale](#) that will be printed in the sale catalog. If a dispute arises regarding the condition of the horse at the time of sale, Consignor agrees to submit to the dispute resolution procedure specified in the Terms and Conditions of the Sale and to comply with Sales Management's determination of the issue. If the Purchaser is entitled to revoke acceptance Consignor is responsible for accepting return of the horse regardless of its condition with exception of deliberate injury to or willful neglect of horse together with Purchaser's expenses, and Sale Management's fees, commission, and expenses as if the sale was concluded.

**11. CONDUCT OF SALE.** Sales Management reserves the right in its sole judgment and discretion to (a) determine order of sale of all entries, (b) assign stabling, (c) change the date, time, or location of sale should unforeseen circumstances necessitate a change, (d) subject horses to examination by a licensed veterinarian prior to sale, and to announce the findings.

The horse will be sold at the fall of the gavel to the final bidder as determined by the auctioneer at which time Sales Management will present the final bidder with an "Acknowledgment of Purchase" and acceptance of delivery. Sales Management reserves the right to publish a photograph of the horse, information supplied by consignor, the selling price, and name of the successful bidder. Sales Management, in the exercise of its sole judgment and discretion, is authorized to reject any bid made by a non-qualifying bidder. A non-qualifying bidder is a person who, in the judgment of Sales Management, does not qualify to purchase the horse and to complete the transaction for any of the following reasons: a) lack of financial responsibility including default in payment on a former purchase, b) falsifying information to Sales Management or any Consignor in any way relating to a purchase, including any former purchase, (c) intoxication, unruliness, or other conduct which interferes with the progress of the sale, d) lack of contractual capacity, e) repudiation or refusal to comply with purchase requirements, or f) other unacceptable conduct which causes Sales Management to conclude that the bidder is not reliable and responsible.

Sales Management will exercise due diligence to collect the purchase price from the purchaser. Sales Management will not extend credit to the Purchaser unless Consignor consents.

In the event that the final bidder fails to acknowledge the purchase, accept delivery, pay for the horse so struck down, or otherwise repudiates the sale transaction, Sales Management is authorized to accept an equivalent amount from another purchaser, to accept the next highest bid, or re-present the animal for sale. Sales Management is not responsible for any deficiency if the final bid on resale is less than the high bid at the initial sale.

In the event of a subsequent default by the high bidder (including stopping of payment of funds, dishonor upon presentment of a check or draft, or inability to collect payment of the purchase price), and if circumstances render immediate resale impracticable or impossible, Consignor agrees to retain ownership and possession of the horse without recourse against Sales Management. The duty of Consignor to retain ownership and to recover possession extends to circumstances in which the intended Purchaser has removed the horse from the sale premises. Sales Management has no pecuniary or possessory interest in the animal and has no duty to provide transportation, board, veterinary care, farrier service or other upkeep for the horse.

**12. HANDLING.** Consignor (or designated representative) has sole responsibility for handling, safety, welfare, and humane treatment of the horse until Purchaser has accepted it. Risk of loss or change of condition of the horse is with Seller until Purchaser has accepted it. Consignor shall supply a good, serviceable halter and bucket with the horse and upon failure to do so Consignor will be charged \$25.00 for each omission.

**13. SETTLEMENT.** Sales Management will settle with Consignor for the completed sale within ten (10) banking days after the last day of the sale in order to enable clearing of funds, completion of accounts, administration, and the like.

Sales Management shall provide Consignor with an itemization of authorized expenses (e.g. commission, sales fees, and pay-offs, if applicable) deducted in computing net proceeds from the sale.

Sales Management may withhold settlement and distribution of proceeds until purchase funds are collected or in the event of a dispute over the condition of the animal. Upon collection of purchase funds or dispute resolution in Consignor's favor, as the case may be, sale proceeds will be immediately distributed to Consignor.

**14. INDEMNIFICATION.** In the event that any claim is presented against Sales Management concerning the non-conforming condition of the horse, Consignor's misrepresentation, or any injury or damage caused by Consignor or Consignor's horse, or any breach of Consignor's duty, Consignor shall fully indemnify Sales Management and shall reimburse Sales Management for its legal fees and litigation expenses including, for example, veterinary expenses, expert fees, courier fees, travel expenses, court reporter, and court costs incurred in defense. Consignor shall fully cooperate in the defense of claims.

**15. TIME. TIME IS OF THE ESSENCE** regarding all time limitations specified herein which will be strictly enforced by Sales Management.

**16. Horses may enter sale premises** by 10:00 AM Friday January 20, 2006. It is in the best interest of consignor to have horses on premises as early as possible so that prospective buyers may view them at end of lead or under saddle in either the covered or uncovered arenas. Exhibition time's will be Friday 12:00 noon to 6:00 Pm and Saturday 8:00 AM to 11:00 AM.

**17. GOVERNING LAW.** The agreement shall be governed according to principles of Indiana law.

**Owners Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Sale managed by: Midwest Equine Sales**

**PO Box 206, Markleville, IN 46056, Phone 317-446-7535 Fax 7655-779-0112**