



NOMINATION AGREEMENT

1<sup>st</sup> October Special Live Foal

AN AGREEMENT for the sale and purchase of a nomination for the covering season of YEAR to the Stallion STALLION standing at Kildangan Stud between Godolphin Ireland Ltd trading as Darley (the "Vendor) and (the "Purchaser").

The Vendor hereby discloses to the Purchaser that the Vendor has agreed to pay a commission to - {NOT APPLICABLE} - ("the Agent") of 5% ("the Commission") of the Nomination Fee once the Nomination Fee has been paid in full and in accordance with the Due Date and upon receipt of an invoice from the Agent received no later than 31<sup>st</sup> January of the year following covering. The Vendor retains the right to withhold all or part of the Commission if the Nomination Fee is not paid within the terms of this Agreement. The Commission will not be paid if the Agent is an employee of the Purchaser or if the Agent or the Agent's family owns any part of the Mare. The Agent confirms that it has made the Purchaser aware of the information contained within this paragraph.

1. In this Agreement:

- "certified pregnant" means certified pregnant by a registered veterinary surgeon at least 40 days after the last service;
"committee" means, if applicable, the stallion syndicate committee or its agent;
"covering season" means 9 February to 15 July (or 30 June in any year in which the stallion is to be sent to the Southern Hemisphere breeding season for standing);
"due date" means the 1<sup>st</sup> October following the end of the covering season for the year;
"each oestrus period" means each oestrus period during the covering season;
"keep and expenses" means reasonable daily charges (plus VAT where applicable) for keep of the mare (and foal at foot, if applicable), plus any other incidental expenses reasonably incurred by the Vendor with third parties in connection with the mare (and foal);
"mare" means a thoroughbred mare nominated pursuant to this Agreement by the Purchaser including where the context permits any substitute mare. The Purchaser has nominated [ • ];
"nomination fee" means €[ • ] (plus VAT where applicable);
"nomination" means the right (subject to the terms of this Agreement) to present one thoroughbred mare for service by the stallion in each oestrus period;
"owner" means the owner of the stallion or his or their agent.

- 2. The Vendor agrees to sell and the Purchaser agrees to purchase for the nomination fee one nomination to the stallion for the covering season of the year subject to the terms of this Agreement (including the terms overleaf).
3. The Purchaser warrants that it/he/she owns the mare or is duly authorised by the mare owner(s) to enter into this Agreement on behalf of the mare owner(s). If the Purchaser is acting as an agent for the owner, the Purchaser shall be personally liable under this Agreement unless that status and the full name of the owner are stated on this Agreement.
4. Neither party shall be liable or responsible to the other for any disease, accident, injury or death of the mare (or her foal) or the stallion.
5. This Agreement sets out the whole of the agreement and understanding between the parties to the exclusion of all or any formal or informal discussions, arrangements or agreements between the parties.
6. Save as is expressly set out in this Agreement, and to the fullest extent permitted by law, all other terms, warranties, representations, and conditions implied by custom, statute, equity or common law are expressly excluded. This exclusion will not prejudice any statutory right of the Purchaser which cannot be excluded.
7. This Agreement shall be governed by and construed in accordance with Irish Law.
8. If the Purchaser is more than one person their obligations under this Agreement are joint and several.

At the Vendor's election this Agreement will not take effect unless the Purchaser signs and returns both copies thereof to the Vendor not later than: [ • ]

PLEASE NOTE THAT UNDER THIS AGREEMENT THE PURCHASER WILL NOT BE ENTITLED TO COMPENSATION FROM THE VENDOR FOR ANY DAMAGE TO OR LOSS OF THE MARE AND IS THEREFORE RECOMMENDED TO SEEK PROFESSIONAL ADVICE AS TO APPROPRIATE INSURANCE COVER.

By signing this agreement the purchaser confirms that they have read, understand and agree to all its terms, including those detailed overleaf.

.....
(Signature of Vendor) (Signature of Purchaser/authorised agent) (Print Name- Purchaser) Date

## 9. Nomination

- 9.1 A certificate signed by the Vendor's authorised representative shall be conclusive evidence of whether and on what dates the mare has been served by the stallion.
- 9.2 The right to use the nomination is personal to the Purchaser and shall not be sold or otherwise disposed of without the written consent of the Vendor.
- 9.3 Subject to paragraph 10 the nomination shall not be transferable to any other mare without the written consent of the Vendor.

## 10. The mare

- 10.1 The Purchaser will give to the Vendor or his agent written particulars of the mare which the Vendor will forward to the manager of the stud. Such particulars will be given before the arrival of the mare at the stud and will include details of any illness, disease vice or disposition of or affecting the mare which may be prejudicial to the stallion.
- 10.2 This Agreement is for approved mares only, accordingly acceptance of the mare in respect of the nomination will be subject to the approval of Vendor.
- 10.3 Service of the mare by the stallion may be refused by the manager of the stud after consultation with the registered veterinary surgeon who normally attends the stud.
- 10.4 If before being served the mare dies or becomes unfit for service or is refused services under paragraph 10 the Purchaser will be entitled to substitute another thoroughbred mare for the remainder of the covering season on the terms of this Agreement.
- 10.5 The Vendor reserves the right in the event of an outbreak of any disease which poses a threat to other mares and/or foals on the stud to impose restriction on the movement of mares to and from the stud and to implement such measures on the effective control of disease as it thinks appropriate.

## 11. Payment of nomination fee

- 11.1 The nomination fee shall become due and payable by the Purchaser to the Vendor without deduction or set off on the due date.
- 11.2 If the Purchaser disposes of the mare before the payment due date, the Purchaser will, unless otherwise agreed in writing, pay the nomination fee forthwith, the live foal guarantee condition in paragraph 11.3 shall no longer apply and no entitlement to a refund of the nomination fee will arise under paragraph 11.7.
- 11.3 No nomination fee is payable if the Purchaser produces for inspection (not later than 14 days after the due date) a certificate signed by a registered veterinary surgeon:
- relating to an examination carried out at least 40 days after the mare's last service by the stallion and not later than the due date to the effect that the mare has been found barren; provided that if it subsequently appears that the said certificate was mistaken the Purchaser will inform the Vendor immediately and the said fee will be payable on the due date or on the date when the mistake became evident, whichever is the later, and
  - that the mare either failed to give birth to a live foal or gave birth to a foal that died within (48) hours of its birth (other than by reason of an accident). The Vendor shall have the right (at its cost) to carry out a post mortem examination on the relevant foal.
- 11.4 The Purchaser and the Vendor acknowledge that the foal may be born on or before 31 December of the year of covering. If the Vendor agrees that the mare may be covered before February 15<sup>th</sup> the Purchaser and the Vendor acknowledge that the risk of the foal being born on or before 31 December will be materially higher than if the covering took place during or after that date. In any event the Purchaser acknowledges that any such pre-31 December birth shall have no effect on the Vendor's rights under this Agreement, and in particular to the Vendor's rights to payment for the covering services the Vendor shall have provided.
- 11.5 The nomination fee will also be payable:
- if after the mare has been served by the stallion and certified pregnant any abortification is used on the mare by the Purchaser or with his authority or consent, regardless of whether or not the mare is believed to be carrying a single foetus; or
  - if for any reason other than that the stallion is not available the Purchaser fails to send the mare to the stud for service by the stallion in each of the three oestrus periods, or if the Purchaser unreasonably refuses to allow the mare to be served by the stallion. For this purpose the stallion will be deemed to be available unless service of the mare is prevented by the death, impotence, disease or other incapacity (except infertility) of the stallion or by the stallion not being available for any reason to serve the mare at the stud.
- 11.6 The nomination fee will not be payable:
- if the mare dies after being served by the stallion but before the payment date, whether or not she was believed to be pregnant at the date of her death. The Purchaser shall produce a certificate signed by a registered veterinary surgeon that the mare has died; or
  - if the mare is not served by the stallion and paragraph 11.5(b) does not apply.
- 11.7 Unless paragraph 11.2 applies, the nomination fee shall be refunded in full (without interest) upon the Purchaser producing a certificate signed by a registered veterinary surgeon that the mare either failed to give birth to a live foal or gave birth to a foal which died within (48) hours of its birth (other than by reason of an accident). The Vendor shall have the right (at its cost) to carry out a post mortem examination to the relevant foal.

- 11.8 At any time up to 40 days after the mare's latest service by the stallion or until such earlier date as the mare leaves the stud the manager of the stud, acting with the approval of the registered veterinary surgeon who normally attends the stud, may take such action in regard to the mare as in his opinion is necessary or desirable with a view to the mare producing a single live foal.

## 12. Indemnity

The purchaser shall indemnify the Vendor against all liabilities, costs, expenses, damages and losses (including but not limited to loss of profit, loss of reputation and all interest, penalties and legal costs) incurred by the Vendor arising out of or in connection with the Purchaser's breach or non-performance of this agreement and the enforcement of this agreement.

## 13. Payment of keep and expenses

Keep and expenses shall become due and payable by the Purchaser within 28 days of the Vendor sending the Purchaser an invoice. The Purchaser undertakes to pay such invoice to the Vendor regardless of whether the mare has been served or is certified pregnant.

## 14. Interest

Interest at the rate of 1.5% per month (or part thereof) shall apply on all unpaid amounts from the due date(s) until payment is made in full.

## 15. Certificate of covering

The certificate of covering of the mare may be withheld by the Vendor or the manager of the stud or their respective servants or agents until payment is made of all monies due to the Vendor in respect of the mare and/or foal or other monies due by the Purchaser to the Vendor and the Purchaser undertakes with the Vendor not to register or attempt to register the ownership of the foal of the mare until full payment is made of all such monies.

## 16. Lien

- 16.1 For the purposes solely of this paragraph, the expression "Vendor" shall be taken to include any company whose ultimate ownership is the same as that of the Vendor. The Vendor shall have a general and particular lien over the mare, any other mare owned by the Purchaser or any foal (in utero or born alive) born as a result of a nomination under this Agreement or any other nomination agreement between the Purchaser and the Vendor.
- 16.2 The lien in paragraph 15.1 shall be for all claims and money owing by the Purchaser to the Vendor under such agreement(s) until all sums owed have been received by the Vendor. After giving 21 days written notice to the Purchaser the Vendor shall be entitled to sell or dispose of the mare, any other such mare or any such foal at the expense of the Purchaser and apply the proceeds towards the payment of such sums. Such sale or disposal shall be at the expense of the Purchaser. The Vendor shall be entitled to apply the proceeds in or towards the payment of such sums and upon accounting to the Purchaser for any balance remaining after payment of such sums and costs of sale or disposal the Vendor shall be discharged of any liability whatsoever in respect of the mare, any other such mare and any such foal.

## 17. Disposal of Stallion

If the stallion ceases to be available to serve the mare as a result of him being sold and moved from the stud after the 1st of January preceding the start of the covering season the Vendor will notify the Purchaser of that event and be liable to pay to the Purchaser forthwith as agreed compensation for breach of this Agreement a sum equal to one half of the nomination fee, provided that the Purchaser has signed and returned a copy of this Agreement to the Vendor as specified overleaf. If such notification is first given before the said 1<sup>st</sup> January, no compensation will be payable by the Vendor.

## 18. Dispute resolution

- 18.1 It is irrevocably agreed for the exclusive benefit of the Vendor that the courts of Ireland are to have jurisdiction to resolve any claim by the Vendor against the Purchaser in respect of non-payment of the nomination fee and/or keep and expenses (together with interest).
- 18.2 Any other dispute whatsoever arising from this Agreement shall be referred to a single arbitrator to be agreed upon between the parties or in default of agreement of 28 days to be appointed at the request of either party by the Executive Council for the time being of the Irish Thoroughbred Breeders Association, the arbitrator shall have power to take the opinion of such counsel as he may think fit upon any question of law that may arise and to obtain the assistance of such other expert as he may think fit and to act on any such opinion or expert assistance. The decision of the arbitrator shall be final and binding on both parties to this Agreement. The costs of arbitration (including the fees and expenses of the arbitrator) shall be in the discretion of the arbitrator who may direct to and by whom and in what manner such costs or any part thereof shall be paid, and may assess the amount of such costs or any part thereof or direct how the same shall be assessed.

## 19. General

- 19.1 If any provision of this Agreement is held to be partially void, ineffective or unenforceable by any court the said provision shall be given effect in its reduced form and in all cases the validity, effectiveness and enforceability of the other provisions shall not be affected.