

CONDITIONS OF CARRIAGE – ERH TRANSPORT PTY LTD

1. DEFINITIONS

1.1 The meanings of the terms used in this agreement are set out below.

Term	Meaning
Carriage	the whole of the operations and services undertaken by the Carrier or any Person on behalf of the Carrier in respect of the Goods (whether gratuitously or not), including but without limiting the generality of this definition, loading, unloading, and storage of the Goods
Carrier	ERH Transport Pty Ltd (ABN 72 625 383 523) trading under its own name or under any other business name and its officers, servants, agents and Subcontractors
Dangerous Goods	Goods that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever
Goods	the property from time to time accepted by the Carrier from the Consignor for Carriage and includes any container or packaging supplied by or on behalf of the Consignor
Person	includes a corporation, company, partnership or any other entity
PPSA	<i>Personal Property Securities Act 2009</i> (Cth) (as amended from time to time) and the regulations
Subcontractor	includes any Person who pursuant to a contract or arrangement with any other Person (whether or not the Carrier) performs or agrees to perform the Carriage or any part of it

1.2 Terms used in these Conditions of Carriage have the same meaning as under the PPSA.

2. NEGATION OF LIABILITY AS A COMMON CARRIER

The Carrier is not a common Carrier and will accept no liability as such. All Goods are carried and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the Carriage of Goods for any Person, corporation, company or other entity and the Carriage of any class of goods at its discretion.

3. CONSIGNOR'S WARRANTIES

3.1 The Consignor warrants that:

- the Goods are fit for Carriage and have been suitably packaged for those purposes;
- the Consignor has the authority of all Persons owning or having any interest in the Goods to enter into this agreement on their behalf;
- the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor are correct;
- there is a suitable practicable road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be removed and the place to which the Goods are to be delivered;

3.2 The Carrier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor, but does not admit their accuracy.

3.3 The Consignor undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any Person (other than the Consignor) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods.

4. RIGHT TO SUBCONTRACT

The Carrier at its discretion may subcontract on any terms the whole or any part of the Carriage.

5. EXTENSION OF EXEMPTIONS TO SUBCONTRACTORS

5.1 The Consignor agrees that no claim or allegation may be made against any servant, agent, or Subcontractor of the Carrier that imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Goods or the Carriage of them whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences of any such claim or allegation.

5.2 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available and will extend to protect:

- all Subcontractors;
- every servant or agent of the Carrier or of a Subcontractor;
- every other Person (other than the Carrier) by whom the Carriage or any part of it is undertaken; and
- all Persons who are or might be vicariously liable for the acts or omissions of any Person falling within clauses 5.2(a), 5.2(b) or 5.2(c).

5.3 For the purposes of clause 5.2 the Carrier is or will be deemed to be acting as agent or Trustee on behalf of and for the benefit of all such Persons and each of them and all such Persons and each of them will to this extent be or be deemed to be parties to this agreement.

6. LIABILITY OF CARRIER

6.1 The Consignor acknowledges and agrees that neither the Carrier nor any servant or agent or Subcontractor of the Carrier nor any other Person who undertakes the Carriage of the Goods at any time pursuant to this agreement will in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for:

- any personal injury or loss of or damage to, deterioration, evaporation or contamination of the Goods, or
- misdelivery, delay in delivery or non delivery of the Goods or any of them,

whether in the course of Carriage or otherwise or for any consequential loss or injury of any kind whatever whether such personal injury, loss, damage, deterioration, evaporation, contamination or misdelivery, delay in delivery, non delivery or consequential damage or injury is caused or alleged to have been caused by the negligence or wilful act or default of the Carrier or its officers, servants or agents, its Subcontractors, or by any cause whatever.

6.2 The Carrier will be entitled to the benefit of the exclusion of liability provided for in clause 6.1 even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

6.3 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of the Contract or otherwise will under any circumstances constitute a fundamental breach of the Contract, or a repudiation of the Contract such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Carrier contained in these conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

6.4 Where clauses 6.1, 6.2 or 6.3 cannot legally operate and to the extent permitted by law, the Carrier's liability for breach of any warranty or any term implied by law in to this Agreement is limited to:

- in the case of the supply of Carriage, the cost of having those services supplied again; or
- in the case of the supply of Goods, the lowest of the cost of replacing the Goods, acquiring equivalent goods or having the Goods repaired.

7. ROUTE AND DEVIATION

7.1 The Consignor authorises any deviation from the usual route or manner of Carriage of Goods that may in the absolute discretion of the Carrier be considered desirable or necessary in the circumstances.

7.2 If the Consignor expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of Carriage, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier the Consignor authorises the Carrier to handle or store or to carry or to have the Goods handled, stored or carried by another method or methods.

8. DELIVERY

8.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Consignor for that purpose. The Carrier will be conclusively presumed to have delivered the Goods in accordance with this agreement if at that address it obtains from any Person a receipt or signed delivery docket for the Goods.

8.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier or the Consignee otherwise fails to take delivery of the Goods the Carrier may at its option deposit the Goods at that place (which will be conclusively presumed to be due delivery under this agreement) or store the Goods and if the Goods are stored by the Carrier the Consignor will pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. In the event that the Goods are stored by the Carrier the Carrier will be at liberty to redeliver them to the Consignor from the place of storage at the Consignor's expense.

9. STORAGE

9.1 Where Goods are stored by the Carrier at the request of the Consignor, the Consignor will furnish an address to which notices shall be sent, and will provide samples of the signatures of persons entitled to collect the Goods.

9.2 The Carrier will be entitled to remove the Goods from a place of storage to another place of storage at its discretion.

9.3 The Consignor must give 48 hours' notice to the Carrier of its intention to remove Goods from storage.

9.4 The Carrier will not be obliged to deliver any Goods except to the Consignor or to a person authorised in writing by the Consignor to receive the Goods without:

- a direction in writing from the Consignor;
- payment of all amounts due by the Consignor to the Carrier on any account whatsoever.

9.5 The Consignor will remove its Goods from storage within seven days of receipt of written notice from the Carrier.

- 9.6 If any identifying document or mark is lost, damaged, destroyed or defaced, the Carrier may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.
- 10. GENERAL LIEN**
- 10.1 The Goods are accepted subject to a general lien for all charges now due or that may become due to the Carrier by the Consignor on any account whatsoever, whether in respect of the Goods or in respect of any other goods for which the Carrier provides or has provided services of Carriage.
- 10.2 If charges are not paid when due, or the Goods are not collected when so required or designated, the Carrier may, without notice, and immediately:
- remove all or any of the Goods and store them as the Carrier thinks fit at the Consignor's risk and expense;
 - open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any Person for any loss or damage caused.
- 10.3 The parties agree that the lien attaches to Goods when the Goods are accepted by the Carrier for Carriage.
- 10.4 The Consignor agrees that the lien arising under these Conditions of Carriage is a security interest.
- 10.5 If the Carrier requests, then the Consignor must promptly upon receipt of a request from the Carrier do anything for the purposes of ensuring that any security interest created under, or provided for by, these Conditions of Carriage is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Consignor to be done under this clause will be done by the Consignor at its own expense. The Consignor agrees to reimburse the costs of the Carrier in connection with any action taken by the Carrier under or in connection with this clause.
- 10.6 The parties agree that, to the extent permitted by the PPSA:
- sections 125, 142 and 143 of the PPSA do not apply (unless the Consignor is otherwise notified in writing by the Carrier);
 - any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is waived; and
 - any right to receive a copy or any notice of any verification statement confirming registration of a financing statement or a financing change statement relating to any security interest under or provided for by these Conditions of Carriage is waived.
- 11. DELAY IN LOADING OR UNLOADING**
- The Consignor will be and remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay in excess of 20 minutes in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading.
- 12. CARRIER'S CHARGES**
- 12.1 The Carrier's charges will be deemed fully earned on receipt of the Goods by the Carrier and are non refundable in any event.
- 12.2 Any special instruction given by the Consignor to the effect that charges will be paid by the Consignee or any other third party will be deemed to include a stipulation that if the Consignee or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Goods the Consignor will pay such charges.
- 12.3 Where the Carrier stores Goods for the Consignor, the Consignor must:
- pay the Carrier's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other Person;
 - if any Goods are under Customs control, pay all Customs duty, excise duty and costs (including any fine or penalty) that the Carrier becomes liable to pay or pays;
 - supply or pay for labour or machinery or both to load or unload the Goods;
 - compensate the Carrier for any cost, expense or loss to the Carrier's property or any Person caused by the Goods;
 - if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.
- 13. DANGEROUS GOODS**
- 13.1 If the Carrier accepts Dangerous Goods for Carriage, such Goods must be accompanied by a full written declaration disclosing the nature of such goods.
- 13.2 The Consignor will indemnify the Carrier against all loss (including consequential loss) damage or injury howsoever caused arising out of the Carriage of any Dangerous Goods whether declared as such or not and whether or not the Consignor was aware of the nature of the Goods.
- 13.3 If in the opinion of the Carrier, the Goods are or are liable to become of a dangerous or flammable or damaging nature, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Consignor and without prejudice to the Carrier's right to charge for the Carriage of the Goods.
- 13.4 The Consignor warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or cartage of any Dangerous Goods and that the said Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and agrees to indemnify the Carrier for any liability whatsoever as a result of or arising out of the Consignor's failure to comply with each of these warranties.
- 14. PALLETS AND EXCHANGES**
- 14.1 Unless otherwise agreed in writing, the Carrier will not exchange any pallets with any Person and the Consignor must not transfer any pallets to any account the Carrier may have with a pallet hirer.
- 15. NOTIFICATION OF CLAIM**
- 15.1 Notwithstanding any other provision of this agreement (other than clause 16), the Carrier will in any event be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Carrier:
- in the case of Goods allegedly damaged in the course of loading, unloading or transit within two hours of the delivery of the Goods in the case of perishable Goods, or within four hours of the delivery of the Goods for non-perishable Goods;
 - in the case of alleged non delivery of Goods, within twenty four hours from the time at which, in the ordinary course of business, delivery would have been effected; or
 - in the case of Goods allegedly lost or damaged during storage, within four hours of the date of removal of the Goods from storage.
- 15.2 The Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless suit is brought:
- in the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within six months of their delivery or of the date on which they should have been delivered; or
 - in the case of Goods allegedly lost or damaged during storage, within six months of the date of removal or attempted removal of the Goods from storage.
- 16. APPLICABLE LEGISLATION**
- Notwithstanding anything contained in this agreement, the Carrier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 17. ENTIRE AGREEMENT**
- 17.1 This agreement sets out the entire agreement of the parties with respect to its subject matter. No other agreement, warranty or representation, express or implied has been given or made by the parties with respect to the Carriage of Goods.
- 17.2 The Carrier will not be bound by any agreement purporting to vary these terms and conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.
- 18. GENERAL**
- 18.1 This agreement will be construed in accordance with the laws in force in New South Wales and the parties submit to the jurisdiction of the courts of New South Wales.
- 18.2 Headings are included for convenience only and do not affect interpretation of this agreement.
- 18.3 Words importing the singular include the plural and vice versa and words importing a gender include other genders.
- 18.4 Where the Consignor or Consignee comprise two or more Persons an agreement or obligation to be performed or observed by the Consignor or Consignee binds those Persons jointly and severally.
- 18.5 If any part of this agreement is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and this agreement will remain otherwise in full force.