

TERMS & CONDITIONS OF CONSIGNMENT

1. DEFINITIONS

In these terms and conditions:

"**Address**" means the address given by the Sender to the Carrier to which the Consignment is to be delivered.

"**Carrier**" means M & J Mitchell Pty Ltd and/or Mitchell's Livestock Transport and/or Esperance Livestock Transport (ABN 25 009 343 659) its officers, employees, agents and where applicable, subcontractors, and the subcontractor's officers, agents and employees. "Person" includes a natural person, firm, corporation, government authority or other body or organisation.

"**Charges**" means charges set by the Carrier and payable by the Sender to the Carrier in consideration of Services provided to the Sender, including but not limited to:

- (a) costs caused by delays that are not the fault of the Carrier;
- (b) taxes, fines and duties including customs and excise duties payable by the Carrier for a Consignment;
- (c) any goods and services tax;
- (d) all other costs and expenses incurred in the provision of the Services including demurrage at the rate charged by the railway or shipping authority;
- (e) storage charges; and
- (f) Charges referred to in this contract.

"**Consignment**" means the Stock and any other goods accepted from the Sender, its officers, employees and agents together with any containers, packaging or pallets supplied by or on behalf of the Sender and used in relation to provision of the Services.

"**Count**" means the counting by the Carrier of the Stock when the Stock enters the Carrier's vehicles or its loading ramps and the counting by the Carrier of the Stock at the Address when the Stock leaves the Carrier's vehicles or its loading ramps.

"**Damage**" means any loss of, damage to, deterioration of, or misdelivery of, or non-delivery of, or delay in Delivery of the Consignment and includes consequential economic or ancillary loss damage, expense or liability.

"**Delivery**" means delivery of the Consignment to the Address.

"**Due date**" means fourteen (14) days after the date of invoice unless otherwise agreed.

"**Receiver**" means the Person, their officers, employees and agents to whom the Sender consigns, sends or directs the Consignment.

"**Sender**" means the Person with whom the Carrier contracts to provide Services or the Person's officers, employees and/or agents.

"**Services**" means the whole or part of the operations and services undertaken by the Carrier in connection with the Consignment including but not limited to, the collection, loading, unloading, carriage, transportation, Delivery and storage of the Consignment, and use of the Carrier's intellectual property but excluding crantage unless otherwise specified.

"**Stock**" means any livestock accepted from the Sender, its officers, employees and/or agents.

2. CARRIER

- (a) The Carrier is M&J Mitchell Pty Ltd t/as Esperance Livestock Transport and/or M & J Mitchell Pty Ltd and/or M&J Mitchell Pty Ltd t/as Mitchell's Livestock Transport (ABN 25 009 343 659) its officers, employees, agents and where applicable, subcontractors, and the subcontractor's officers, agents and employees. "Person" includes a natural person, firm, corporation, government authority or other body or organisation;
- (b) The Carrier is not a common Carrier and accepts no liability as such. All Services are provided subject to these terms and conditions and the Carrier has discretion to refuse to provide Services to any Person or of any class of goods;
- (c) The Carrier relies on the details supplied by the Sender but does not verify or admit the accuracy of the details. A signature by the Carrier upon collection or delivery is merely acknowledgement of the items collected or received.

3. DELIVERY

- (a) The Carrier must deliver the Consignment to the Address and Delivery occurs if at the Address the Carrier obtains from any person a receipt or signed delivery docket for the Consignment.
- (b) Where the Consignment is accepted for transport by rail to an address in a place where the Carrier has no receiving depot, Delivery occurs when the Consignment is delivered to the nearest rail head.
- (c) If the Address is unattended the Carrier can effect Delivery by leaving the Consignment at the Address.
- (d) If the Address is unattended the Carrier may store and redeliver the Consignment, and the Receiver shall indemnify the Carrier for all expenses incurred by storage and attempted or actual redelivery.

4. METHOD AND ROUTE

- (a) If the Sender instructs (expressly or impliedly) the Carrier to use a particular method of or route for providing the Services, the Carrier will give priority to that method and route but the Carrier may provide Services by another method or route.
- (b) The Carrier may change the usual or directed route or method for provision of Services if the Carrier believes it is necessary or desirable.

5. SUB-CONTRACTING

The Carrier may have a sub-contractor or sub-contractors perform all or any part of the Services. the Carrier act as the agent and trustee for sub-contractors who have the benefit of these terms and conditions as if they had contracted with the Sender to provide Services.

6. CARRIAGE OF STOCK

The Carrier agrees to carry Stock upon the following terms and conditions:

- (a) The Count is conclusive evidence of the number and condition of the Stock transported. The number and condition of the Stock may be verified in writing either by the Sender, the Receiver or their respective agent/s at the Address.
- (b) The Sender warrants that the Stock is in a fit and proper condition to undergo the carriage the subject of this Contract.
- (c) The Sender warrants that the Stock is marked and branded in accordance with the provisions of the Stock (Brands and Movements) Act 1970 and that the Stock otherwise complies with the provisions of that Act.
- (d) The Carrier shall load and unload the Stock into vehicles of such size and number as in its discretion it thinks fit.
- (e) Where the Carrier is unable to deliver the Stock to the Sender or Receiver or to the Address or where the Stock or part thereof dies in transit or is not removed from the Address within a reasonable time after the Count, or where the Stock is so injured that it is reasonable to slaughter, the Carrier may sell the Stock or the carcasses thereof PROVIDED THAT:

- (a) The Carrier shall not sell the Stock or carcasses thereof unless the Carrier has taken reasonable steps to give notice to the Sender or Receiver by telegraphic or telephonic communication and the Sender or Receiver has failed to give immediate instructions for the disposal of the Stock;
- (b) The Carrier shall do all that is reasonable to obtain the market value of the Stock or carcasses;
- (c) The payment of the proceeds of the sale of the Stock (after deduction of all Charges and expenses in relation to the sale thereof and any other monies due to the Carrier) shall discharge the Carrier from all liability in respect of the Stock or the carriage or delivery thereof.

7. PACKAGING

- (a) Containers, packaging and pallets within the Consignment must conform with the Carrier's requirements, and the Sender is liable for any expense caused by non-conformance.
- (b) If pallet weight is not included in the Consignment weight nominated by the Sender, each pallet will be charged at a rate determined by the Carrier.

8. DANGEROUS AND HAZARDOUS CONSIGNMENT

- (a) The Sender must not tender any Consignment containing:
 - (a) dangerous, hazardous or damaging goods, unless a full description disclosing the dangerous, hazardous or damaging character of those goods is presented to the Carrier; or
 - (b) goods if the carriage of those goods is illegal or prohibited by any law or regulation of a State of Australia, Territory of Australia or the Commonwealth of Australia.
- (b) Details provided by the Sender are warranted by them as correct.
- (c) The Sender is liable for all Damage caused wholly or partially by a breach of Condition 7(a) and must indemnify the Carrier for death, bodily injury, loss or Damage (personal and property) incurred by any Person as a result of the Sender's breach.
- (d) The Carrier, at the Sender's expense, may return to the Sender or destroy, dispose or make harmless a Consignment that is tendered in breach of condition 7(a) or in breach of any law or regulation of a State, Territory or the Commonwealth.

9. STORAGE

- (a) Within fourteen (14) days of the Carrier's request, the Sender must pay the Charges and remove the Consignment stored by the Carrier.
- (b) Where storage Charges in respect of the Consignment are unpaid for twenty-eight (28) days the Carrier require the Sender to pay the storage Charges within seven (7) days.
- (c) If the Sender fails to comply with conditions 8(a) or 8(b), the Carrier may deal with the Consignment in any way it sees fit including, opening and selling the Consignment at the Sender's risk and expense and applying the proceeds of any sale to the Charges then in arrears. The Sender indemnifies the Carrier in respect of any costs incurred, Charges which remain owing and any claims by any other party with an interest in the Consignment.

10. THE CARRIER'S CHARGES

- (a) The Sender will pay the Charges on the Due Date without deduction for any reason.
- (b) Charges are earned when the Consignment is tendered to the Carrier.
- (c) The Sender must pay interest at the current rate which is RBA Cash Rate as of 1 January each year + 8% per annum calculated on a daily basis on unpaid Charges (unless waived by the Carrier) from the Due Date until Charges are paid.
- (d) A further Charge may be made for any delay exceeding two (2) hours from the time of reporting for loading or unloading.
- (e) No Charges are refundable.
- (f) Charges are exclusive of GST unless stated otherwise. The Sender will pay to the Carrier the GST payable by the Carrier for the Service at the same time as the Charge is payable.
- (g) Charges may, at the Carrier's discretion, be calculated by weight or volume.

11. CASH ON DELIVERY

The Carrier will not collect any payment on Delivery on behalf of the Sender even if instructed so.

12. CHARGES COLLECT

If the Sender specifies that some other Person will pay the Charges and that Person fails to pay the Charges, the Sender must pay the Charges within five (5) days of request by the Carrier.

13. POSSESSORY LIEN

- (a) the Carrier has a possessory general lien over the Consignment and other property of the Sender in its possession or under its control from time to time with respect to any due Charges from the Sender or other Person to the Carrier under this contract.
- (b) the Carrier may sell the Consignment and apply the proceeds to pay Charges due after providing written notice to the Sender's last known place of business or registered office of its intention to do so.
- (c) The Sender indemnifies the Carrier against claims by any party with an interest in the Consignment.

14. INDEMNITIES AND EXCLUSIONS

Unless the Carrier enters into a separate agreement to exclude or vary any of the following sub-clauses then:

- (a) The Consignment is at the risk of the Sender and not the Carrier and, unless expressly agreed in writing, the Carrier will not be liable for any Damage to the Consignment or any part of the Consignment, whether or not the Damage occurs in the course of performance by the Carrier of the Services or when otherwise in the possession of the Carrier pursuant to this Contract, for any reason whatsoever including without limitation, negligence, breach of contract, bailment or wilful act or default of the Carrier.
- (b) The Sender indemnifies the Carrier against any claim or allegation made against the Carrier by or liability to any Person including but not limited to the Receiver and the bailor for any Damage, personal injury (including death or disease) or other loss or injury (personal or property) arising out of or in connection with the provision of the Services including solicitor-client indemnity costs incurred by the Carrier, irrespective of any negligence, breach of contract, bailment or wilful act or default of the Carrier.
- (c) Subject to any implied warranty provided by the Trade Practices Act 1974, the Fair Trading Act or any other Act (as amended from time to time) which may not be excluded, no warranty, condition or representation is given on the part of

the Carrier and any express or implied warranty as to quality, fitness for purpose or otherwise of the Services is hereby excluded.

- (d) To the extent that the Carrier is subject to any implied warranty provided by the Trade Practices Act 1974, the Fair Trading Act or any other Act (as amended from time to time) the Carrier limits its liability to the maximum extent allowed under that Act.
- (e) The Consignment is at all times at the risk of the Sender.
- (f) If temperature control is required for the Consignment the Sender acknowledges that variations can occur in relation to temperature control. Temperature records of the Carrier will be sufficient evidence to prove the temperatures applying during the provision of the Services.

15. CLAIM FOR DAMAGE

Where by express written agreement the Carrier becomes responsible for loss or Damage, no claim for loss or Damage will be allowed unless:

- (a) the claim is lodged in writing within seventy-two (72) hours after Delivery to the Carrier; and
- (b) the Sender substantiates the damage.

Failure to claim within seventy-two (72) hours is evidence of satisfactory performance of the Services. Time is of the essence in this clause.

16. INSURANCE

The Sender must take out its own insurance cover for the Consignment. At the request of the Carrier, the Sender will make the Carrier a co-insured to the Sender's insurance policy. the Carrier does not and will not arrange any insurance.

17. LAWS, CUSTOMS AND REGULATIONS

- (a) The Sender warrants that the Consignment complies with all the applicable laws, customs and other government regulations of any Federal, State or Territory of Australia.
- (b) The Sender is liable for any taxes and duties levied in respect of the Services.
- (c) In respect of contracts made in Queensland:
 - (a) These terms and conditions will be read subject to the Carriage of Goods (Liability Act 1967 (Qld)) (as amended from time to time) and will continue to apply except where they are repugnant to the provisions of the Act, and
 - (b) the Carrier limits its liability to the maximum extent allowed under that Act.

18. SENDER ACCEPTS TERMS

- (a) The Sender warrants that it is either the owner of the Consignment or authorised agent of the owner of the Consignment and the authorised agent of the Receiver.
- (b) The Sender accepts the terms of this Contract for the owner of the Consignment and Receiver and any other Person on whose behalf the Sender is acting.

19. ENTIRE AGREEMENT

This Contract is the entire agreement between the Carrier and the Sender. No purported variation or modification of this Contract will have any effect unless it is in writing and signed by an authorised agent of the Carrier.

20. SEVERABILITY

If any part of this Contract is unenforceable that part is severed from the Contract with the rest remaining in full force.

21. PROPER LAW AND JURISDICTION

This Contract is governed by the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia. Any proceedings against the Carrier must be instituted within six (6) months of the cause of action arising. Time is of the essence in this clause.