

IMPORTANT NOTICE

Please read all the following conditions carefully and in their entirety. You will be bound by these conditions if we carry Livestock for you. Please note that:

- By accepting these conditions, you warrant that:
 - you are acquiring our services for, or in relation to, the transport of Livestock for the purposes of a business, trade, profession or occupation carried on or engaged in by you; and
 - the consignee of the Livestock in question carries on or is engaged in a business, trade, profession or occupation in relation to those Livestock,

unless you otherwise advise us in writing before we agree to provide our services (see clause 4.2(j));

- Our services are priced based on the exclusions and limitations set out in these conditions;
- To the extent permitted by law, we will not be liable for any loss of or damage to Livestock, unless that loss or damage was caused by our proven negligence or wilful misconduct. The conditions provide for various exclusions of liability and limits on our liability for loss of or damage to Livestock. These exclusions and limits are set out in clause 6;
- The effect of these provisions is that, even if we have been negligent, you may not be able to recover the full value of any lost or damaged Livestock. If you want to negotiate for us to have a higher limit of liability with respect to your Livestock, you should contact us;
- You must seek our written consent before consigning any stud animals or prize animals or we will not be liable for loss of or injury to those animals (clauses 4.1(a) and 6.3(c)); and
- There are some livestock – defined as ‘Excluded Livestock’ in clause 1.1 – that we do not agree to carry, and accordingly, we do not accept any liability for loss of or injury to these sorts of livestock (see clause 6.3(b)). You must not, under any circumstances, include any ‘Excluded Livestock’ in a consignment.

CONDITIONS OF CARTAGE

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

Authority includes any legal or administrative authority exercising any jurisdiction within an Australian state or territory.

Carriage means the whole of the operations and services undertaken by the Carrier or any person on behalf of the Carrier in respect of the Livestock (whether gratuitously or not), including collection, transporting, loading, unloading, feeding, handling, consolidating, delivery, boarding, agistment, and resting/spelling of the Livestock, towing a trailer and the provision of any advice.

Carrier means C.M. FRASER & SONS PTY. LTD. (ABN 50 058 772 866) trading under its own name, under the business name Frasers Livestock Transport or under any other business name.

Chain of Responsibility Law means the Heavy Vehicle National Law as enacted in any Australian state, the *Road Traffic (Administration) Act 2008 (WA)* and the *Road Traffic (Vehicles) Act 2012 (WA)* and any other Commonwealth, state or territory Law dealing with the obligations of parties involved in the transport of goods by road.

Consequential Loss means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; wasted expenditure; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in connection with the performance of the Carriage and whether or not foreseeable at the time of entering into any agreement incorporating these conditions.

Consignment means the consignment of Livestock at any one time from the Consignor in a single load from one address in Australia to another address in Australia.

Consignor means the person engaging the Carrier.

Declared Livestock means stud animals and prize animals.

Excluded Livestock means horses, poultry and any animals that are not herd animals.

Force Majeure Event means any event beyond the reasonable control of the Carrier including acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, labour disputes and other industrial disturbances, any road closure or congestion of roads, any quarantine or customs restriction, epidemic or pandemic, cyber warfare, cyberattacks, ransomware attacks, cyber sabotage, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, crane, machinery or equipment.

Interest means an amount calculated on any Outstanding Amount at the rate of 10% per annum, compounded annually.

Law means applicable statutes and any associated regulations, proclamations, rules, bylaws, requirements and approvals.

Livestock means the animals accepted by the Carrier from, or at the request of, the Consignor for Carriage.

Outstanding Amount means any amount which remains unpaid upon the expiry of the credit terms extended by the Carrier or for which the Consignor is otherwise liable, pursuant to these conditions, to the Carrier.

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 In these conditions:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) headings are included for convenience only and do not affect the interpretation of these conditions;
- (c) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)'; and

- (f) all indemnities survive the termination or expiration of any agreement incorporating these conditions.

2. NEGATION OF LIABILITY AS A COMMON CARRIER

The Carrier is not a common carrier and will accept no liability as such. All Livestock are carried and all Carriage is performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the Carriage of livestock for any person and the Carriage of any class of goods at its discretion.

3. CARRIER'S OBLIGATIONS

3.1 The Carrier will:

- (a) take reasonable care to protect and safeguard the Livestock and to follow any special handling requirements notified to the Carrier by the Consignor;
- (b) provide the Carriage exercising the degree of skill, care and efficiency that would be expected from a competent provider of services of Carriage;
- (c) at its own expense, hold all licences as may be required by Law in connection with the Carriage;
- (d) use reasonable endeavours to deliver the Livestock to the address nominated by the Consignor and to effect delivery at the date and time requested by the Consignor (subject to compliance with all Law, including Chain of Responsibility Law); and
- (e) use reasonable endeavours to comply with the Consignor's reasonable and lawful directions.

3.2 The Carrier does not warrant or guarantee particular collection or delivery times for Livestock and is not liable for claims for loss or damage in any way associated with delay in collection or delivery of Livestock.

3.3 To the extent permitted by law, all conditions, guarantees, terms and warranties which would otherwise be imposed or implied into these conditions are excluded. Without limitation, this exclusion applies to any conditions, guarantees, terms or warranties of merchantability or of satisfactory quality applying to the Carriage.

4. CONSIGNOR'S WARRANTIES, OBLIGATIONS AND INDEMNITIES

4.1 The Consignor must:

- (a) obtain the prior written consent of the Carrier before consigning any Declared Livestock;
- (b) ensure that the loading of the Livestock onto the Carrier's vehicle will not cause the vehicle to exceed any dimension or mass limits under Chain of Responsibility Law; and
- (c) provide all documents, information and assistance necessary to allow the Carrier to comply with Law or the requirements of any Authority.

4.2 The Consignor warrants that:

- (a) the Livestock are healthy and fit for Carriage and have been suitably prepared for those purposes;

- (b) it has informed the Carrier of any underlying medical conditions, prior illness and any current medications with respect to the Livestock;
- (c) it has lodged all necessary biosecurity paperwork required by any Authority before Carriage, or as otherwise required by Law;
- (d) it will supervise the loading of any Livestock to be carried by the Carrier and, before the departure of the Carrier's vehicle, will satisfy itself that all Livestock have been safely and correctly loaded into the Carrier's vehicle;
- (e) it is authorised by all persons owning or having any interest in the Livestock to accept these conditions on their behalf;
- (f) the Livestock do not include or contain any Excluded Livestock (which the Carrier does not agree to carry);
- (g) all details supplied by the Consignor or any other party with respect to the Livestock, including the details of description, quantity, weight, quality, value and measurements, are correct;
- (h) there is a suitable and safe road and approach for the Carrier and the Carrier's vehicles to the place from which the Livestock are to be collected and the place to which the Livestock are to be delivered;
- (i) safe and adequate loading facilities and equipment will be available at any place from which any Livestock are to be collected and to which any Livestock are to be delivered; and
- (j) unless the Consignor advises the Carrier in writing prior to the Carrier agreeing to provide Carriage:
 - (i) the Carriage is supplied for, or in relation to, the purposes of a business, trade, profession or occupation carried on or engaged in by the Consignor; and
 - (ii) the consignee of the Livestock carries on, or is engaged in, a business, trade, profession or occupation in relation to the Livestock.

4.3 The Carrier relies on the details of description, weight, quality and value supplied by the Consignor but does not admit their accuracy.

4.4 The Carrier may comply with any orders, directions or recommendations of an Authority or a veterinarian or animal welfare officer at the risk and expense of the Consignor.

4.5 The Consignor:

- (a) acknowledges that the Carrier is not responsible for any medical condition suffered by Livestock;
- (b) agrees that:
 - (i) the Carrier may, but is not obliged to, treat any Livestock, and may engage a veterinary surgeon or other practitioner on behalf of the Consignor;
 - (ii) it will be fully responsible for any fees or expenses charged by a veterinary surgeon or other practitioner; and

- (c) if requested, must promptly provide the Carrier with the contact details of a person who is authorised to give instructions to the Carrier in relation to any issues that arise with respect to the Livestock and their welfare during Carriage.

4.6 The Consignor will indemnify the Carrier in respect of all losses, damages, expenses, claims, actions and proceedings or any other liability suffered or incurred by, or made or instituted against the Carrier arising from:

- (a) the breach of a warranty given by the Consignor in clauses 4.2(a), 4.2(c), 4.2(e), 4.2(f), 4.2(g) or 4.2(j); and
- (b) any incorrect or wrongful declaration made by the Consignor as to:
 - (i) the purpose for which the Consignor requires the Carriage;
 - (ii) the proposed use of the Livestock by the consignee; or
 - (iii) the value of the Livestock.

5. SUBCONTRACTING

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

5.2 If the Carrier subcontracts any Carriage, to the extent permitted by Law, the Carrier:

- (a) will not be relieved of any of its liabilities or obligations under any agreement incorporating these conditions; and
- (b) will be liable to the Consignor for any act or omission of the Subcontractor that causes loss of, death of, damage or injury to, delay in delivery or non-delivery of the Livestock, as if such act or omission were the act or omission of the Carrier.

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

- (a) all Subcontractors;
- (b) every employee or agent of the Carrier or of a Subcontractor; and
- (c) all persons who are or are found to be vicariously liable for the acts or omissions of any person falling within clauses 5.3(a) or 5.3(b).

5.4 For the purposes of clause 5.3, 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 all such persons will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

6. LIABILITY OF CARRIER

6.1 To the extent permitted by Law, the Carrier will not, under any circumstances, be liable (whether in contract, tort, bailment or otherwise), for any:

- (a) loss of or death of the Livestock;
- (b) damage or injury to the Livestock; or

(c) misdelivery or non-delivery of the Livestock,

whether in the course of Carriage or otherwise, unless the loss, death, damage, injury, misdelivery or non-delivery was caused by the proven negligence or wilful misconduct of the Carrier.

- 6.2 Any liability of the Carrier under clause 6.1 will be reduced proportionately to represent the extent to which the Consignor or any other person's negligent or wrongful acts or omissions caused the loss, death, damage, injury, misdelivery or non-delivery of the Livestock.
- 6.3 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable for any loss of, death of or damage or injury to Livestock:
- (a) caused by a Force Majeure Event;
 - (b) which consist of Excluded Livestock;
 - (c) which consist of Declared Livestock where the Consignor has not complied with clause 4.1(a);
 - (d) caused by the Carrier following the Consignor's instructions;
 - (e) caused by the Livestock contracting any virus, bacterial or fungal infection, disease, or like condition;
 - (f) caused by inoculation or its aftereffects, infectious diseases, abortion, or loss/death of a foetus;
 - (g) that is self inflicted by that Livestock;
 - (h) caused by another animal;
 - (i) caused by vibration, road conditions, weather or weather events of any kind whatsoever;
 - (j) caused by or connected to any pre-existing injury or illness of the Livestock; or
 - (k) caused by insufficiency or unsuitability of preparation of the Livestock to withstand the ordinary incidents of Carriage.
- 6.4 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable, under any circumstances, for Consequential Loss.
- 6.5 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier's liability arising from any:
- (a) loss or death of Livestock or damage or injury to Livestock; or
 - (b) misdelivery or non-delivery of Livestock,
- during the provision of Carriage is limited to the sum of \$400,000 for each incident.
- 6.6 For the purposes of this clause, 'incident' means any event which results in loss or death of or damage or injury to Livestock or misdelivery or non-delivery of Livestock and all claims that result from the one original cause will be considered to have arisen from the same incident.

- 6.7 The limitation of liability set out in clause 6.5 does not apply to the extent that any loss of, death of or damage or injury to Livestock is caused by the Carrier engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct.

7. ROUTE AND DEVIATION

- 7.1 The Consignor authorises any deviation from the usual route or manner of Carriage of Livestock that may, in the opinion of the Carrier, acting reasonably, 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 the Livestock, 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, acting reasonably, to handle or carry or to have the Livestock handled or transported by another method or methods.
- 7.3 If the Carrier, acting reasonably, forms the view that any Livestock are not fit, or are no longer fit for Carriage, it may, without compensation to the Consignor and without prejudice to the Carrier's right to charge for the Carriage:
- (a) refuse to load the Livestock; or
 - (b) off-load the Livestock at any place it considers is safe and convenient.

8. INSPECTION

- 8.1 The Carrier:
- (a) is not obliged to carry out any inspection of the Livestock; and
 - (b) may inspect the Livestock to determine the nature or condition of the Livestock or for any other purpose which the Carrier considers reasonably necessary.
- 8.2 If, under Law, a crate or other vehicle in which the Livestock are held must be opened to allow the Livestock to be inspected, the Carrier will not be liable for any loss, Damage or delay incurred as a result of any opening, unloading, inspection or reloading and the Consignor agrees to pay the Carrier's charge for the cost of any such opening, unloading, inspection or reloading.
- 8.3 If the Consignor makes a claim that Livestock have been damaged, injured or killed while in the custody of the Carrier, the Consignor must, on request, permit the Carrier to inspect those Livestock.

9. DELIVERY

- 9.1 The Carrier is authorised to deliver the Livestock at the address nominated to the Carrier for that purpose. The Carrier will be deemed to have delivered the Livestock if, at that address, it obtains from any person a receipt or signed delivery docket for the Livestock.
- 9.2 If, without advance notice to the Carrier, the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Carrier or the consignee otherwise fails to take delivery of the Livestock, the Carrier must attempt to contact the Consignor to obtain alternative instructions for delivery. The Carrier may make an additional charge for following the alternative instructions.
- 9.3 If the Carrier is unable to obtain alternative instructions that the Carrier can reasonably and practicably carry out, the Carrier may, at its option:

- (a) deposit the Livestock at the nominated place of delivery (which will be conclusively presumed to be due delivery under these conditions); or
- (b) agist the Livestock.

9.4 If the Livestock are agisted by the Carrier pursuant to clause 9.3:

- (a) the Consignor will pay or indemnify the Carrier for all costs and expenses incurred with respect to such agistment; and
- (b) the Carrier may, at any time, redeliver the Livestock to the Consignor at the Consignor's expense.

10. DEFAULT AND CONSEQUENCES OF DEFAULT

Without prejudice to any other remedies the Carrier may have, if at any time the Consignor is in material breach of any obligation under any agreement incorporating these conditions (including those relating to payment), the Carrier may terminate the supply of Carriage to the Consignor.

11. CARRIER'S CHARGES

- 11.1 The Consignor agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 11.2 The Carrier's charges are due within the credit terms agreed in writing between the Consignor and the Carrier. If the Carrier has not agreed to any credit terms, the charges are payable on delivery of the Livestock. If the Consignor defaults in making any payment in accordance with these conditions, then all amounts owed to the Carrier will immediately become due and payable.
- 11.3 In addition to any other charges contemplated under these conditions, the Consignor is liable to pay:
 - (a) Interest on any Outstanding Amount;
 - (b) all agistment charges and any costs associated with loading or unloading Livestock;
 - (c) any fuel levy imposed, which may be adjusted by the Carrier at any time on reasonable grounds to reflect fuel price movements; and
 - (d) all charges under Law including customs charges and excises in relation to the Carriage.
- 11.4 The Carrier may charge the Consignor, in accordance with its schedule of rates, in respect of any delay occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading. Labour to load or unload is the responsibility and expense of the Consignor or consignee.
- 11.5 The Consignor agrees to pay a cancellation fee in accordance with the Carrier's schedule of rates if the Consignor cancels within 24 hours of the agreed pickup time.
- 11.6 If the Consignor instructs the Carrier that the Carrier's charges will be paid by the consignee or any other third party and the consignee or third party does not pay the Carrier's charges within seven days of the date of delivery or attempted delivery of the Livestock, the Consignor must pay such charges.

12. FORCE MAJEURE

- 12.1 The Carrier will not be liable for any failure or delay in performance of the Carriage to the extent that such failure or delay is due to a Force Majeure Event affecting the Carrier.
- 12.2 If a Force Majeure Event causes the delay or non-performance of the Carrier's obligations for 30 days or more, either party may, by notice in writing, immediately terminate any agreement incorporating these conditions.

13. NOTIFICATION OF CLAIM

- 13.1 Notwithstanding any other provision of these conditions (other than clause 14), to the extent permitted by Law, the Carrier will be discharged from all liability whatsoever in respect of the Livestock 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 within 14 days from the delivery of the Livestock or from the date on which in the ordinary course of business, delivery would have been effected.
- 13.2 The Consignor acknowledges that the purpose of clause 13.1 is to allow the Carrier an opportunity to promptly investigate the cause of any loss or damage. Clause 13.1 will not apply if the Consignor has a reasonable excuse for its failure to give written notice as required by that clause (having regard to the extent of any delay in giving that notice).

14. APPLICABLE LEGISLATION

- 14.1 Notwithstanding anything contained in these conditions, the Carrier will continue to be subject to any terms, conditions, guarantees or warranties imposed or implied by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 14.2 The Carrier, Consignor and consignee must comply with all Law, including Chain of Responsibility Law.
- 14.3 The Consignor must not impose any requirement on the Carrier that would directly or indirectly encourage or require the Carrier or any person on behalf of the Carrier to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner or in breach of Law.

15. ENTIRE AGREEMENT

- 15.1 The entire agreement between the parties is contained in these conditions and there are no other understandings, representations or agreements between the parties that are not set out in these conditions.
- 15.2 The Consignor acknowledges and agrees that these conditions set out the sole basis upon which the Carrier will provide Carriage to the Consignor. The supply or provision by the Consignor of any document setting out other, or alternative, terms will be of no legal effect and will not constitute a variation of these conditions or amount to a new contract or be part of these conditions.
- 15.3 The Carrier will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

16. GENERAL

- 16.1 This agreement will be construed in accordance with the law in force in Queensland and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.
- 16.2 The failure of a party to take action to enforce its rights under any agreement incorporating these conditions or the granting of any time or indulgence will not be construed as a waiver of the provision nor as a waiver of the right of the party at a later time to enforce its rights under any agreement incorporating these conditions.
- 16.3 Where the Consignor comprises two or more persons, an agreement or obligation to be performed or observed by the Consignor binds those persons jointly and severally.
- 16.4 If any provision of these conditions is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.

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