

Cross Country Horse Transport – Terms and Conditions

The following terms and conditions apply to all contracts for the carriage of goods or livestock in which Signature Cross Country Horse Transport Pty Ltd acts as a carrier.

1. Definitions

- 1.1 "Carrier" means Signature Equine Group Pty Ltd T/A Cross Country Horse Transport (ABN 43 150 418 125).
- 1.2 "Sub-Contractor" means and includes:
 - (a) railways or air transport services operated by the Commonwealth, or any State or Territory, or any other party; or
 - (b) any other person, firm, body or corporation with whom the Carrier may arrange for the carriage of the Goods; or
 - (c) any person who is now, or hereafter, a servant, agent, employee or sub-contractor of any of the parties referred to in clause 1.2(a) and 1.2(b).
- 1.3 "Consignor" means any person/s, firm, body or corporation (or person/s acting on behalf of and with the authority of the Consignor) placing an order with the Carrier to undertake Carriage of the Goods, or places Goods with the Carrier for transportation and if there is more than one person or entity requesting Carriage, is a reference to each person jointly and severally.
- 1.4 "Carriage" means all transport services provided by the Carrier to the Consignor, including, but not limited to, dispatch, pick-up, carriage, transportation, storage, consignment, delivery, agistment, resting, temporary, depasturing, livery or any other service provided by the Carrier in relation to the Goods. The same meaning shall be attributed to the word "carried" when used in the contract.
- 1.5 "Goods" shall mean goods (or livestock of every description), together with any other incidental items or accessories, the subject of the contract.
- 1.6 "Price" shall mean the cost of the Carriage of the Goods, as agreed between the parties, subject to clause 3 of the contract.
- 1.7 "Common Carrier" shall mean a common carrier under the Common Carriers Act 1902 (NSW).

2. Acceptance

- 2.1 The Consignor is taken to have exclusively accepted, and is immediately bound, jointly and severally, by these terms and conditions if the Consignor delivers up the Goods to the Carrier's possession for the Carriage thereof.
- 2.2 No purported variation or modification of these terms and conditions shall have any effect unless it is in writing and signed by the Carrier.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Price and Payment

- 3.1 At the Carrier's sole discretion, the Price shall be either:
 - (a) as indicated on invoices provided by the Carrier to the Consignor in respect of the Carriage of the Goods; or
 - (b) the Carrier's quoted Price (subject to clause 3.2 and 3.3) which shall be binding upon the Carrier provided that the Consignor shall accept the quotation within seven (7) days.
- 3.2 The Carrier reserves the right to change the Price:
 - (a) if a variation to the Carrier's quotation is requested or required (including as to the nature or quantity of the Goods and nature or location of the collection and/or delivery address); or
 - (b) to reflect any increases to the Carrier in the cost of performing the Carriage of the Goods, which are beyond the reasonable control of the Carrier.
- 3.3 At the Carrier's sole discretion, a non-refundable deposit may be required.
- 3.4 The Carrier's charges shall be considered earned as soon as the Goods are received into the possession of the Carrier. The Consignor (notwithstanding that it may not be the owner of the Goods) will be, and shall remain, responsible to the Carrier for all proper charges incurred by the Carrier for any reason whatsoever in relation to the Carriage of the Goods. Time for payment for the Carriage of the Goods being of the essence, the Price will be payable by the Consignor on the date/s determined by the Carrier, which may be:
 - (a) on delivery of the Goods by the Carrier; or
 - (b) the date specified on any invoice or other form as being the date for payment.
- 3.5 Payment may be made by bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the transaction), or by any other method as agreed to between the parties.
- 3.6 Unless otherwise stated the Price does not include GST or any other taxes or duties that may be applicable.
- 3.7 In the event that any monthly invoice is less than \$20.00 you may be invoiced the minimum charge of \$22.00 (GST inclusive).
- 3.8 Where the Consignor requesting or organising the Carrier to perform the Carriage of the Goods is acting on behalf of any third party, or a syndicate, and that third party or syndicate is intended to be responsible for the payment of the Price, then:
 - (a) where the syndicate requires any invoice to be split between members, each invoice may incur a fee equal to ten dollars (\$10.00); and
 - (b) in the event that the third party or syndicate does not pay the invoice when due, the Consignor acknowledges that it shall be liable for the payment of said invoice as if it had contracted for the Carriage of the Goods on its own behalf.

4. Carriage of the Goods

- 4.1 The Carrier is not a "Common Carrier" and will accept no liability as such. All Goods are carried by the Carrier subject only to these terms and conditions, and the Carrier reserves the right to refuse the carriage of Goods for any person, firm, body or corporation, and the carriage of any class of Goods.
- 4.2 If the Consignor expressly directs the Carrier to use or adopt (or it is expressly agreed that the Carrier will use or adopt) a particular manner, means or method of performing the Carriage of the Goods, the Carrier will use its best endeavours to use or adopt the same. However, if that manner, method or means cannot be used or adopted at the date of the planned Carriage of the Goods, for any reason whatsoever, the Consignor hereby authorises the Carrier to perform the Carriage of the Goods by, or in, an alternative manner, means or method, as the Carrier deems fit. Notwithstanding any instructions (verbal or otherwise) from the Consignor that the Goods are to be carried in a certain manner, or by certain means or methods, the Carrier reserves the right to charge any additional demurrage charged directly, or indirectly, by any authority, or by any other person, firm body or corporation.
- 4.3 The Consignor authorises the Carrier (in its discretion, at any time, without notice to the Consignor) to:
 - (a) arrange with any Sub-Contractor/s for the Carriage of the Goods. Any such arrangement shall be deemed to be ratified by the Consignor upon delivery of the said Goods to such Sub-Contractor/s (whether by the Consignor, Carrier or any Sub-Contractor/s), who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such Sub-Contractor/s shall be so entitled, the Carrier shall be deemed to enter into the contract for its own benefit and also as agent for the Sub-Contractor/s;
 - (b) perform the Carriage of the Goods in any manner, and by any means or methods, which the Carrier (in its absolute discretion) deems fit. The Carrier may alter such manner, means or method (as chosen by the Carrier), and the Consignor hereby acknowledges that any such alteration is deemed necessary and reasonable in the circumstances, subject always to clause 4.2; and
 - (c) perform the Carriage of the Goods by any route it deems fit, and either alone or with articles belonging to any other person, firm, body or corporation, and deviate from, or alter, at any time, the route chosen by it for Carriage of the Goods. The Consignor hereby acknowledges and agrees that any such deviation or alteration is deemed necessary and reasonable in the circumstances.
- 4.4 Any time specified by the Carrier for Carriage of the Goods is an estimate only, and the Carrier will not be liable for any loss or damage incurred by the Consignor as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Goods to be carried by the Carrier at the time and from/to the address/es as was arranged between both parties. In the event that the Carrier is unable to perform the Carriage of the Goods, as agreed, solely due to any action or inaction of the Consignor, then the Carrier shall be entitled to charge a reasonable fee for rescheduling the Carriage of the Goods at a later time and date.

5. Consignor's Responsibilities

- 5.1 The Consignor expressly warrants to the Carrier that:
 - (a) the Consignor is either the owner, or the authorised agent of the owner of any Goods and by entering into the contract the Consignor accepts these terms and conditions for itself, as well as for all other persons on whose behalf the Consignor is acting; and
 - (b) where livestock are submitted as Goods for Carriage:

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- (i) that such are in good health and condition, free of disease and infection, and that all vaccinations are up to date at the time of delivery to the Carrier, or collection by the Carrier; and
 - (ii) the Consignor will indemnify the Carrier for any veterinarian fees incurred at any time while the livestock is in the custody of the Carrier; and
 - (iii) the Carrier may, at its discretion, provide or arrange for any other party to provide feed and water for the Goods during the Carriage thereof, or during any rest stop, agistment or temporary depasturing, and such costs will be the responsibility of the Consignor. The Carrier is not responsible for any loss of, or damage to, or deterioration of, or illness affecting the Goods from lack of, or the provision of, food or water; and
 - (iv) the Consignor acknowledges that the transportation of such is a high-risk activity; there are inherent dangers in loading and unloading, and a foreseeable risk that the livestock will be injured in transit or suffer from travel sickness, or die; and
 - (v) any person/s placing an order with the Carrier for the Carriage of Goods, or delivering the Goods to the Carrier, is authorised to do so by the Consignor.
- 5.2 The Consignor acknowledges that it is the responsibility of the Consignor to provide the Carrier with the correct address for collection, and for delivery, and to arrange for a (responsible) person to be present at those addresses at the time of collection and delivery to enable the Carrier to collect the Goods and to make effective delivery.
- 5.3 The Consignor shall comply with all the relevant laws, customs and regulations of the Commonwealth of Australia, and any State or Territory thereof. The Carrier accepts no responsibility for any damage, loss or expense incurred due to the Consignor's failure to comply with such laws, customs and regulations.
- 5.4 The Carrier shall not be liable for any delay in onward carriage, or loss or damage resulting from the Consignor's failure to comply with this clause 5.
- 6. Risk and Insurance**
- 6.1 The Goods are at the risk of the Consignor at all times and, under no circumstances does the Carrier undertake to insure, or arrange for the insurance of, the Goods against any insurable risk whatsoever. The Consignor:
 - (a) warrants that the Goods are fully insured against all risk which may arise during the Carriage of the Goods; and
 - (b) acknowledges and agrees that, subject to clause 9, the Carrier is not responsible, and cannot be held responsible for, any incidents whatsoever in which may void any insurance policy that the Consignor has for the Goods; and
 - (c) hereby agrees to produce to the Carrier any insurance policy affecting the Goods if requested to do so by the Carrier prior to the Carriage of the Goods.
- 7. Delivery of the Goods**
- 7.1 The Carrier is authorised to pick up the Goods from the address for collection, and to deliver said Goods to the address for delivery given to the Carrier by the Consignor, and shall be taken to have delivered the Goods for the purpose of the contract if, at the said address the Carrier makes the Goods available at the destination irrespective of whether they are accepted.
- 7.2 If the Consignor, subsequent to commencement of Carriage of the Goods, directs the Carrier to deliver the Goods to an alternative address (the "New Address"), the Carrier will use its best endeavours to have the Goods redirected to the New Address, however the Carrier does not promise that it will be able to redirect the Goods to the New Address, and is not responsible for any delay that may be caused by such redirection. If the Goods cannot be redirected, and are delivered to the original address, the Carrier accepts no responsibility for the Carriage of the Goods (or the arrangement thereof) from the original address to the New Address.
- 7.3 If the Goods are not accepted for delivery when tendered, the Carrier may, at its discretion:
 - (a) hold the Goods as bailee and shall be entitled to storage fees at normal rates charged by the Carrier. If the Carrier acts as bailee, the Carrier will not be liable for any loss or damage to the Goods howsoever caused; or
 - (b) return the Goods to the Consignor at the cost and risk of the Consignor; or
 - (c) otherwise deal with the Goods as it sees fit.
- 8. Loss or Damage**
- 8.1 The Consignor acknowledges that it has been given the opportunity to inspect the Carrier's facilities and vehicles, and acknowledge that they meet the standard applicable to the freight/transport industry, and, unless expressly agreed in writing, and subject to clause 11 and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Consignor holds harmless and releases the Carrier from any responsibility and liability (in tort, contract or otherwise) in respect of:
 - (a) any delay, or any loss or damage to the Goods, occasioned during Carriage arising from any Force Majeure; and
 - (b) any deterioration, injury, damage or death of the Goods carried; and
 - (c) deterioration, contamination (including any contamination of any feed or other cargo compromising the Goods), wrongful delivery, misdelivery, delay in delivery, or non-delivery of the Goods, whenever or howsoever occurring (and whether the Goods are, or have been, in the possession of the Carrier or not); and
 - (d) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods, or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (e) any act or omission whether wilful, reckless, negligent or otherwise of the Carrier, or its servants or agents or sub-contractors;
 - (f) any latent defect or inherent vice or natural deterioration or wastage of the Goods, or packaging; and
 - (g) any act, omission or neglect of the Consignor (including insufficient or improper provision of feed or water, or addressing, or failure to take delivery, or any handling, loading or unloading of the Goods.
- 8.2 Any liability of the Carrier in relation to the Carriage, howsoever arising or incurred, is limited to the cost charged to or incurred by the Consignor for Carriage.
- 9. Lien**
- 9.1 The Carrier shall have a lien on any Goods owned by the Consignor and in the possession or control of the Carrier (and any documents relating to those Goods) for all sums payable by the Consignor to the Carrier, and the Carrier shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Consignor. The Carrier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect the Carrier's right to recover from the Consignor any charges due or payable in respect of the carriage or such detention and sale.
- 10. Claims**
- 10.1 Notwithstanding clauses 6 and 8, in the event that the Consignor believes that they have any claim against the Carrier then they must lodge any notice of claim for consideration and determination by the Carrier within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery.
- 10.2 The failure to notify a claim within the time limits under clause 10.1 is evidence of satisfactory performance by the Carrier of its obligations hereunder.
- 10.3 The Consignor undertakes that no claim or allegation shall be made against any servant or agent of the Carrier which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier and any such servant or agent against all consequences thereof.
- 11. The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts**
- 11.1 Except as required by statute and including the Competition and Consumer Act, all implied conditions and warranties are hereby excluded, subject to the extent that such conditions and warranties cannot be excluded under statute.

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- 11.2 Except as required by statute and including under the Competition and Consumer Act, the Carrier does not accept liability for any direct, indirect or consequential loss or damage caused to the Consignor or any other person which arises out of the negligence or carelessness of the Carrier or any of its employees, servants or agents.
- 12. Cancellation**
- 12.1 The Carrier may cancel any contract to which these terms and conditions apply or cancel the Carriage of the Goods at any time before the Goods have been loaded for Carriage, by giving written notice to the Consignor. On giving such notice, the Carrier shall repay to the Consignor any sums paid in respect of the Price. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Consignor cancels the Carriage of the Goods, then the Consignor shall be liable for any loss incurred by the Carrier up to the time of cancellation.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2.5% per calendar month after as well as before any judgment.
- 13.2 If the Consignor owes the Carrier any money the Consignor shall indemnify the Carrier from and against all costs and disbursements incurred by the Carrier in recovering the debt (including but not limited to internal administration fees, debt collection agency costs and expenses, legal costs on a Solicitor/Client basis, the Carrier's contract default fee, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies the Carrier may have, if at any time the Consignor is in breach of any obligation (including those relating to payment) the Carrier may suspend or terminate the Carriage of the Goods, and any of its other obligations under these terms and conditions. The Carrier will not be liable to the Consignor for any loss or damage the Consignor suffers because the Carrier exercised its rights under this clause.
- 13.4 Without prejudice to the Carrier's other remedies at law the Carrier shall be entitled to cancel all or any part of any order of the Consignor which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Carrier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Consignor will be unable to meet its payments as they fall due; or
 - (b) the Consignor becomes insolvent/bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Consignor or any asset of the Consignor.
- 14. Personal Property Securities Act 2009 (Cth) ("the Act")**
- 14.1 These terms and conditions constitute a security interest for the purposes of the Act and where the context requires words used in these terms and conditions should be given the same meaning as in the Act.
- 14.2 As security for the Price and other monetary obligations owing pursuant to these terms and conditions, the Consignor:
- (a) grants to the Carrier a security interest, being a charge over the collateral AND any proceeds realised from either the sale thereof or any insurance policy relating thereto.
 - (b) consents to the registration of the security interest created by these terms and conditions on the Personal Property Securities Register ("PPSR").
 - (c) consents to the Carrier registering a financing statement and/or financing change statement with the PPSR.
- 14.3 The Consignor undertakes to:
- (a) promptly sign any further documents and/or provide any further information requested by the Carrier to complete and register any financing statement or any financing change statement with the PPSR;
 - (b) indemnify and, upon demand, reimburse the Carrier for all expenses incurred in searching, registering and/or discharging a financing statement or any other document with the PPSR and any reasonable enforcement fees and expenses in relation to such security interests; and
 - (c) not grant any encumbrance to any other person in the collateral without first obtaining the consent in writing of the Carrier. The Carrier will be entitled, at its sole discretion, to withhold consent without providing a reason.
- 14.4 The Consignor acknowledges and waives its rights to notice as a debtor or grantor under sections 95, 121(4), 129(2)(a), 130, 132(3)(d), 132(4), 135 and 137(2) of the Act.
- 14.5 The Owner declares that, to the extent permitted under the Act, sections 142 and 143 of the Act will not apply to these terms and conditions and the security interest granted under this clause.
- 15. General**
- 15.1 The failure by the Carrier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Carrier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the State in which the Carrier has its principal place of business.
- 15.3 Subject to clause 11, the Carrier shall be under no liability, whether in tort, or contract or otherwise, to the Consignor for any indirect and/or consequential or liquidated loss or damages, and/or expense (including loss of profit) suffered by the Consignor arising out of a breach by the Carrier of these terms and conditions. Alternatively, the Carrier's liability shall be limited to damages which under no circumstances shall exceed the Price. Furthermore, the Consignor hereby indemnifies the Carrier in respect of any loss, damage or injury caused to the Carrier, or any other person, or any property of the Carrier or any other person, by the Goods during the Carriage thereof, and further agrees to indemnify against all damages, actions, claims, suits and demands made by any person in respect of such loss, damage or injury.
- 15.4 The Consignor shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Consignor by the Carrier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.5 The Consignor agrees that the Carrier may amend these terms and conditions at any time. If the Carrier makes a change to these terms and conditions, then that change will take effect from the date on which the Carrier notifies the Consignor of such change. The Consignor will be taken to have accepted such changes if the Consignor makes a further request for the Carrier to perform Carriage of Goods for the Consignor.
- 15.6 Where the Carrier is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Carrier, including, but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("Force Majeure") to carry out any obligation under the contract, and the Carrier gives the Consignor prompt notice of such Force Majeure, with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform, or be delayed in performing, that obligation, and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Carrier.
- 15.7 The defences and exclusions of liability in these conditions, including clause 8, apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against the Carrier even if it is resulted from an act or omission of the Carrier done wilfully or recklessly with knowledge that damage would or would probably result.
- 15.8 The Consignor acknowledges that it has had the opportunity to seek independent legal advice in relation to these terms and conditions.