

TERMS AND CONDITIONS OF CARRIAGE

1. In these Terms and Conditions of Carriage:–
 - (i) “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 Goods including, but without limiting the generality hereof, consolidation, deconsolidation, loading, unloading and storage of the Goods; (ii) “the Carrier” means XL Express Pty Ltd (A.B.N. 54 098 743 901), carrying on business in its own name and under any business name and unless the context otherwise requires, includes its officers, employees, servants, agents and Subcontractors; (iii) “Dangerous Goods” includes Goods that do or are likely to harbour or encourage vermin or other pests, noxious goods, hazardous, inflammable or explosive goods or any goods likely, either inherently or due to their manner of packing to cause injury or damage; (iv) “Goods” means the property from time to time accepted by the Carrier for Carriage together with any container, packaging or pallets or other aides to Carriage not supplied by or on behalf of the Carrier; (v) “Person” includes a corporation, company, partnership or any other entity; (vi) “Sender” means each and every Person on whose behalf Carriage is undertaken by the Carrier and may include (but is not necessarily) the Sender named overleaf and where the Sender comprises two or more Persons an agreement or obligation to be performed or observed by them binds them jointly and severally; and (vii) “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 thereof.

Words importing the singular include the plural and vice versa and words importing a gender include other genders.

These Terms and Conditions of Carriage set out the entire agreement of the parties with respect to their subject matter. No other agreement, warranty or representation, express or implied, is given or made by the Carrier with respect to the Carriage.

The parties acknowledge and agree that if any provision or part of any provision of the Contract of Carriage is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof.
2. The Carrier is not a common carrier and will accept no liability as such. The Carrier reserves the right to refuse the Carriage of goods for any Person and the Carriage of any class of goods at its discretion.
3. The Goods are accepted by the Carrier subject to the following conditions:–
 - (i) That the Sender has complied with all applicable laws (including the Australian Code for the Transport of Dangerous Goods by Road and Rail and Air Navigation Orders Part 33) relating to the notification description (on the consignment note or separately) consigning and packaging of the Goods and the expenses and charges of the Carrier in complying with the provisions of any such law or with any order or requirement thereunder or with the requirements of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by the Sender. Additional freight charges shall be paid on such Goods if deemed necessary by the Carrier; (ii) If any of the Goods are or become subject to the control of the Australian Customs Service, all customs duty, excise duty, taxes, levies, charges and costs which the Carrier becomes liable to pay or shall pay in respect of such Goods pursuant to any law relating to customs or excise shall be paid by or reimbursed to the Carrier by the Sender; (iii) That the Sender has fully and adequately described the Goods to the Carrier on the consignment note or otherwise, however any mention on the consignment note or otherwise given when effecting pick-up or taking delivery of the quantity, quality or condition of the Goods is no more than a record of the pick-up or delivery and cannot be construed as confirmation of those details; (iv) The Carrier shall not be bound by any agreement purporting to vary these Terms and Conditions of Carriage unless such agreement shall be in writing and signed on behalf of the Carrier by a director of the Carrier and notice is hereby given that no other Person has any authority to agree to any variation, cancellation or waiver of these Terms and Conditions of Carriage; (v) The Carrier may open and inspect the Goods, including any document, packaging or container, to determine their nature or condition or for the purpose of determining their ownership or destination; (vi) The Goods are fit for Carriage and have been suitably packaged for those purposes; (vii) That the Sender has the authority of all Persons owning or having any interest in the Goods to enter into the Contract of Carriage on their behalf, and hereby does so; and (viii) The tendering to the Carrier by the Sender or any other Person acting for or on behalf of the Sender of any goods for Carriage shall be deemed to constitute acceptance by the Sender of these Terms and Conditions of Carriage for the Carriage of those Goods.

Without prejudice to the generality of the foregoing, the Sender undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any Person (other than the Sender) who claims to have, who has, or who may hereafter have any interest in the Goods or part thereof.

The Sender’s warranties given above (or anywhere else in these Terms and Conditions of Carriage) are absolute and the Sender’s liability for breach of those warranties shall not be reduced or excused on the basis of lack of fault of the Sender or due to the breach or probable breach being (or being such as should have been) apparent to any officers, employees, servants, agents or Subcontractors of the Carrier.
4. If the Carrier accepts Dangerous Goods for Carriage, such Goods must be accompanied by a full written declaration disclosing the nature of such Goods. The Sender shall 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 Sender was aware of the nature of the Goods. If in the opinion of the Carrier, the Goods are or are liable to become of a dangerous and/or flammable and/or damaging nature, the Goods may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Sender and without prejudice to the Carrier’s right to charge for the Carriage of the Goods. The Sender 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 Sender’s failure to comply with each of these warranties.
5. The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Sender for that purpose and without prejudice to the foregoing it is expressly agreed that the Carrier shall be conclusively presumed to have delivered the Goods in accordance with the Contract of Carriage if at that address the Carrier obtains from any Person a receipt or signed delivery docket for the Goods, but the Carrier is under no obligation to deliver the Goods to any particular Person or obtain a receipt or signed delivery docket. The Carrier reserves the right to make an additional charge for any delay in effecting delivery for any reason whatsoever outside the Carrier’s control. If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier or the Receiver otherwise fails to take delivery of the Goods the Carrier may at its option continue to attempt delivery and shall be entitled to make an additional charge for every call made until delivery is effected, or deposit the Goods at that place (which shall be conclusively presumed to be due delivery hereunder), or store the Goods and if the Goods are stored by the Carrier the Sender shall pay or indemnify the Carrier for all costs and expenses incurred in or about such storage.

6. The Carrier reserves to itself complete freedom in respect of means, route, procedure or place of Carriage of the Goods or any other aspect of anything undertaken by the Carrier whatsoever, even where the Sender expressly or impliedly gives any relevant instructions or has any relevant expectations in that respect. The concept of "deviation" shall have no application in relation to the Contract of Carriage whatsoever.
7. The de-hiring, return, exchanging, or transfer of Carriage equipment (including, without limitation, containers, pallets, pallet cages, packing materials, dunnage etc) remains the responsibility of the Sender.
8. The Carrier is authorised by the Sender to assume that the Goods do not require temperature control, unless particular arrangements in writing as to the nature of the Goods and the particular temperature range required to be maintained are received and agreed by the Carrier prior to presentation of the Goods, even though the Carrier may or should be aware from the nature of the Goods or their packaging or otherwise that some arrangements should be or are in the usual course made for such Goods.
9. The Carrier at its discretion may subcontract on any terms the whole or any part of the Carriage.
10. The Carrier may charge freight by weight, measurement, or value, and may at any time re-weigh or re-value or re-measure or require the Goods to be re-weighed, re-valued, or re-measured and charge proportional additional freight accordingly. The Carrier reserves the right to charge for demurrage at the rate charged to the Carrier directly or indirectly by any third party.
11. Any instruction to the effect that charges shall be paid by the Receiver shall be deemed to include a stipulation that if the Receiver does not pay the said charges within seven (7) days of the date set for payment or, if no date is set for payment, within seven (7) days of delivery or tendered delivery of the Goods, then the Sender shall pay the said charges.
12. Freight shall be considered earned whether the Goods are delivered to the Receiver or not, and whether damaged or otherwise. Under no circumstances will any payment for freight be refunded.
13. The Goods are accepted subject to a general lien for all charges now due or which may hereafter become due to the Carrier by the Sender on any account whether in respect of the Goods comprised herein or in respect of any other amount owing by the Sender to the Carrier. If the lien is not satisfied and/or the Goods are not collected or are undeliverable, the Carrier may at its option and without notice, in the case of perishable goods forthwith and in any other case upon the expiration of one month either (i) remove such goods or part thereof and store them in such place and manner as the Carrier shall think proper and at the risk and expense of the Sender or as the case may be or (ii) open any package and sell such goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any Person for any loss or damage thereby caused.
14. The Sender acknowledges and agrees that neither the Carrier nor any officer, employee, servant, agent or Subcontractor of the Carrier nor any other Person who carries the Goods at any time pursuant to the Contract of Carriage shall 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 or deterioration of, or misdelivery, delay in delivery or non delivery of the Goods or any of them whether in transit or storage or otherwise or for any consequential loss, damage or injury of any kind whatever whether such personal injury, loss, damage, deterioration, misdelivery, delay in delivery, non delivery or consequential loss, damage or injury is caused or alleged to have been caused by the negligence or wilful act or omission or default of the Carrier or its officers, employees, servants, agents or Subcontractors, or by any cause whatever. The Carrier shall be entitled to the benefit of the exclusion of liability provided for herein even if it is proved that the injury, loss, or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that injury, loss, or damage may or probably would result.
15. The Sender shall defend, indemnify and hold harmless the Carrier from and against all claims, costs and demands whatsoever and by whosoever made in relation to or arising out of the Carriage, in excess of the liability of the Carrier under these Terms and Conditions of Carriage and, without prejudice to the generality of this clause, this indemnity shall cover all potential liabilities excluded by the previous clause.
16. The Sender agrees that no claim or allegation shall be made against any officer, employee, servant, agent, or Subcontractor of the Carrier which imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Goods and/or the Carriage thereof 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 thereof.
Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect; (i) all Subcontractors; (ii) every officer, employee, servant or agent of the Carrier or of a Subcontractor; (iii) every other Person (other than the Carrier) by whom the Carriage or any part thereof is undertaken; and (iv) all Persons who are or might be vicariously liable for the acts or omissions of any Person falling within (i), (ii) or (iii) hereof, and for the purposes of this clause the Carrier is or shall 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 shall to this extent be or be deemed to be parties to the Contract of Carriage.
17. The Carrier will not insure or arrange insurance of the Goods or risks arising out of the Carriage. To the extent that the Carrier may provide any assistance or give any indication in relation to insurance, it is under no obligation to do so and insurance remains always the responsibility of the Sender. It is the obligation of the Sender to ensure that adequate insurance cover is arranged.
18. The Contract of Carriage shall be governed by and is to be construed in accordance with the laws of the State of Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.
19. Notwithstanding any other provision hereof (other than clause 20), the Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless 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 fourteen (14) days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected.
20. Notwithstanding the provisions hereof they shall be read subject to any implied terms, conditions or warranties imposed by the *Trade Practices Act 1974* (Cth) or any other Commonwealth or State legislation but only insofar as such may be applicable and prevents either expressly or impliedly the exclusion or modification of any such term, condition or warranty. To the extent that any clause or any part of any clause of these Terms and Conditions of Carriage would (due to the circumstances of a particular matter) be declared void under the *Trade Practices Act 1974* (as may be amended from time to time) such clause or clauses (or relevant parts thereof) shall be read as restricting the Sender's entitlements only to the extent of limiting the Carrier's liability to the greatest extent permitted by law in the applicable circumstances. In particular, in such circumstances such clauses shall be read only as limiting the liability of the Carrier in accordance with Section 68A of that Act, where permissible.