

Transport Conditions

1. Definitions. In these conditions:

“Carrier” means Mellea Dyer “Darling Downs Equine Transport” carrying on business in their own names and under any business names and their officers, servants, agents, and Sub-Contractors.

“Charges” mean Carrier’s quoted charges for Transport calculated under its rates schedule or other agreed rates, the charges in 6, the cost of any Carrier Horses Cover and any tax including a horses and services tax (“GST”) levied directly on a transaction or supply under these conditions.

“Horses” mean the horses accepted from the Owner for Transport.

“Owner” means either the Owner of the horses or the authorised agent of the Owner.

“Person” includes any person, firm, corporation, governmental authority or state or federal government.

“Sub-Contractor” means:

Any Person Carrier arranges to Transport the horses; and
Any Person who is a servant, agent, employee or sub-contractor of Carrier or any person in “Transport” means the whole of the operations and services undertaken by Carrier for the horses.

2. Transport Basis

2.1 Carrier IS NOT A COMMON CARRIER and does not accept any liability as a common carrier AND MAY REFUSE TO TRANSPORT HORSES FOR ANY PERSON.

2.2 Carrier relies on the details supplied to it, but Carrier cannot verify and does not admit their accuracy or completeness and a signature by Carrier is only an acknowledgment for the Horses received.

2.3 Carrier will deliver Horses to other than the Receiver’s address only by special arrangement in writing and provided suitable facilities for their acceptance are available.

2.4 Carrier will use due diligence to safely transport and care for the Horses but makes no guarantees as to the health or condition of the horses upon departure or arrival.

2.5 Carrier will always provide hay for horses and water breaks every 3-5 hours.

2.6 The Owner authorises Carrier to obtain any necessary veterinary services in case of an emergency and agrees to reimburse Carrier for any costs and fees associated with veterinary care.

3. Owner’s Obligations — The Owner must:

3.1 Make all arrangements and assume the costs of the following:

- a) Health Certificate (If required)
- b) Negative Coggins (EIA) test (If required)
- c) Horse Brand inspection (If required)

4. Owner’s Warranties and Indemnities. The Owner warrants:

4.1 The Owner has fully and adequately described the Horses, their nature, weight, and measurements and complied with all applicable laws and regulations.

4.2 The Person delivering the Horses to Carrier for Transport is authorised to do so and to sign this contract.

4.3 The Owner accepts these conditions for themselves and the Receiver as well as for any other Person for whom the Owner is acting; and

4.4 The Owner acknowledges that Carrier does not provide mortality insurance or any other insurance to the Owner for Transport. The Owner accepts all risk and liability associated with transporting the horses. Neither the Owner nor any other Person will make an allegation or claim against Carrier or any other person about the Transport

AND the Owner indemnifies Carrier from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties, the Owner’s obligations, or these conditions.

5. Carrier's Rights

- 5.1 Carrier is authorised to deliver the Horses at the address given to Carrier by the Owner or any other address directed by the Receiver and Carrier will be taken to have delivered the Horses if at either address Carrier obtains from any person an acknowledgement of delivery.
- 5.2 If the address is unattended or the Receiver fails to take delivery of the Horses, Carrier may return the Horses to the Owner and this action will constitute delivery.
- 5.3 Carrier may as principal, or agent arrange for Transport of the Horses by any Sub-Contractor on any terms.
- 5.4 If Carrier believes it is necessary or desirable, Carrier may deviate from the usual route or method of Transport.

6. Charges

- 6.1 The Owner must or, if a Person other than the Owner is nominated on the front, then that Person must:
 - a) unless otherwise agreed, pay Carrier the Charges in Australian dollars within 7 days of the date of Carrier's invoice.
 - b) pay freight by weight or measurement as Carrier selects.
 - c) pay 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, road authority, warehouse authority or other
 - d) supply or pay for labour or machinery or both to load or unload the Horses.
 - e) if Carrier requires, pay an additional charge at industry rates if the Receiver is not present during normal trading hours or the time specified, or if there is any delay outside Carrier's control in loading or unloading greater than 30 minutes.
 - f) pay the cost, expense, or loss to Carrier of return under 5.2.
 - g) compensate Carrier for any cost, expense or loss to Carrier's property or any Person caused by the Horses.
 - h) if any Charges are not paid on the date for payment, pay interest on the unpaid Charges at a rate 4% higher than the prevailing rate under the Penalty Interest Rates Act 1983 and pay any charge or amount owing to Carrier under any other contract.
 - i) if a copy of a contract or any part is required, pay Carrier a charge of \$5.00; and
- 6.2 If a Person other than the Owner is nominated to pay the Charges and doesn't do so within 7 days of the date for payment, the Owner must pay the Charges and a transfer charge of \$10.00 immediately upon Carrier's demand.
- 6.3 Carrier's Charges are earned as soon as the Horses are delivered.
- 6.4 Carrier will not refund any payment for Charges under any circumstances.

7. Lien

- 7.1 Carrier has a general lien on the Horses for all Charges due or which become due on any account for Transport of the Horses.
- 7.2 If the Owner or Receiver fails to take delivery or return of the Horses, Carrier may immediately:
 - a) store the Horses as Carrier thinks fit at the Owner's risk and expense, or
- 7.3 Carrier may deduct or set-off from any moneys due from Carrier to the Owner under any contract, debts, and moneys due from the Owner to Carrier under these conditions or any contract.

8. Exclusions and Limitations

- 8.1 Subject to 9, Carrier excludes from these conditions all conditions, warranties and terms implied by statute, general law or custom.
- 8.2 Subject to 9, Carrier excludes all liability to any Person, including the Owner, for acts or omissions of Carrier in tort (including negligence), contract, bailment or otherwise for loss of, damage to the Horses, or any delay, non-delivery, or other failure to supply the Transport or arising out of the Horses, the Transport or these conditions.
- 8.3 Subject to 9, Carrier excludes all liability for, and the Owner and Receiver release and indemnify Carrier against all loss, damage, cost and expense from any claim by any Person in tort (including negligence), contract, bailment or otherwise for loss or damage to any property, injury to, or death of any Person arising out of any acts or omissions of Carrier or any or all of the Horses, the Transport, any delay, non-delivery or other failure to supply the Transport or these conditions.
- 8.4 The exclusions, releases, and indemnities in 8.2 and 8.3 extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if Carrier knows they are possible or otherwise foreseeable.
- 8.5 These conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental term.

- 8.6 Carrier, in addition to acting for itself, also acts as agent of and trustee for each of its servants, agents and Sub-Contractors so they are entitled to the full benefit of these conditions, including any exclusions or limitations of liability, to the same extent as Carrier.
- 8.7 Even if Carrier breaches any of these conditions, all the rights, immunities and limitations of liability in these conditions continue to have their full force and effect in all circumstances.
- 8.8 Despite the Transport, Carrier is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments for any Person.

9. Competition and Consumer Act.

These conditions are subject to any applicable implied warranty in the Competition and Consumer Act 2010 which cannot be excluded, restricted, or modified.

10. Law

These conditions are governed and must be construed under the laws of the State of Queensland and the parties submit to the exclusive jurisdiction of the courts of that State.

11. Severability

If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition.

12. Variations and Waiver

12.1 Carrier is not bound by any waiver, discharge or release of a condition or any agreement which varies these conditions unless it is in writing and signed for Carrier by an authorised officer.

12.2 If Carrier waives a breach of a condition the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.