

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 Goods (whether gratuitously or not) including, but without limiting the generality hereof, consolidation, deconsolidation, loading, unloading and storage of Goods, towing a trailer and the provision of advice; (ii) “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) “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; (iv) “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; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; 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 Contract of Carriage; (v) “Contract of Carriage” means the express or implied contract between the Carrier and the Sender for the Carriage of Goods and includes the Carrier’s Terms and Conditions of Carriage as amended from time to time and published on its website; (vi) “Dangerous Goods” has the same meaning as under the Australian Dangerous Goods Code and includes Goods that do or are likely to harbour or encourage vermin or other pests, noxious goods, hazardous, flammable or explosive goods or any goods likely, either inherently or due to their manner of packing, to cause injury or damage; (vii) “Force Majeure” means any: acts of God, earthquake, cyclone, flood, landslide, storm, lightning, hail, fire, or other natural disaster; acts of war, acts of foreign or public enemies, terrorism, public disorder, riot or civil commotion, malicious damage, vandalism or sabotage; explosion, nuclear accident or incident; strike, labour dispute and other industrial disturbance; road closure or congestion of roads or traffic; quarantine or customs seizure or restriction; interruption of power supply or scarcity of fuel; and any accident, collision or breakdown of a vehicle, machinery or equipment; (viii) “Freight” means all charges for or incidental to the Carriage of the Goods, including but not limited to any ancillary or other charges, fees, levies and surcharges imposed by the Carrier; (ix) “Goods” means the goods accepted by the Carrier for Carriage or storage together with any Packaging; (x) “Packaging” means any containers, pallets, pallet cages, packing materials, dunnage or other aides to Carriage not supplied by or on behalf of the Carrier; (xi) “Person” includes a corporation, company, partnership or any other entity; (xii) “PPSA” means the *Personal Property Securities Act 2009* (Cth); (xiii) “Sender” means each and every Person on whose behalf Carriage is undertaken by the Carrier and where the Sender comprises two or more Persons any agreement or obligation to be performed or observed by them binds them jointly and severally; (xiv) “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; (xvii) unless the context otherwise requires, defined terms under the PPSA have the same meaning hereunder; (xv) words importing the singular include the plural and vice versa; (xvi) words importing a gender include all other genders; and (xvii) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision.

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 Carrier, Sender and consignee must comply with all laws, including the Chain of Responsibility Law.

4. Goods are accepted for Carriage subject to the following conditions:–

(i) the Sender warrants that the Goods are fit for Carriage and have been suitably packaged for that purpose and it has complied with all applicable laws (including Chain of Responsibility law, the Australian Dangerous Goods Code and the Load Restraint Guide published by the National Transport Commission) and any expenses or charges incurred by 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 will be paid by or reimbursed to the Carrier by the Sender; (ii) 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 consignment of the Goods, even though the Carrier may or should be aware from the nature of the Goods or their Packaging or otherwise that such arrangements should be, or in the usual course are, made for such Goods; (iii) all customs duty, excise duty, taxes, levies, charges and costs which the Carrier becomes liable to pay or pays in respect of Goods pursuant to any law relating to customs or excise must be paid by or reimbursed to the Carrier by the Sender; (iv) 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; (v) the Carrier may open and inspect 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 Sender warrants that it 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 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; and (vii) 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 will be deemed to constitute acceptance by the Sender of the Contract of Carriage.

5. 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 must 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. Goods may at any time be destroyed, disposed of, abandoned, or rendered harmless 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, without compensation to the Sender and without prejudice to the Carrier’s right to charge Freight 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 Goods are packed in a manner adequate to withstand the 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.

6. The Carrier reserves to itself complete freedom in respect of means, route, procedure or place of Carriage of 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 regard. The concept of "deviation" has no application whatsoever in relation to the Contract of Carriage.
7. The Carrier at its discretion may subcontract on any terms the whole or any part of the Carriage.
8. The Carrier will be conclusively presumed to have delivered the Goods if the Carrier obtains from any Person in attendance at the point of delivery a receipt for the Goods, but the Carrier is under no obligation to deliver the Goods to any particular Person and the Sender is not entitled to withhold payment of Freight even if the Carrier fails to obtain a receipt. If the nominated place for delivery is unattended the Carrier may deposit the Goods at that place (which will be conclusively presumed to be due delivery hereunder) 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 will be entitled to charge additional Freight for every attempt made until delivery is effected, or store the Goods and if the Goods are stored by the Carrier the Sender must pay or indemnify the Carrier for all costs and expenses incurred in or about such storage.
9. The Carrier may charge Freight by quantity, weight, measurement or value, and may at any time re-weigh, re-measure or re-value or require the Goods to be re-weighed, re-measured or re-valued, and charge additional Freight accordingly.
10. The Carrier will not be liable for any failure or delay in performance of the Carriage if such failure or delay is due, in whole or in part, to any cause whatsoever beyond its control, including due to Force Majeure.
11. Freight will be considered earned at the time of consignment of the Goods and whether the Goods are delivered to the receiver or not, and whether damaged or otherwise. The Sender agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off. Under no circumstances will any payment of Freight be refunded.
12. Any request by the Sender to the effect that the Freight will be paid by a third party will be deemed to include a stipulation that the Sender must pay the Freight if the third party does not do so within seven days of demand.
13. The hire, de-hiring, return, exchanging, or transfer of Packaging remains the responsibility of the Sender. The Sender agrees to release and indemnify the Carrier from and against any liability for loss of any Packaging or the failure of the Carrier to return Packaging or to transfer, or correctly transfer, Packaging on or off any hire account.
14. Where Goods are stored by the Carrier at the request of the Sender, the Sender will provide: (i) an address to which notices will be sent; (ii) samples of the signatures of persons entitled to collect the Goods; and (iii) an inventory of the Goods to be stored. The Carrier may remove the Goods from a place of storage to another place of storage at its discretion. Storage charges do not include removing, packing, unpacking, inspecting, stowing, restoring or delivering. The Sender must give 48 hours' notice to the Carrier of its intention to remove Goods from storage.
15. The Carrier will not be obliged to allow an inspection of Goods in storage or to deliver up any Goods in storage: (i) to any Person other than the Sender or a Person authorised in writing by the Sender; or (ii) in circumstances where any amount is due by the Sender to the Carrier on any account whatsoever. The Sender must remove its Goods from storage within seven days of receipt of written notice from the Carrier.
16. Goods are accepted subject to a general lien for all amounts now due or which may become due to the Carrier by the Sender on any account or in respect of any other amount owing by the Sender to the Carrier. Without prejudice to any other rights the Carrier may have under law, if the lien is not satisfied and/or 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 thinks proper and at the risk and expense of the Sender or as the case may be; or (ii) open any Packaging and sell such Goods or part thereof upon such terms as it thinks fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable for any resulting loss.
17. The parties agree that the lien arising hereunder: (i) attaches to the Goods when the Goods are accepted by the Carrier for Carriage; and (ii) is a security interest. On request by the Carrier, the Sender must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, these Terms and Conditions of Carriage is enforceable, perfected (including perfection by registration), maintained and is otherwise effective. Anything that is required by the Sender to be done under this clause will be done at the Sender's expense. The Sender agrees to reimburse the Carrier's costs in connection with any action taken by the Carrier under or in connection with this clause. The parties agree that, to the extent permitted by the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Sender is notified otherwise by the Carrier) and any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.
18. Notwithstanding any other provision hereof (other than clause 36), the Sender acknowledges and agrees that neither the Carrier nor any other Person who carries the Goods at any time pursuant to the Contract of Carriage will in any circumstances be under any liability whatsoever (whether in contract, tort or otherwise) for any: (i) loss of the Goods; (ii) damage to, deterioration of or contamination of the Goods; or (iii) misdelivery, delay in delivery or non-delivery of the Goods or any of them, whether in transit or storage or otherwise, including, but not limited to, where such loss, damage, deterioration, contamination, misdelivery, delay in delivery or non-delivery is caused or alleged to have been caused by the negligence or wilful act or omission or default of the Carrier.
19. Notwithstanding any other provision hereof (other than clause 36), the Carrier will not be liable for any loss of or damage to Goods caused by: (i) Force Majeure; (ii) the Carrier following or failing to follow the Sender's instructions; (iii) vermin, infestation or mould; (iv) vibration or road conditions; (v) the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage; (vi) the inherent vice or nature of the Goods; (vii) a decline in value, or loss of value as a result of the Goods becoming past their 'use by' or 'best by' expiry date; or (viii) insufficiency or unsuitability of the Packaging or preparation of the Goods to withstand the incidents of Carriage.

20. Notwithstanding any other provision hereof (other than clause 36), the Carrier will not be liable under any circumstances for any claim for Consequential Loss.
21. Notwithstanding any other provision hereof (other than clause 36), the Carrier will not be under any liability whatsoever (whether in contract, tort or otherwise) for any personal injury, including but not limited to where such injury is caused or alleged to have been caused by the negligence or wilful act or omission or default of the Carrier.
22. Notwithstanding any other provision hereof (other than clause 36), the Carrier will 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 days from the delivery of the Goods, or from the date on which, in the ordinary course of business, delivery would have been effected, and any such claim is limited to the Freight of the Goods.
23. The Carrier will be entitled to the benefit of all exclusions of liability provided herein even if it is proved that any loss, damage, deterioration, contamination, misdelivery, delay in delivery, non-delivery or personal injury 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.
24. The Sender agrees that no claim or allegation will 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.
25. The Sender must defend, indemnify and hold harmless the Carrier from and against all claims, costs and demands whatsoever and by whomsoever made in relation to or arising out of the Carriage in excess of any liability of the Carrier hereunder (if any) and, without prejudice to the generality of this clause, this indemnity will cover all potential liabilities excluded by the preceding clauses.
26. The Carrier will not insure or arrange insurance of the Goods or risks arising out of the Carriage. Insurance remains always the responsibility of the Sender. It is the obligation of the Sender to ensure that adequate insurance cover is arranged and the Sender warrants that any such cover will include a waiver of subrogation by the insurer of any right to claim against the Carrier.
27. The Sender acknowledges and agrees that the Carrier may amend these Terms and Conditions of Carriage from time to time by publishing an amended version on its website and notifying the Sender of the publication by email or FTP and the Contract of Carriage will be amended accordingly upon publication and notification.
28. The Carrier will not be bound by any agreement purporting to vary these Terms and Conditions of Carriage unless such agreement is 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;.
29. 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 will also be available and will 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), and for the purposes of this clause 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 each of them and all such Persons and each of them will to this extent be, or be deemed to be, parties to the Contract of Carriage.
30. All the Sender's warranties and indemnities given herein are absolute and survive the termination or expiration of any Contract of Carriage and the Sender's liability for a breach will 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 the Carrier.
31. The failure of a party to take any action to enforce its rights under the Contract of Carriage 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 the Contract of Carriage.
32. The parties acknowledge and agree that if any provision or part of any provision of the Contract of Carriage is unenforceable, such unenforceability will not affect any other part of such provision or any other provision hereof.
33. These Terms and Conditions of Carriage, read in conjunction with any proposal or tender for the Carriage of Goods upon express or implied acceptance, 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.
34. No rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of these Terms and Conditions of Carriage or the Contract of Carriage.
35. The Contract of Carriage will 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.
36. These Terms and Conditions of Carriage shall be read subject to any implied terms, conditions, guarantees or warranties imposed by the Australian Consumer Law or any other Commonwealth or State legislation but only insofar as such legislation may be applicable and prevents either expressly or impliedly the exclusion or modification of any such term, condition, guarantee or warranty. To the extent that any clause or any part of any clause hereunder would (due to the circumstances of a particular matter) be declared void under the Australian Consumer Law (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 as only limiting the liability of the Carrier in accordance with section 64A(2) of the Australian Consumer Law (or an equivalent provision in any other legislation), where permissible.