

**CONDITIONS OF CARRIAGE:**

1. In these conditions: "carrier" shall mean the business which is carried on as Russell Ebert Deliveries P/L and the name of which appears on the face of this document. Carrier is not a common carrier and will accept no liability as such. All goods carried or other services performed shall be subject only to these conditions. Carrier reserves the right to refuse carriage of any goods.
2. Carrier, its servants, agents and sub-contractors are entitled to the full benefit of these terms and conditions, and carrier shall be deemed to enter into this contract for its own benefit and also for the benefit of its servants, agents and sub-contractors. Consignor hereby authorises carrier to arrange with a sub-contractor for the carriage of goods the subject of this contract. Any such arrangement shall be deemed to be ratified by consignor upon delivery of goods to sub-contractor.
3. Goods are at risk of consignor and not carrier, and carrier shall not be responsible in tort or contractor otherwise, for loss of or damage to or deterioration of goods or miss-delivery or failure to deliver or delay in delivery of goods, including chilled, frozen, refrigerated or perishable goods either in transit or in storage, or for any reason whatsoever, including without limiting the a foregoing, the negligence or wilful act or default of carrier or others. This clause shall apply to all loss damage deterioration, or failure to deliver, or delay in delivery, whether or not it occurs in the course of performance by carrier, or in events which are in the contemplation of carrier and/or consignor, or in events which would constitute a fundamental breach of the contract, or a breach of a fundamental term.
4. Carrier's charges shall be considered earned as soon as goods are loaded and dispatched from consignor's premises or deliveries to carrier for dispatch.
5. Consignor will be and remain responsible to carrier for all proper charges incurred for any reason. A charge will be made by carrier in respect of any delay in excess of 15 minutes in loading or unloading, occurring other than from the default of carrier, such permissible delay period commencing upon carrier reporting for loading or unloading, labour for which purpose being the responsibility and at the expense of consignor (or consignee).
6.
  - (i) Carriers shall have a lien on the goods for freight and incidental costs and expenses.
  - (ii) Consignor hereby changes his right title and interest to goods with payment to carrier of all freight charges, cost and expenses payable by consignor to carrier in respect of the carriage by carrier of the goods the subject hereof or of any other goods whether before or after the date hereof and agrees carrier shall be entitled to retain possession of goods until payment of all charges costs and expenses.
  - (iii) In the event of payment not being made of the amount of any charges, costs or expenses referred to in 6 (ii) as and when the same shall be and become due and payable carrier shall be entitled to sell goods without notice to consignor, either at public auction or by private treaty and either in one parcel or in lots and either for cash or on terms with or without security.
  - (iv) Charges due and payable in respect of detention and sale may also be deducted from monies arising from sale. The sender shall be liable for freight charges where the receiver refuses to pay.
7. Consignor warrants that except as shown in any accompanying consignor's certificate, the consignment does not contain any explosive volatile spirits or other cargo of a dangerous inflammable or offensive nature, or cargo the carriage which by carrier would be illegal or prohibited by law or regulation of any State, Territory or the Commonwealth, due to its nature, packaging, or labelling. Consignor hereby indemnifies carrier in respect of carrier's liability for death, bodily injury, loss and/or damage occurring wholly or partially as the result of, or arising out of consignor's failure to comply with this warranty.
8. No purported variation or modification of these conditions shall have any effect unless in writing signed by an executive officer of carrier.
9. All goods received by carrier for cartage, forwarding or storage are accepted subject to the condition that carrier will accept no responsibility for the collection of cash on delivery payments on behalf of consignor or any other person. When goods are tendered by any person with instructions for carrier to collect such payments, carrier shall not be bound by such instructions notwithstanding that carrier, its servants or agents or sub-contractors may accept the goods as tendered and perform other services of cartage, forwarding or storage in relation to those goods.
10. Where goods are accepted for forwarding by rail or bus to an address in a town or other place where carrier has no receiving depot, the goods will be deemed duly delivered if they are delivered to the nearest rail or bus acceptance depot.
11. Where goods are accepted for forwarding by rail or bus to an address in a town or place where carrier has no receiving depot, the goods will be deemed duly delivered with the goods to the carrier.
12. Liability of Carrier:
  - (i) Except as otherwise provided in these conditions the carrier shall not be under any liability in respect of any injury, damage or loss resulting from any work done in connection with the business of the carrier except to the extent that any statute applicable to these conditions prevents the exclusion, restriction or modification.
  - (ii) Notwithstanding any other provisions of the contract of carriage, the carrier shall not be liable to the consignor for any loss of profits whatsoever arising nor shall the carrier be under any liability whether in contract, tort or otherwise nor for any injury, damage or loss, whether consequential or otherwise save as expressly provided in these conditions.
  - (iii) The carrier shall not be responsible for damage or fault arising out of incorrect or inappropriate packing of goods by the consignor.
  - (iv) The consignor acknowledges that the carrier has given no warranty in respect of timings of delivery of goods and in consigning the goods, the consignor has relied entirely on its own evaluation thereof.
  - (v) The terms and conditions of this agreement that purport to exclude or limit the carrier's liability shall apply to the extent permitted by law. Provisions of the Trade Practices' Act 1974 (as amended) and other statutes from time to time enforced in Australia may imply warranties or conditions or impose obligations upon the carrier that cannot be excluded, restricted or modified except to a limited extent. If any such statutory provisions apply then, to the extent to which the carrier is entitled thereunder to do so, its liability under those statutory provisions shall be limited at the option of the carrier to any on or more of the following: -
    - (a) If the breach relates to the damage of goods:-
      - (i) The replacement of the goods or the supply of equivalent goods.
      - (ii) The repair of such goods.
      - (iii) The payment of the cost of replacing the goods or of acquiring equivalent goods, or
      - (iv) The payment of the cost of having the goods repaired, and
    - (b) If the breach relates to services;
      - (i) The supply of the service again, or
      - (ii) The payment of the cost of having the services supplied again.
13. Consignor warrants that he is not infringing any Act, Law, regulation or ordinance of any State, Territory or the Commonwealth in the sending of goods.