

1. In these Conditions:
"Company" means International Racehorse Transport Pty Ltd (ACN 004 932 183, ABN 79 004 932 183).
"Livestock" means the livestock accepted by the Company, together with any stalls or other equipment travelling with the livestock, supplied by or on behalf of the Shipper.
"Services" mean the whole of the operations provided by the Company in respect of the Livestock including but not limited to road and air carriage, boarding of Livestock awaiting carriage, customs and/or quarantine clearance and groom attendance.
"Shipper" means the person with whom this Contract is made.
"Subcontractor" includes any other person who pursuant to a contract or arrangement with any other person (whether or not the Company) provides or agrees to provide the Services or any part of the Services.
2. The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Livestock at its sole discretion. All Services are provided by the Company subject only to these Conditions which prevail at all times over the conditions of contract of the Shipper.
3. The Shipper warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Livestock and enters into this Contract on its own behalf or as authorised agent of that person or those persons. Further the Shipper undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Livestock to any person having or claiming to have any interest in the Livestock (other than the Shipper).
4. The Shipper warrants that it has complied with all laws and regulations relating to the handling, carriage, exportation and importation of the Livestock and that the Livestock is able to withstand the ordinary risks of handling and carriage. Further, the Shipper shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with such laws and regulations and warrants that the information and documentation provided to the Company accurately and completely describe the Livestock. The Shipper indemnifies the Company for all liability and for all costs incurred as a result of or arising out of a breach of the before mentioned warranties.
5. All customs and/or excise duties, costs, fines or penalties relating to the exportation and importation of the Livestock which the Company becomes liable to pay for any reason whatsoever in respect of the Livestock and any documentation relating to the Livestock shall be paid by the Shipper.
6. (i) The Shipper warrants that the Livestock accepted by the Company for the provision of Services is in all respects fit and suitable for the Services to be provided by the Company.
(ii) If, in the sole opinion of the Company, the Livestock is or is liable to become dangerous it may at any time be destroyed by the Company without compensation to and at the cost of the Shipper.
(iii) If, in the sole opinion of the Company, the Livestock requires medical treatment, including but not limited to sedation, such medical treatment shall be provided by the Company at the cost of the Shipper.
7. The Livestock is at the risk of the Shipper and not of the Company and the Company shall not be responsible in tort or contract or bailment or otherwise for any, and the consequences of any, loss of or damage to the Livestock or misdelivery or failure to deliver or for delay in delivery of the Livestock, either during carriage or otherwise, or for failure to provide or delay in providing the Services for any reason whatsoever. Without limiting the foregoing, this includes the negligence or breach of contract or wilful act or default of the Company or others or theft of the Livestock by the Company's servants, agents or Subcontractors. This Clause shall apply to all, and the consequences of all, such loss of or damage to or misdelivery or failure to deliver or delay in delivery of the Livestock or failure to provide or delay in providing the Services whether or not the same occurs in the course of performance by or on behalf of the Company of the Contract or in events which are in the contemplation of the Company and/or the Shipper or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach or a breach of a fundamental term of the Contract.
8. (i) The Shipper authorises the Company and any Subcontractor to subcontract on any terms the whole or part of the provision of the Services.
(ii) The Shipper undertakes:
(a) that no claim or allegation shall be made, whether by the Shipper or any other person who is or who may subsequently be interested in the provision of the Services and/or the Livestock, against any person (other than the Company) by whom (whether it is a Subcontractor, principal, employer, servant, agent or otherwise) the Services or any part of the Services are or is provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Livestock;
(b) that, if such claim or allegation should nevertheless be made, to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation. For the purpose of this Clause, the Company 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 shall to this extent be or be deemed to be parties to this Contract; and (c) to indemnify the Company against any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services and/or the Livestock.
9. Every exemption, limitation, condition and liberty in these Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be available and shall extend to protect:
(i) all Subcontractors;
(ii) every servant or agent of the Company or of a Subcontractor;
(iii) every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and
(iv) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (i), (ii) or (iii) of this Clause.
10. (i) The Shipper authorises any deviation (whether resulting from circumstances beyond the control of the Company or not) from the usual manner in which the Services are provided which may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances and agrees that all additional charges which are incurred (as a result of such deviation) shall be for the account of the Shipper.
(ii) If the Shipper expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of providing the Services the Company will give priority to that method but its adoption remains at the sole discretion of the Company and the Shipper authorises the Company to provide the Services by another method.
11. Insurance will not be arranged by the Company.
12. The charges of the Company shall be considered earned as soon as the Livestock is delivered to the Company and under no circumstances shall any of those charges be refunded. The Shipper is and remains responsible to the Company for all its proper charges whether or not the Livestock is delivered and/or the Services are provided as instructed and whether or not the Livestock is injured or lost. Further, the Company reserves the right to withhold the provision of the Services in connection with the Livestock until all charges of the Company have been paid.
13. The Company shall have a lien on the Livestock and any documents relating to the Livestock and/or any other Livestock of the Shipper in the possession or control of the Company and any documents relating to those other Livestock for all sums payable by the Shipper to the Company for that purpose and shall have the right to sell, destroy or otherwise dispose such Livestock by public auction or private treaty without notice to the Shipper. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Livestock, from the proceeds of sale and shall render any surplus to the entitled person.
14. Every special instruction to the effect that charges shall be paid by a person other than the Shipper shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Livestock, then the Shipper shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.
15. The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Shipper or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Shipper or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Livestock or any cargo whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Shipper.
16. In all cases where liability of the Company has not been excluded, whether by these Conditions, or otherwise, the liability of the Company whatsoever and howsoever arising is limited, in the case of a proven breach of an implied warranty provided by the Trade Practices Act 1974 as amended, to the payment of the cost of having the Services supplied again.
17. The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive or vary shall be in writing and signed by an executive officer of the Company.
18. (i) Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Livestock or of the date upon which the Livestock should have been delivered.
(ii) In any event the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Livestock unless suit is brought and notice given within nine (9) months of the provision of the Services or delivery of the Livestock or when the Services should have been provided or the Livestock should have been delivered.
19. (i) All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these Conditions by the Company or any other person entitled to the benefit of such provisions.
(ii) It is agreed that if any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.
20. Notwithstanding anything herein contained the Company shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 as amended if and to the extent that that Act is applicable to this Contract and prevents the exclusion, restriction and modification of such warranty.
21. These Conditions shall be governed by and construed in accordance with the laws of Victoria.