

TERMS AND CONDITIONS

1. (a) Jolly & Sons Pty Ltd ('the Carrier', which, unless the context otherwise requires, includes its servants, agents and sub-contractors) is not a common carrier and accepts no liability as such.
(b) 'Consignor' means the person consigning the Goods to the Carrier and includes that persons servants and agents.
(c) 'Consignee' means the person to whom the Goods are to be delivered.
(d) 'Person' includes corporations, partnerships, firms, associations and all juristic persons recognised by the law.
(e) 'Sub-contractor' means:
 - (i) All companies which are or become subsidiaries of the Carrier within the meaning of the corporations Law;
 - (ii) railways whether privately owned and operated or operated by the Commonwealth or any state;
 - (iii) any person who is a member of the Forwarders division of the Australian Road Transport Federation and its affiliates;
 - (iv) any person with whom the Carrier arranges the carriage of any goods the subject of this contract ('the Goods'); and
 - (v) any person who is a servant, agent, employee or sub-contractor of any person referred to in this clause.
2. The Goods are carried or transported and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the carriage or transport of the Goods or any goods of any person referred to in the clause.
3. (a) The Consignor warrants that the Goods comply with the requirements of any applicable law relating to the nature, conditions and packaging of the Goods and the expenses and charges of the Carrier in complying with the provisions of such law or with any order or requirement of any such law of any harbour, dock, railway, customs warehouse other authority must be paid by the Consignor.
(b) If the Goods are subject to the control of customs then the Consignor holds the Carrier harmless and indemnified in respect of all customs duty, excise duty and costs which the Carrier must pay in respect of such goods pursuant to any law.
4. (a) The Goods are at the risk of the Consignor and not the Carrier and the Carrier is not liable in tort or contract or otherwise for any loss or damage to or deterioration of the Goods or any loss or damage to or arising from the use of any services or equipment of any person including without limitation the Consignor or Consignee ('Service and Equipment') by the Carrier in handling, delivering or transporting the Goods or misdelivery or failure to deliver or delay in delivery of the Goods either in transit or storage for any reason whatsoever including without limitation the negligence or breach of contract or wilful act or default of the Carrier and this clause applies to all such loss or damage to or deterioration the Goods, Services and Equipment or misdelivery or failure to deliver or delay in delivery of the Goods whether or not the same occurs in the course of performance by or on behalf of the Carrier of the contract or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach of a fundamental term of these Terms and Conditions.
(b) The Consignor warrants that the Goods, Services and Equipment are insured on behalf of itself and the Carrier and waives all rights of recovery against the Carrier and must indemnify and hold the Carrier harmless against any liability for any use, loss or damage of the Goods, Services and Equipment caused by or resulting from anything whatsoever including without limitation the negligence or breach of contract or wilful act or default of the Carrier including any rights of subrogation that the Consignor's or the Consignee's insurers have or seek to exercise against the Carrier.
(c) In relation to this clause the Carrier in addition to acting for himself acts as agent of and trustee for each of his servants and any other person with whom the Carrier arranges the carriage of the Goods and the servants of such person so that it's servants and such person or its servants are parties to this agreement so far as this clause is concerned and the Carrier holds the benefit of this clause for his servants and for any such person and his servants.
(d) All rights, immunities and limitation of liability granted to the Carrier by this clause must continue to have full force and effect in all circumstances and notwithstanding any breach of these conditions by the Carrier.
5. The Consignor must pay the Carrier it's fees whether the Goods are delivered or not and whether damaged or otherwise. Payment for the Carrier's fees will not be refunded under any circumstances.
6. The Carrier has a lien of the Goods and any related documents and on any other goods of the Consignor in the Carrier's possession or any related documents for all sums payable by the Consignor or the Carrier and for that purpose has the right to sell any such goods by public auction or private treaty without notice to the Consignor.
7. If the Carrier is liable for damage to or loss of the Goods or any part of them, no claim in respect of such loss or damage must be made unless notice of the claim is lodged in writing with the Carrier within 7 days after delivery was affected or would have been effected in the ordinary course of business.
8. The Carrier is discharged from all liability whatsoever in respect of the Goods unless suit is brought within 3 months from their delivery or from the date of which in the ordinary course of business delivery would have been affected.
9. Every special instruction to the effect that charges are to be paid by a consignee includes a stipulation that if the Consignee does not pay the charges within 7 days of the date set for the payment or, if no date is set for payment within 7 days of delivery or tendered deliver, then the Consignor must pay all such charges.
10. The Carrier may levy charges according to weight, measurement or value and may at any time re-weight, re-value or re-measure or require same and charge proportional additional fees.
11. Any person bailing of delivering any goods to or making any goods available for collection by the Carrier is authorized to sign a consignment not for the Consignor.
12. If the Consignee is not in attendance at the address given during normal business hours the Carrier may levy additional charges at the prevailing market rate for all attempted deliveries until delivery is made.
13. The Carrier will only deliver at intermediate points by prior arrangements and only if appropriate facilities are available at all hours.
14. The Carrier may forward the Goods by any means at its absolute discretion and is authorised to have the Goods carried by an independent contractor or sub-contractor.
15. The Carrier may in the absence of an agreed route in writing carry the Goods by any method or route at its absolute discretion.
16. The consignor must specifically declare and fully describe in writing the nature and value of all goods subject to special rates of carriage or of a noxious, dangerous, hazardous or flammable nature or capable of causing damage or injury to any other goods or to any persons or animals with which, or to any store, vessel, wagon, van, aircraft or other conveyance of any kind in which they may be loaded, carried, packed or stored or which are liquid and additional weight charges must be paid on such goods if request by the Carrier.
17. The Terms and Conditions apply to all goods consigned by or on behalf of the Consignor to the Carrier or carried by the Carrier for or on behalf of the Consignor from time to time.
18. These conditions must be governed and construed in accordance with the laws of Western Australia and any proceedings against the Carrier must be brought in Western Australia.
19. If any part of these Terms and Conditions is or becomes void or unenforceable then that part must be severed so that all parts that are not or do not become void or unenforceable remain in full force and effect are unaffected by any severance.