

7. The proprietor shall not be liable either in contract or in tort for any injury sickness or death caused or sustained by the horse or any loss arising whilst under the care and control of the proprietor its servants or agents and the owner hereby excludes any liability on behalf of the proprietor other than from any recklessness, negligence, forbearance or neglect by the proprietor its servants or agents and agrees that the horse is placed with the proprietor for agistment, transport and training entirely at the risk of the owner.
8. In the event of the proprietor having to transport the horse the following provisions shall apply:
 - 8.1 In this clause proprietor shall include the servants, agents or sub-contractors of the proprietor.
 - 8.2 The proprietor is not a common carrier and will accept no liability as such. All goods are carried or transported subject to the owner's terms and conditions of transport as annexed hereto.
9. The owner shall have the right to inspect the horse upon giving the proprietor a minimum of 48 hours notice in writing.
10. The owner agrees that should the horse be considered for sale by private treaty that the owner will advise the agent of the purchaser that commissions on the sale of the horse will be shared with the proprietor.
11. In the event that the horse is owned or leased by a syndicate, partnership, group or any other form of multiple ownership the members of the syndicate, partnership or group shall be jointly and severally liable for all amounts due by the owner to the proprietor pursuant to this contract
12. If the owner is a corporation and it fails to pay the moneys owing to the proprietor by the date they are due then the person who signs this agreement on behalf of the owner or who attests to the affixation of the seal of the owner agrees that he shall be personally liable to pay on demand to the proprietor the moneys owing by the owner under this Agreement.
13. Any notice given under this agreement shall be in writing and may be given by post, facsimile, email or by delivery to the parties' address as set out above. Notices that are posted shall be taken to being received 48 hours after posting unless proved otherwise. Notices sent by facsimile or email after 5.00 pm will be taken to have been received at 9.00 am on the next business day at the place it is received.
14. No purported variation or modification of these conditions shall have any effect unless in writing signed by an authorised officer of the proprietor.
15. The owner agrees that this contract is made in the State of South Australia and that the Courts of the State of South Australia shall have exclusive jurisdiction in relation to any dispute arising from this Agreement.
16. The fees payable pursuant to this contract do not include any Goods and Services Tax ("GST") and any fees payable will attract GST at the rate applicable from time to time which will be specified in each invoice provided and the owner agrees to pay the proprietor for any such amount.
17. In this Agreement:-
 - 17.1 Any reference to the singular shall, unless the context otherwise requires, include a reference to the plural.
 - 17.2 Any reference to one gender shall include a reference to the other genders.
 - 17.3 Any reference to a person shall include a corporation, body corporate or unincorporate and vice versa.

SIGNED by and on behalf of _____)
DAVID HAYES RACING PTY LTD)

in the presence of:

Witness(sign)

Witness Name.....(BLOCK LETTERS)

SIGNED by the **OWNER** _____)

in the presence of: _____)

Witness(sign)

Witness Name.....(BLOCK LETTERS)

ANNEXURE

TERMS AND CONDITIONS OF TRANSPORT

1. In these conditions:-
“Carrier” shall mean LINDSAY PARK HORSE TRANSPORT PTY LTD its related companies, servants and agents.
“Consignor” shall be the person referred to as The Owner in the Thoroughbred Agistment and Training Agreement.
“Sub-Contractor” shall mean and include:-
 - I. All companies which are now subsidiaries of the Carrier within the meaning of the expression as defined in the Corporations Act.
 - II. Any Railway whether operated by the Commonwealth of Australia, a State of Australia or any other entity.
 - III. Any other person, firm, or company with whom the Carrier may arrange for the carriage of any livestock the subject of this contract:And any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in I or II above.
2. The Carrier is not a Common Carrier and will accept no liability as such. All livestock is 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 articles for any person corporation or company and the Carriage or transport of any class of articles at its discretion.
3. The Consignor hereby authorises the Carrier (if it should think fit to do so) to arrange with a sub-contractor or sub-contractors for the carriage of any livestock the subject of this contract. Any such arrangement shall be deemed to be ratified by the Consignor upon delivery of the said livestock to such sub-contractor or sub-contractors who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such sub-contractor or sub-contractors shall be so entitled the Carrier shall be deemed to enter into this contract for its own benefit and also as agent for the sub-contractor or sub-contractors.
4. If the Consignor expressly or impliedly instructs the Carrier to use or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the livestock or a particular method of carriage whether by road, rail, sea or air the Carrier will give priority to the method but if it cannot conveniently be adopted by the Carrier, the Consignor hereby authorises the Carrier to handle or store or to carry or have the livestock carried by another method or methods.
5. The livestock is at risk of the Consignor and not the Carrier and unless expressly agreed in writing and subject to Clause 23 hereof the Carrier shall not be responsible in tort or contract or otherwise for any loss of or damage to or deterioration of livestock or mis-delivery or failure to deliver or delay in delivery of livestock either in transit or in storage for any reason nor for any consequential loss or injury of any kind whatsoever including without limiting the foregoing the negligence or wilful act or default of the Carrier or others and this clause shall apply to all such loss of or damage to or deterioration of livestock or mis-delivery or failure to deliver or delay in delivery of livestock nor for any consequential loss or injury of any kind whatsoever as aforesaid whether or not the same occurs in the course of performance by the Carrier or the contract or in events which are in the contemplation of the Carrier and/or the Consignor or in events which are foreseeable by them or either of them or in events which would constitute a fundamental breach of the contract or a breach of a fundamental term thereof.
6.
 - (i) The Consignor warrants that the livestock accepted by the Carrier for the provision of services is in all respects fit and suitable for the services to be provided by the Carrier.
 - (ii) If, in the sole opinion of the Carrier, the livestock is or is liable to become dangerous it may at any time be destroyed by the Carrier without compensation to and at the cost of the Consignor.
 - (iii) If, in the sole opinion of the Carrier, the livestock requires medical treatment, including but not limited to sedation, such medical treatment shall be provided by the Carrier at the cost of the Consignor.
7. Under no circumstances does the Carrier undertake to insure or arrange for the insurance of the livestock against any insurable risk whatsoever. The Consignor warrants that the livestock is fully insured against all risks which may arise during the carriage of the livestock and that, unless specifically notified to the Carrier in writing prior to the commencement of the carriage, the livestock is in good health and condition.
8. The Consignor hereby agrees to indemnify the Carrier in respect of any loss, damage or injury caused to the Carrier or any other person or any property of the Carrier or any other person by the livestock during the Carriage thereof and further agrees to indemnify and keep the Carrier indemnified against all damages, actions, claims, suits and demands made by any person in respect of such loss, damage or injury.
9. The Carrier is authorized to deliver the livestock at the address given to the Carrier by the Consignor for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the livestock in accordance with this contract if the livestock is delivered at that address.
10. It is agreed that the person conveying any livestock to the Carrier for carriage or forwarding is authorised to sign this consignment note for the Consignor.

11. The Consignor expressly warrants with the Carrier that the Consignor is either the owner or the authorised agent of the owner of any livestock or property the subject matter of this contract of cartage and by entering into this contract the Consignor accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Consignor is acting.
12. Notwithstanding Clause 6 above it is expressly agreed that all the rights, immunity, exemptions from and limitations of liability granted to the Carrier by the provisions set forth in the above conditions of contract shall have and continue to have their full force and effect in all circumstances whether or not the same occur in the course of performance by the Carrier of the contract or are in the contemplation of the Carrier and/or the Consignor or are foreseeable by them or either of them or would constitute a fundamental breach of the contract or a breach of a fundamental term thereof.
13. The Consignor hereby authorises any deviation from the usual route or manner or cartage of livestock which may in the absolute discretion of the Carrier by deemed reasonable or necessary in the circumstances.
14. The Carrier's charges shall be considered earned as soon as the livestock is delivered to the address specified for delivery.
15. The Consignor will be and remain responsible to the Carrier for all its proper charges incurred for any reason.
16. If any person fails to pay charges due to the Carrier in respect of any service rendered by the Carrier on reasonable demand being made in accordance with the contract, the Carrier shall have a lien on the Livestock and any documents relating to the Livestock and/or any other Livestock of the Consignor in the possession or control of the Carrier and any documents relating to those other Livestock for all sums payable by the Consignor to the Carrier 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 Consignor. The Carrier 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.
17. Where by express agreement the Carrier becomes responsible for damage to or loss of livestock no claim for such loss or damage will be allowed unless:
 - (i) notice in writing is lodged with an office of the Carrier in the State in which delivery was effected within seventy-two (72) hours after delivery was given; and
 - (ii) In any event the Company shall be discharged from all liability whatsoever in connection 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.
18. No purported variation or modification of these conditions shall have any effect unless in writing signed by the general manager of the Carrier.
19. All livestock received by the Carrier for cartage, forwarding or storage are accepted subject to the condition that the Carrier will accept no responsibility for the collection of cash on delivery payments on behalf of the consignor or any other person. When livestock are tendered by any person with instructions for the carrier to collect such payments the Carrier shall not be bound by such instructions notwithstanding that the Carrier its servant or agent may accept the livestock as tendered and perform other services of cartage, forwarding or storage in relation to those livestock.
20. If the livestock is not accepted for delivery when tendered, the Carrier may hold the livestock as bailee and shall be entitled to storage fees at normal rates charged by the Carrier AND as bailee shall not be under any liability for any loss of damage to the livestock howsoever caused, OR at its discretion, the Carrier may return the livestock to the Consignor at the cost and risk of the Consignor.
21. The provisions of these conditions of cartage shall apply to the container or containers or other packaging containing the livestock and to any pallet or pallets delivered with the livestock to the Carrier. The Carrier shall be responsible for the conformity of such containers packaging and pallets with any requirements of the consignee and for any expense incurred by the Carrier arising from any failure so to confirm.
22. Notwithstanding anything herein contained, the Carrier shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to this contract and prevents the exclusion or modifications of the warranty.
23. The Consignor shall comply with all applicable law, customs and other government regulations of any State or Territory or of the Commonwealth of Australia including those relating to the packaging carriage and delivery of livestock and shall furnish information and attach such documents to this contract as may be necessary to comply with such laws and regulation. The Carrier shall not be liable to the Consignor or any other person for loss or expense due to the Consignor's failure to comply with this provision.
24. The Consignor warrants that except as shown in any accompanying Consignor's certificate the consignment does not contain any explosive volatile spirits or any other cargo of a dangerous inflammable or offensive nature or cargo the carriage of which by the Carrier would be illegal or prohibited by any law or regulation of any States, Territory or the Commonwealth due to its nature, packaging or labelling. The Consignor hereby indemnifies the Carrier in respect of the Carrier's liability for death, bodily injury, loss and/or damage occurring wholly or partially as a result of or arising out of Consignor's failure to comply with this warranty.
25. Craneage is not included unless otherwise specified.

- 26. This contract is made in the State of South Australia and shall be governed by the laws of South Australia and the Courts of South Australia shall have exclusive jurisdiction in relation to any dispute arising from this contract.
- 27. The fees payable pursuant to this contract do not include any Goods and Services Tax (“GST”) or like taxation impost levied by the Commonwealth Government. All fees payable will attract GST at the rate applicable from time to time which will be specified in each invoice provided and the Consignor agrees to pay the Carrier for any such amount.
- 28. Words importing the singular number or plural number when used in this Contract shall include the plural number and singular number respectively and words importing the masculine gender shall include the feminine or neuter gender and person includes any company or other legal entity.

SIGNED by and on behalf of)
 the **CARRIER**)

in the presence of:

Witness(sign)
 Witness Name(BLOCK LETTERS)

SIGNED by the)
CONSIGNOR)

in the presence of:)

Witness(sign)
 Witness Name(BLOCK LETTERS)