

Enright Bros. Pty Ltd T/A Enright's North Coast Removals – Terms & Conditions of Removal and Storage

<p>1. Definitions</p> <p>1.1 "Carrier" shall mean Enright Bros. Pty Ltd T/A Enright's North Coast Removals and its successors and assigns or any person acting on behalf of and with the authority of Enright Bros. Pty Ltd T/A Enright's North Coast Removals.</p> <p>1.2 "Sub-Contractor" shall mean and include:</p> <p>(a) Railways or Airways operated by the Commonwealth or any State or other country or by any corporation; or</p> <p>(b) Any other person, firm or Carrier with whom the Carrier may arrange for the carriage or storage of any Goods the subject of the contract; or</p> <p>(c) And any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).</p> <p>1.3 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.</p> <p>1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Carrier's Services.</p> <p>1.5 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.</p> <p>1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Carrier's Services, or for storage by the Carrier.</p> <p>1.7 "Services" shall mean all services supplied by the Carrier to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by the Carrier to the Client and includes any advice or recommendations.</p> <p>1.8 "Price" shall mean the cost of the Services as agreed between the Carrier and the Client subject to clause 3 of this contract.</p> <p>2. Acceptance</p> <p>2.1 Any instructions received by the Carrier from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.</p> <p>2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions and with the written consent of the manager of the Carrier.</p> <p>2.3 These terms and conditions are to be read in conjunction with the Carrier's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Carrier to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.</p> <p>3. Price And Payment</p> <p>3.1 At the Carrier's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by the Carrier to the Client in respect of Services supplied; or</p> <p>(b) Carrier's quoted Price (subject to clause 3.2 & 3.3) which shall be binding upon the Carrier provided that the Client shall accept in writing the Carrier's quotation within thirty (30) days.</p> <p>3.2 The Carrier's quoted Price does not include:</p> <p>(a) The taking down or putting up of fixtures, gas, electric or other fittings;</p> <p>(b) The cost of dismantling and/or re-fixing any musical instrument, billiard table or electrical items;</p> <p>(c) Any packing which is necessary to secure fragile articles, including but not limited to statues, ivories or light fittings;</p> <p>(d) The re-fixing of blinds, mirrors or other fittings;</p> <p>(e) The re-hanging of pictures or curtains;</p> <p>(f) The removal of safes.</p> <p>3.3 The Carrier may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to the Carrier beyond the reasonable control of the Carrier (including, without limitation, foreign exchange fluctuations, or increases in taxes, fuel or customs duties or insurance premiums or warehousing costs).</p> <p>3.4 The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.</p> <p>3.5 The Carrier may charge additional costs to the Client in the event the Carrier has poor access to the Client's nominated address, and/or has to engage traffic control services to enable the Carrier to perform the Services.</p> <p>3.6 At the Carrier's sole discretion a deposit may be required.</p> <p>3.7 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.</p> <p>3.8 At the Carrier's sole discretion:</p> <p>(a) payment shall be due on delivery of the Goods, or</p> <p>(b) payment shall be due before delivery of the Goods, or</p> <p>(c) payment for approved Clients shall be made by instalments in accordance with the Carrier's payment schedule.</p> <p>3.9 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (3%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Carrier.</p> <p>3.10 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.</p> <p>4. Carrier Not Common Carrier</p> <p>4.1 The Carrier is not a Common Carrier and will accept no liability as such. All articles 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 articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.</p> <p>5. Client-Packed Containers</p> <p>5.1 If a container has not been stowed by or on behalf of the Carrier the Carrier shall not be liable for loss of or damage to the Goods caused by:</p> <p>(a) the manner in which the container has been stowed; or</p> <p>(b) the unsuitability of the Goods for carriage or storage in containers; or</p> <p>(c) the unsuitability or defective condition of the container.</p> <p>6. Nomination Of Sub-Contractor</p> <p>6.1 The Client hereby authorises the Carrier (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, 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 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.</p> <p>7. Carrier's Servants or Agents</p> <p>7.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of the Carrier which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier and any such servant or agent against all consequences thereof.</p> <p>8. Method Of Transport</p> <p>8.1 If the Client instructs the Carrier to use a particular method of carriage whether by road, rail, sea or air the Carrier will give priority to the method designated but if that method cannot conveniently be adopted by the Carrier the Client shall be deemed to authorise the Carrier to carry or have the Goods carried by another method or methods.</p> <p>9. Route Deviation</p> <p>9.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.</p> <p>10. Charges Earned</p> <p>10.1 The Carrier's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.</p> <p>11. Demurrage</p> <p>11.1 The Client will be and shall remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period shall commence upon the Carrier reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.</p> <p>12. Dangerous Goods</p> <p>12.1 Unless otherwise agreed in advance in writing with the Carrier the Client or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies the Carrier for all loss or damage whatsoever caused by any Dangerous Goods.</p> <p>13. Consignment Note</p> <p>13.1 It is agreed that the person delivering any Goods to the Carrier for carriage or forwarding is authorised to sign the consignment note for the Client.</p> <p>14. Client's Responsibility</p>	<p>14.1 The Client expressly warrants to the Carrier that the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of carriage and/or storage and by entering into this contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.</p> <p>14.2 The Client shall be present when the Goods are loaded or unloaded, except if they are being unloaded into or loaded from store.</p> <p>14.3 The Client will, prior to the commencement of the removal or storage, give to the Carrier written notice of any Goods which are of a fragile or brittle nature and which are not readily apparent as such, or which compromise jewellery, precious objects, works of art, money collections of items or precision equipment in any case having a value in excess of \$1,000.</p> <p>14.4 The Client will ensure that all Goods to be removed (other than Goods being removed from store) or stored are uplifted by the Carrier and that none is taken in error.</p> <p>15. Delivery</p> <p>15.1 The Carrier is authorised to deliver the Goods at the address given by the Carrier by the Client for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with this contract if at that address the Carrier obtains from any person a receipt or a signed delivery docket for the Goods.</p> <p>15.2 The Client shall make all arrangements necessary for the Carrier to carry out performance of the Services. In the event that the Client requires changes to the agreed arrangements then the Carrier shall be entitled to charge a reasonable fee for any loss or additional expense incurred.</p> <p>15.3 The Carrier may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.</p> <p>15.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.</p> <p>15.5 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.</p> <p>15.6 The Client shall not be entitled to require removal or storage of any article or substance which is, or may become, of a dangerous, corrosive, highly combustible, explosive, damaging or noxious nature, not anything likely in the course of such removal or storage to encourage any vermin or pest. The Client shall indemnify the Carrier against any loss or damage which may be suffered by the Carrier through the presence of any such article or substance in any Goods removed or stored for the Client, and against any claim made against the Carrier by any other person arising therefrom unless such presence and the nature of such article or substance were notified in writing to the Carrier prior to loading or receipt by it of the Goods. In the event of discovery by the Carrier of any such article or substance after Goods have been received by it the Carrier may take any reasonable action in relation thereto including to remove, destroy or otherwise dispose of or treat the same at the expense of the Client and without, in any way becoming liable to the Client. The failure of the Carrier to deliver shall not entitle either party to treat this contract as repudiated.</p> <p>16. Loss Or Damage</p> <p>16.1 This contract is "at limited carrier's risk".</p> <p>16.2 Subject to statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):</p> <p>(a) The Carrier shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Carrier or otherwise, for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Carrier or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and</p> <p>(b) The Client will indemnify the Carrier against all claims of any kind whatsoever, howsoever caused or arising and, (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Carrier or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Carrier in connection with the Goods.</p> <p>17. Conditions of Storage</p> <p>17.1 The Carrier will prepare an inventory of Goods received for storage at the Customer's expense, and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Carrier, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case the Carrier will be entitled to make a reasonable additional charge.</p> <p>17.2 The Carrier is authorised to remove the goods from one warehouse to another without cost to the Client. The Carrier will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).</p> <p>17.3 The Client is entitled upon giving the Carrier reasonable notice to inspect the Goods in store but a reasonable charge may be made by the Carrier for this service.</p> <p>17.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Carrier may require the Goods to be removed from the store at any time on giving the Carrier not less than five (5) working days notice. If the Client gives the Carrier less than the required notice the Carrier will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.</p> <p>17.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Carrier to do so. In default, the Carrier may after fourteen (14) days notice to the Client SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to the Carrier.</p> <p>18. Disputes</p> <p>18.1 If the Client or the Carrier consider that a dispute has arisen in relation to this agreement (either during the services, or after they have been completed), written notice of the dispute will be given to the other party. Even if that notice is given, the Client and the Carrier must continue to perform any obligations outstanding by the Carrier under the agreement.</p> <p>18.2 If the Client and the Carrier cannot resolve the dispute, the Client is entitled to refer the dispute to the Australian Furniture Removers Association (telephone 1800 671 806) which has procedures for dispute resolution, and the Carrier, but not the Client, will be bound by the outcome of that referral.</p> <p>19. Insurance</p> <p>19.1 The Carrier is not an authorised agent for the purposes of selling insurance. It is the Client's sole responsibility to arrange insurance of the Goods, and the Client acknowledges that such insurance shall not be arranged.</p> <p>20. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts</p> <p>20.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.</p> <p>20.2 Liability of the Carrier arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by the Carrier:</p> <p>(a) The supplying of the Services again; or</p> <p>(b) The payment of the cost of having the Services supplied again; or</p> <p>(c) The lesser of AUD\$200.00 for loss of or damage to any such Goods, packages or units or AUD\$2.00 per kilogram or the gross weight for loss of or damage to any such Goods, packages or units or \$20.00 per package or unit lost or damaged. For the purpose of this clause the word "package" shall include the contents even if particulars have been provided or incorporated in any document of the Carrier.</p> <p>20.3 The Carrier shall be under no liability whatsoever for loss or damage to Goods unless:</p> <p>(a) the Client provides written notice to the Carrier detailing the alleged damage, and that such written notice shall be received by the Carrier within seven (7) days after the delivery of the Goods; or</p> <p>(b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within fourteen (14) days of the date of dispatch of the Goods.</p> <p>21. Default & Consequences Of Default</p> <p>21.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.</p> <p>21.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Carrier from and against all costs and disbursements incurred by the Carrier in pursuing the debt including legal costs on a solicitor and own client basis and the Carrier's collection agency costs.</p> <p>21.3 Without prejudice to any other remedies the Carrier may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Carrier may suspend or terminate the supply of Services to the Client and any of its other obligations under the</p>	<p>terms and conditions. The Carrier will not be liable to the Client for any loss or damage the Client suffers because the Carrier exercised its rights under this clause.</p> <p>21.4 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.</p> <p>21.5 Without prejudice to the Carrier's other remedies at law the Carrier shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Carrier shall, whether or not due for payment, become immediately payable in the event that:</p> <p>(a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Client will be unable to meet its payments as they fall due; or</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>22. Unpaid Carrier's Rights to Dispose of Goods</p> <p>22.1 The Carrier shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of the Carrier for all sums payable by the Client to the Carrier, and the Carrier shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. The Carrier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, due from the proceeds of sale and shall render any surplus to the entitled person.</p> <p>23. Security And Charge</p> <p>23.1 Despite anything to the contrary contained herein or any other rights which the Carrier may have whatsoever:</p> <p>(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Carrier or the Carrier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Carrier (or the Carrier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should the Carrier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Carrier from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Carrier or the Carrier's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 21.1.</p> <p>24. Privacy Act 1988</p> <p>24.1 The Client and/or the Guarantor agree for the Carrier to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor's in relation to credit provided by the Carrier.</p> <p>24.2 The Client and/or the Guarantor agree that the Carrier may exchange information about the Client and the Guarantor's with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:</p> <p>(a) to assess an application by Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the credit worthiness of Client and/or Guarantor's.</p> <p>24.3 The Client consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(b) Privacy Act 1988).</p> <p>24.4 The Client agrees that personal credit information provided may be used and retained by the Carrier for the following purposes and for other purposes as shall be agreed between the Client and Carrier or required by law from time to time:</p> <p>(a) provision of Services; and/or</p> <p>(b) marketing of Services by the Carrier, its agents or distributors in relation to the Services; and/or</p> <p>(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or</p> <p>(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or</p> <p>(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.</p> <p>24.5 The Carrier may give information about the Client to a credit reporting agency for the following purposes:</p> <p>(a) to obtain a consumer credit report about the Client; and/or</p> <p>(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.</p> <p>General</p> <p>24.6 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>24.7 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.</p> <p>24.8 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Carrier.</p> <p>24.9 The Carrier reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Carrier notifies the Client of such change.</p> <p>24.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.</p> <p>24.11 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.</p> <p>Deposit</p> <p>24.12 Upon acceptance of the carrier's quotation or upon the client giving instructions to the carrier for supply of services the client will immediately pay a ten percent deposit to the carrier, which deposit shall be non-refundable</p> <p>24.13 Notices under this Contract may also be sent by facsimile transmission or email.</p>
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