

Toll Global Forwarding Standard Trading Conditions

ABN: 31 082 292 233

All and any business undertaken by the Company shall be subject to the following Terms and Conditions

Introduction

Except where the Company issues a Sea-Carriage Document or house air waybill in which it is described on its face or the reverse as the "Carrier", these Terms and Conditions shall apply to every Service.

Where the Company issues a Sea-Carriage Document or house air waybill in which it is described on its face or the reverse as the "Carrier", these Terms and Conditions shall apply to every Service encompassed by the Sea-Carriage Document or house air waybill except where inconsistent with the terms of the Sea-Carriage Document or house air waybill. In the event of such inconsistency, the terms of the Sea-Carriage Document or house air waybill shall prevail to the extent of the inconsistency but no further.

1. Definitions

In these Terms and Conditions, unless the context indicates otherwise:

"Company" means Toll Global Forwarding Pty Limited and its employees, servants, subsidiaries and associated entities;

"Customer" means the shipper, consignor, the receiver, the consignee, the owner of the Goods, the bailor of the Goods, or the person for whom any of the Services are performed;

"Dangerous Goods" means such of the Goods as are, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to anything in which Goods are carried, handled or stored;

"Goods" means the chattels, articles or things tendered by the Customer for carriage or bailment or other services and includes the container or containers, unit load devices or other packaging containing the same and any other pallet or pallets delivered with the same to the Company;

"GST" means the goods and services tax imposed by or under a GST Law.

"GST Law" means the same as in the A New Tax System (Goods and Services Tax) Act (Cth) 1999.

"Perishable Goods" means such of the Goods as are, in fact or law, liable to deteriorate in quality and/or value and includes fruits, vegetables, dairy products and meats;

"Terms and Conditions" means these terms and conditions;

"Service" means the carriage, transport, movement, storage, customs clearance and/or any other service performed or arranged by the Company;

"Sea-Carriage Document" means a bill of lading, a sea waybill or a ship's delivery order.

"Subcontractor" includes:-

i) Any person, firm or company with whom the Company may arrange to affect any Service in respect of the Goods;

ii) Any person, firm or company which is now or becomes a servant, agent, employee or subcontractor of any of the persons or entities referred to in (i) above;

iii) Any other person, firm or company (other than the Company) by whom the Services or any part thereof are arranged, performed or undertaken;

"Valuables" means bullion, coins, precious stones, jewellery, antiques or works of art.

Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm and corporation where appropriate.

"Supply" means the same as in the GST Law.

"Taxable Supply" has the meaning given to it in Clause 19(a) of these Terms and Conditions.

2. Not a Common Carrier

a) The Company is not a common carrier and accepts no liability as such. Services are arranged or performed by the Company subject only to these Terms and Conditions which constitute the entire agreement between the Company and the Customer. No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the carriage of the Goods for any Customer or any other Service whether before or after the carriage or Service has commenced and further reserves the right to open and inspect all Goods at its discretion and at the Customer's expense.

b) In respect of the Services, the Company acts as agent only for the Customer and the Customer employs and authorises the Company as its agent to contract either in the Company's own name as principal or as agent with any Subcontractor for the performance of any of the Services. Any such contract may be made upon any terms of contract whatsoever used by the Subcontractor with whom the Company may contract for any of the Services and may be made upon any terms and subject to any conditions of any special contract which the Subcontractor may in a particular case require, including in every case terms which may limit or exclude liability and/or any term that the Subcontractor may employ any other Subcontractor for the performance of any of the Services. Similarly, the Customer authorises any Subcontractor whose services have been subcontracted in respect of any of the Services to further subcontract any of the Services to any party or Subcontractor on the same terms as provided to the Company above. In any event, the Company shall be entitled to the full benefit of all privileges, rights and immunities available to the Carrier or any Subcontractor under any Sea-Carriage Document or any other contract or compulsorily applicable law in respect of the Services with respect to the Goods. Any Subcontractor's terms are available from the Company on request. Whilst not in any way lessening the effect of any other provision in these Terms and Conditions the Company shall not be liable for any loss or damage to the Goods whilst not in its possession.

3. Warranties

a) The Customer warrants that the person delivering the Goods to the Company is authorised to sign the Customer's letter of instruction or waybill and/or consignment note which includes these Terms and Conditions and warrants that he has the authority of the person owning or having an interest in the Goods or any part thereof. Without prejudice to the foregoing warranty, the Customer undertakes to indemnify the Company in respect of any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part thereof.

b) The Customer warrants the accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inaccuracy or omission in this respect.

c) The Customer warrants that the performance of any Service by the Company or arranged by the Company, to effect the instructions of the Customer in respect of the Goods, shall not be in breach of any law.

d) The Customer warrants that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature.

e) To the maximum extent permitted by law, all warranties or guarantees expressed or implied (whether by custom or law) in respect of the carriage of the Goods or any other Service provided by the Company or any Subcontractor pursuant to these Terms and Conditions, are excluded.

4. Limitation and Exclusion of Liability

- a) The value of the Goods will not be declared so as to extend the Company's liability as provided for in these Terms and Conditions or under any other mandatory applicable law (including, without limitation, the Carriage of Goods by Sea Act 1991, the Civil Aviation (Carrier's Liability) Act 1959 or any of the international conventions referred to therein or otherwise compulsorily applicable and as amended from time to time) except on express written instructions given by the Customer to the Company.
- b) In all other cases where there is a choice of rates according to the extent of liability assumed by the Company, carrier, warehouseman and/or other Service provider or other company or entity, no declaration will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the Customer.
- c) In all cases where liability has not been excluded or limited by this agreement or by any mandatory applicable statute or convention of law, the liability of the Company is limited to the lesser of:
- (i) in the case of Goods, any one or more of the following:
- (1) the replacement of the Goods or the supply of equivalent Goods;
 - (2) the repair of the Goods;
 - (3) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (4) the payment of the cost of having the Goods repaired; or
 - (5) A\$100.00.
- (ii) in the case of Services:
- (1) the supplying of the Services again;
 - (2) the payment of the cost of having the Services supplied again; or
 - (3) A\$100.00.
- d) Subject to these Terms and Conditions, the Company shall not be liable for any loss or damage suffered by the Customer or any other person whatsoever, howsoever caused or arising, whether caused by the negligence and/or recklessness and/or wilful misconduct of the Company's servants, agents, employees, Subcontractors or otherwise, nor from any loss (whether direct, indirect or consequential loss) or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or Subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any Goods in carriage or subject of any Service.
- e) Save as otherwise provided herein, the Company shall in no circumstances whatsoever or howsoever arising be liable for direct or indirect or consequential loss or damage of any kind. The defences and limits provided for in these Terms and Conditions shall apply in any action against the Company for loss or damage or delay whether the action be founded in contract, tort, or otherwise.
- f) Without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage whatsoever suffered by the Customer or any other person as a result of a failure or inability of the Company or Subcontractor to collect or receive payment or delivery from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.
- g) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will be extinguished unless:-
- i) Any claim for loss of or damage to Goods (including short delivery) is lodged in writing to the Company within 3 days of delivery of the Goods or the date by which the Services are completed, whichever date occurs first; or
 - ii) in the case of non delivery of Goods any claim must be notified in writing to the Company within 14 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first; and
 - iii) if any claim under (i) and (ii) has not been resolved, an action has not been commenced by the Customer in a court of competent jurisdiction within 6 months of delivery, or in the case of non delivery 6 months after the date of dispatch.
- h) It is specifically agreed that all rights, immunities and limitations of liability granted to the Company or the Subcontractors by the provisions set forth in these Terms and Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these Terms and Conditions or any condition hereof by the Company or the Subcontractor.

5. Loading and Unloading on and from Transportation Vehicle

- a) The Customer shall be responsible for the cost of and arranging for the loading and unloading of the Goods on and from the relevant transportation vehicle and will provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle.
- b) In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.
- c) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection or complaint, the transportation vehicle will be deemed to be in an adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall have no rights against the Company or any Subcontractors in respect of any loss of or damage to Goods arising from any inadequacy or unsuitability of the transportation vehicle for the carriage of the Goods.

6. Warehousing

The Goods may, in the sole discretion of the Company, at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held, in each and every case at the Customer's risk and expense and the Company will be entitled to charge for that warehousing in addition to all applicable charges for the carriage of the Goods or the provision of any Service hereunder.

7. Customer's Indemnity

- a) The Customer shall indemnify the Company and its Subcontractors in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever, howsoever caused, whether arising directly or indirectly from any Service arranged or performed by the Company in respect of Goods and/or in respect of any such cost incurred as a result of any breach of these Terms and Conditions by the Customer.
- b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (cash on delivery or otherwise) paid by the Company to any of its agents or Subcontractors which are not subsequently paid to the Company by the Customer or any consignee.
- c) The Customer shall defend, indemnify and hold harmless the Company in respect of any claims for general average and costs, and shall provide any security requested by the Company for release of any Goods that are subject to the said claim for general average.
- d) The Customer shall indemnify the Company in respect of:-
- i) any loss or damage arising from any inherent defect, quality or vice of the Goods; and
 - ii) all or any liability in respect of any loss of profits or indirect or consequential loss or damage of any kind arising from the Services performed in respect of the Goods including loss of market, or loss of contracts, howsoever caused.

8. Insurance

The liability of the Company is defined and limited to any amount stated for specified loss and damage. The Customer is therefore advised to seek its own insurance cover generally.

9. Subcontracting

a) The Company and any Subcontractor shall be entitled to subcontract on any terms the whole or any part of the Services and any exemption, limitation, condition herein contained and every right, exemption from liability, defence and immunity applicable to the Company or to which the Company is entitled shall be available and extend to protect all Subcontractors, every agent or servant of the Company, every other person by whom the carriage or Services or any part thereof is performed and all persons who are or may be vicariously liable for the acts or omissions of any of the persons other than the Company mentioned herein. Similarly, every right, exemption from liability, defence and/or immunity applicable to any Subcontractor shall be available and extend to protect the Company. The Company shall be deemed to be acting as agent or servant on behalf of all such persons who shall to this extent be deemed to be parties to these Terms and Conditions.

b) The Customer undertakes:

- (i) that no claim or allegation shall be made, whether by the Customer or any other person who is or may subsequently be interested in the Services and/or the Goods, against any Subcontractor which imposes or attempts to impose upon such Subcontractor any liability whatsoever and howsoever arising (including but not limited to liability arising from negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods; and
- (ii) that, if such claim or allegation should nevertheless be made, the Customer shall indemnify the Company and the Subcontractor against whom such claim or allegation is made against the consequences of such claim or allegation.

10. Quotations

Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion.

11. Routes and Procedures

Subject to the express written instructions of the Customer, the Company reserves the right to choose or vary the means, route and procedure to be followed in respect of the carriage or Services performed in respect of the Goods. The Customer hereby authorises the Company to complete the carriage or Service with reasonable dispatch and to substitute alternate carriers or Service providers without notice to the Customer and with due regard to the interests of the Customer substitute other means of transport or Service.

12. Brokerage and Commission

The Customer acknowledges and agrees that the Company may receive allowances, brokerages and commissions from shipping and forwarding agents, insurance brokers, airlines, and any other persons with whom the Company deals pursuant to this agreement and that the Company shall retain all such allowances, brokerage and commission for its own account and shall not be obliged to disclose receipt of the same or account to the Customer for all or any part of them.

13. Payment of Duties

The Customer authorises the Company and its Subcontractors, but with no obligation on the part of the Company and its Subcontractors to advance any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the Customer indemnifies the Company for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by the Company in connection therewith.

14. Responsibility for Charges, Terms of Credit

- a) The Customer shall be and shall remain responsible to the Company for all charges incurred for any reason for the Services performed in respect of the Goods, or any other directions the Customer may issue either orally or in writing. Such charges shall be deemed fully earned as soon as the Goods are loaded and despatched from the Customer's premises or otherwise delivered by the Customer to the Company and shall be immediately payable and non-refundable. If a Customer instructs the Company to provide any Service the Customer shall remain liable for the cost and charges of that Service.
- b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.
- c) Unless otherwise agreed by the Company in writing, the Customer must pay the full amount of each invoice in cash immediately on receipt of the Company's invoice.
- d) If payment is not made within the period set out above, or as otherwise agreed by the Company in writing, the Customer agrees to pay:
 - i) Interest at the rate of 5% per annum above the Indicator Lending Rate of the National Bank of Australia as applicable from time to time, such interest to be calculated daily from the day on which any amount becomes overdue for payment until the date of actual payment; and
 - ii) The costs incurred in collecting the debt.
- e) Payment will be first applied to any charges incurred under (d) above, and then to any other outstanding charges.
- f) The Customer agrees not to instruct any third party to invoice the Company for any goods or services unless the Company has previously agreed in writing to this being done and has agreed to pay for the said goods or services.

15. Lien

The Company shall have a particular and general lien on all Goods or cargo of the Customer and any documents relating thereto and on any other goods or cargo of the Customer in the possession or control of the Company or any documents relating thereto and on any other goods or cargo of the Customer which may come into the possession or control of the Company or any documents relating thereto for all sums payable by the Customer to the Company (whether overdue or not) and for that purpose the Company shall have the right to sell any such goods by public auction or private treaty without further notice to the Customer.

16. Valuables, Dangerous Goods, Perishable Goods, Livestock, etc.

- a-i) Except as agreed in writing, the Company will not accept Dangerous Goods, Valuables, Perishable Goods, livestock or plants for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- a-ii) Any such Valuables, Dangerous Goods, Perishable Goods, livestock or plants may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. If such Valuables, Dangerous Goods, Perishable Goods, livestock or plants are accepted pursuant to a written agreement, they may nevertheless be destroyed or dealt with if deemed necessary in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event that the Goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability therefor and the Customer shall indemnify the Company and its Subcontractors from and against all costs and expenses with respect thereto.
- b) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other devices they are carried in) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages, or expenses arising in consequence of any breach of this provision.

c) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

17. Delivery

a) The Company is authorised to deliver the Goods to the consignee or his agent at the address nominated to the Company by either the Customer, the Company, the consignee or their agents and it is expressly agreed that the carrier shall be deemed to have delivered the Goods in accordance with these Terms and Conditions if it obtains a receipt or signed delivery docket for the Goods from any person at that address.

b) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under these Terms and Conditions.

c) Dates specified for completion of carriage or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date or dates or for any consequences of any delay.

18. Sale and Disposal of Goods

The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to compliance with any applicable law, to sell or dispose of:

a) Goods which, in the opinion of the Company or Subcontractor, cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the consignee or for any other reason, and

b) any Perishable Goods which in the opinion of the Company or the Subcontractor appear to be deteriorating,

if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

19. GST

Clause 19 applies if the Company is or may become liable to pay GST in relation to any Supply under these Terms and Conditions (a "Taxable Supply"). A Taxable Supply may comprise the whole or any part of the Services.

a) Unless otherwise stated, all charges quoted by the Company are exclusive of GST. In addition to such charges, the Customer must pay to the Company GST on a Taxable Supply of an amount equal to the Company's GST exclusive charge for the Taxable Supply multiplied by the GST Rate. GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the Company's GST exclusive charge is payable. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the Company's GST exclusive charge is payable under these Conditions.

b) The Company must issue an Invoice to the Customer for the amount of GST referable to a Taxable Supply. The Company must include in such Invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.

c) If the Customer makes default in the payment on the due date of any GST payable pursuant to Clause 19 or pursuant to any GST Law, then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand the GST payable and an amount equal to the amount of any damages, penalty, interest or additional GST that may become payable by the Company arising out of the default of the Customer

20. Regulation Compliance

The Customer shall comply with (and will be solely responsible for compliance with) all applicable laws and Government regulations of any country to, from, through or over which the Goods may be carried, including those relating to packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations. The Company shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision.

21. Law and Jurisdiction

This agreement and these Terms and Conditions shall be governed by the laws of Victoria, Australia and any dispute arising under this agreement shall be determined exclusively by the courts of Victoria.

22. Enforceability

It is hereby agreed that if any provision or part of any provision of these Terms and Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof. Further, should the Company elect not to exercise any of its rights under these Terms and Conditions, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

23. Customer's Forms

Any use or acceptance of an order on the Customer's own form will not derogate from the application of these Terms and Conditions which shall prevail over any other terms submitted by the Customer or the Customer's agent.

24. Other Provisions

a) Any relief from liability contained in these Terms and Conditions is to be read subject to any restriction on contracting out of liability provided in any legislation binding on the Company so that the provisions for relief contained in this agreement are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective and all the provisions hereof are severable and effective independently of any provisions which are null and void or ineffective by reason of any legislation.

b) Notwithstanding anything contained in these Terms and Conditions, the Company shall continue to be subject to any implied warranty provided for in the Trade Practices Act (Cth) 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.

c) If the carriage of Goods involves an ultimate destination or stop in a country other than the country of departure, the **Warsaw Convention (1929) or the Warsaw Convention as Amended at the Hague (1955) or the Montreal Convention (1999)** may be applicable and may govern and in most cases limit the liability of the carrier in respect of loss, damage or delay to cargo, unless a higher value is declared in advance by the Customer and a supplementary charge paid if required.

d) Any personal information about the Customer may be collected and held by the Company and may from time to time:

i) be used by the Company to assess the creditworthiness of the Customer, including disclosing any personal information to the a credit reference agency;

ii) be given to any other person in response to a credit enquiry by that other person or for debt collection purposes;

iii) be given to any other company in the Company's group of companies or used by the Company for sending the Customer marketing, promotional or other material relating to the services provided by the Company or group of companies.

Under the Privacy Act 1988 the Customer has the right to access to and correction of its personal information held by the Company.

25. Force Majeure

Where the Company is unable to carry out any obligation under these Terms and Conditions due to any circumstance, matter or thing beyond its reasonable control ("force majeure"), the Company shall be excused from such obligation to the extent of such prevention, restriction or interference so caused.