

By engaging Toll, the Sender agrees that the Services are subject to the terms and conditions set out below.

**1. Definitions**

1.1. In these conditions:

- 1.11. **"TOLL"** means TOLL TRANSPORT PTY LTD ABN 31 006 604 191, its officers, employees, Subcontractors and its related bodies corporate within the meaning of that expression in Section 9 of the *Corporations Act 2001* (Cth).
- 1.12. **"Charges"** mean TOLL's quoted charges for Services calculated under its rates schedule or other agreed rates, the charges in 6 and any tax including a goods and services tax ("GST") levied directly on a transaction or supply under these conditions.
- 1.13. **"Consequential Loss"** means any consequential, incidental or indirect loss or damage, any punitive, special or contingent loss or damage, any economic loss, expense or damage, whether direct or indirect, including by way of example and not limitation loss of profit, loss of revenue, loss of opportunity, loss of (or loss of anticipated) use, loss of production, loss of income, loss of profits, loss of business, loss of savings and business interruption whether or not the loss or damage is based on contract, indemnity tort, strict liability or otherwise, and whether or not the indirect loss or damage was foreseeable which is suffered by anyone (including third parties) as a result of any act or omission of any party arising under, of our or in connection with these conditions.
- 1.14. **"consumer"** means an individual who acquires our services wholly or predominately for personal, domestic or household use or consumption.
- 1.15. **"Force Majeure Event"** means any event outside of TOLL's reasonable control, including without limitation, Inclement Weather, cyclone, fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage or any act or omission of air traffic control, airline pilot, third person or public authority.
- 1.16. **"Goods"** mean any chattels, articles or items supplied by or on behalf of the Sender and accepted by, and not being the property of TOLL, in relation to which the Services or any part of the Services are performed, together with any receptacle, container or packaging in or on which the items are stored, contained or handled.
- 1.17. **"GST"** has the meaning given to that term in the GST Law.
- 1.18. **"GST Law"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.19. **"Inclement Weather"** means rain or abnormal climatic conditions (including without limitation events such as hail, snow, cold, high wind, severe dust storm and extreme high temperature) in which it would either be unreasonable or unsafe to
  - 1.1.9.1. require employees to continue working; or
  - 1.1.9.2. operate equipment.
- 1.110. **"Person"** includes any person, firm, corporation, governmental authority or state or federal government.
- 1.111. **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
- 1.112. **"Receiver"** means the person nominated by the Sender at the time of booking the Service with TOLL as the receiver of the Goods and/or Services
- 1.113. **"Sender"** includes, in the event of storage, the Storer.
- 1.114. **"Services"** means the whole of the operations and services performed or arranged by TOLL in relation to the Goods, including carriage, transportation movement, storage, customs clearance and the use of any information technology system, process or software developed by TOLL or a Sub-Contractor in relation to the operations and services, but excludes container hire.
- 1.115. **"Small Business Contract"** means a standard form small business contract as defined in the *Competition and Consumer Act 2010* (Cth).
- 1.116. **"Sub-Contractor"** means:
  - 1.1.16.1. any Person TOLL arranges to provide Services for the Goods; and
  - 1.1.16.2. any Person who is a servant, agent, employee or sub-contractor of TOLL or any person in 1.1.1.

**2. Services Basis**

- 2.1. TOLL IS NOT A COMMON CARRIER and does not accept any liability as a common carrier and may refuse to perform Services for the Goods for any Person.
- 2.2. TOLL relies on the details supplied to it but TOLL cannot verify and does not admit their accuracy or completeness and a signature by TOLL is only an acknowledgment for the number of items received.
- 2.3. TOLL will deliver Goods to other than the Receiver's address only by special arrangement and provided suitable delivery facilities are available at all hours.
- 2.4. Unless otherwise agreed TOLL will not exchange any pallets with any Person and the Sender must not transfer any pallets to any account TOLL may have with a pallet hirer.
- 2.5. If you are a consumer or these terms and conditions qualify as a Small Business Contract:
  - 251. these conditions do not affect any rights you have under Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
  - 252. clause 6.6 (change in rates), 4.2.5 (contracting out of certain provisions in the PPSA) and all of Clauses 9 (Exclusions and Limitations) and 10 (Limitations of Liability), do not apply to the contract unless and only to the extent:
    - 2.5.2.1. the contract is for the carriage of Goods by ship; or
    - 2.5.2.2. Services are supplied outside Australia; and
  - 253. the laws in force in the place in which the contract is made apply to the contract.

**3. Sender's Obligations**

- 3.1. The Sender must:
  - 3.1.1. not tender for Services any volatile or explosive Goods or Goods which are or may become dangerous, flammable or offensive (including radioactive materials) or which are or may become liable to damage any person or property without first presenting to TOLL a full written description disclosing the nature of those Goods;
  - 3.1.2. make the Goods conform to the Receiver's requirements and must pay any expense incurred by TOLL if the Sender fails so to do;
  - 3.1.3. if the Services include storage or holding of Goods:
    - 3.1.3.1. unless otherwise agreed, give at least 7 clear days' notice to TOLL of its intention to collect the Goods or have them collected or redelivered; and
    - 3.1.3.2. If TOLL gives notice to the Sender requiring the Sender to remove the Goods or any part from storage, pay any Charges outstanding and then remove the Goods or that part within 7 days of the date of notice.

**4. Sender's Warranties and Indemnities**

4.1. The Sender warrants:

- 4.1.1. it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and packaging of the Goods and that, given their nature, the Goods are packed in a proper way to withstand the ordinary risks of the Services;
- 4.1.2. the Person delivering the Goods to TOLL for the Services is authorised to do so and to sign this contract;
- 4.1.3. it is either the owner or the authorised agent of the owner of the Goods and it accepts these conditions for itself and the Receiver as well as for any other Person for whom the Sender is acting; and
- 4.1.4. neither it nor any other Person will make an allegation or claim against TOLL or any other person about the Service AND the Sender indemnifies TOLL from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties, the Sender's obligations or these conditions AND from and against any loss, penalty, fine or liability arising under, out of or in connection with loss of or damage to the Goods, the performance of the Services, any claim by any person against TOLL in relation to the Services (including for negligence) and any claim against TOLL (including for negligence).
- 4.2. Further, the Sender acknowledges and agrees that if TOLL gives the Sender possession of TOLL's plant, container or equipment ("personal property") at any time during our provision of the services:
  - 4.2.1. the personal property is and remains at all times TOLL's property and at all times the Sender holds the personal property as bailee for TOLL; and
  - 4.2.2. the Sender must not offer to sell, assign, sub-let, mortgage, pledge or otherwise part with possession or deal with the personal property in any way which is inconsistent with TOLL's rights over the personal property; and
  - 4.2.3. TOLL is permitted at any time to retake possession of the personal property; and
  - 4.2.4. The Sender will not retain continuous possession of the personal property for more than 90 days (in the case of serial numbered goods as defined under the PPSA), or more than 1 year in any other case.
  - 4.2.5. The Sender irrevocably waives any right the Sender may have to receive notices under sections 124(4) (enforcement of liquid assets – notice to grantor), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention) and 157(1) (verification statement) of the PPSA.
- 5. **Toll's Rights**
  - 5.1. Generally:
    - 5.1.1. If, in TOLL's opinion the Goods are or are liable to become dangerous, flammable, explosive, volatile, offensive or damaging in nature, TOLL may at any time and at the Sender's cost destroy, dispose of, abandon or render them harmless without compensation to the Sender, Receiver or third party and without prejudice to TOLL's right to any Charges.
    - 5.1.2. if the Sender instructs TOLL to use a particular method of providing the Services TOLL will give priority to that method but at its absolute discretion TOLL may provide the Services by another method.
    - 5.1.3. if any identifying document or mark is lost, damaged, destroyed or defaced TOLL may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership or destination.
    - 5.1.4. TOLL may carry, store, redirect, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the Goods with others and as principal or agent may arrange for the Services to be provided by any Sub-Contractor on any terms.
    - 5.1.5. TOLL may lease, hire or use any container, pallet or rail wagon in which or on which the Goods may be placed or packed and subject to the terms of any bill of lading, hire lease agreement, equipment hand-over agreement, interchange receipt or other contract for transport whether by sea, rail, road or air and give any receipt for any container or pallet or rail wagon.
    - 5.1.6. If, in TOLL's opinion the Goods are unsuitable for handling by TOLL using the equipment and operating procedures normally employed by TOLL in performing the Services, TOLL may in its absolute discretion:
      - 5.1.6.1. Refuse to provide any part of the Services; or
      - 5.1.6.2. Take whatever measures TOLL considers necessary to make the Goods suitable for handling by TOLL at the Sender's cost.
  - 5.2. For transport or distribution of Goods:
    - 5.2.1. TOLL is authorised to deliver the Goods at the address given to TOLL by the Sender or any other address directed by the Receiver and TOLL will be taken to have delivered the Goods if at either address TOLL obtains from any person an acknowledgement of delivery.
    - 5.2.2. If the address is unattended or the Receiver fails to take delivery of the Goods, TOLL may:
      - 5.2.2.1. deposit the Goods at the Receiver's address;
      - 5.2.2.2. store the Goods; or
      - 5.2.2.3. return the Goods to the Sender and its action under 5.2.2.1, 5.2.2.2 or 5.2.2.3 will constitute delivery.
    - 5.2.3. If the transport method is rail and the Receiver's address is a town or place where TOLL does not have a receiving depot, TOLL will be taken to have delivered the Goods if they are delivered to the nearest railhead.
    - 5.2.4. If TOLL believes it is necessary or desirable, TOLL may deviate from the usual route or method of transport.
  - 5.3. For storage of Goods:
    - 5.3.1. If any Charges are unpaid for 7 days TOLL may require the Sender to remove the Goods.
    - 5.3.2. Unless and until all Charges have been paid, a receipt is signed by or on behalf of the Sender, and the Person applying for redelivery, if not the Sender, tenders a proper authority signed by the Sender, TOLL does not have to make the Goods available to any Person.
    - 5.3.3. if the Sender fails to remove Goods the subject of a notice under 3.1.3.2 within the period specified in the notice, TOLL may remove the Goods and return them to the Sender at the Sender's last known address, or store them in the manner and in the place as TOLL thinks appropriate at the expense and risk of the Sender.

- 6. Charges**
- 6.1. The Sender must or, if a Person other than the Sender is nominated on the front or on TOLL documentation, then that Person must:
- 6.1.1. unless otherwise agreed, pay TOLL the Charges in Australian dollars within 7 days of the date of TOLL's invoice;
  - 6.1.2. pay freight by weight or measurement as TOLL selects;
  - 6.1.3. if the Goods are at any time re-weighed or re-measured, pay any proportional additional freight and, if required by TOLL, additional charges may apply;
  - 6.1.4. pay any charge for demurrage at the rate charged to TOLL directly or indirectly by any railway or shipping authority or other Person;
  - 6.1.5. pay TOLL's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, airline, shipping, customs, excise, or warehouse authority or other Person;
  - 6.1.6. if any of the Goods are under Customs control, pay all Customs duty, excise duty and costs (including any fine or penalty) which TOLL becomes liable to pay or pays;
  - 6.1.7. supply or pay for labour or machinery or both to load, unload, maintain or protect the Goods;
  - 6.1.8. pay the cost or expenses incurred by TOLL for delay and demurrage under 11.1 and 11.2;
  - 6.1.9. pay the cost, expense or loss to TOLL of destruction or disposal under 5.1.1, storage and return under 5.2.2, of opening or inspecting under 5.1.3 and of advertising and sale under 7.2.2;
  - 6.1.10. compensate TOLL for any cost, expense or loss to TOLL's property or any Person caused by the Goods, the Sender, the Receiver or any Person acting for the Sender or the Receiver;
  - 6.1.11. if any Charges are not paid on the date for payment, pay interest on the unpaid Charges at a rate 4% higher than the prevailing rate under the Penalty Interest Rates Act 1983 (Victoria) and pay any charge or amount owing to TOLL under any other contract; and
  - 6.1.12. pay TOLL any costs not recouped out of the proceeds of sale of the Goods under 5.3.3 or 7.2.
- 6.2. If a Person other than the Sender is nominated to pay the Charges and doesn't do so within 7 days of the date for payment, the Sender must pay the Charges and a transfer charge of \$20.00 immediately upon TOLL's demand.
- 6.3. TOLL's Charges are earned as soon as the Goods are picked up or accepted for storage, whether they are delivered or not and whether damaged or not.
- 6.4. TOLL will not refund any payment for Charges under any circumstances.
- 6.5. TOLL may change its rates schedule or other agreed rates at any time with notice to the Sender.
- 6A GST**
- Interpretation*
- 6A.1 In this condition 6A, a word or expression defined in the GST Law has the meaning given to it in that legislation.
- GST exclusive amounts*
- 6A.2 Any consideration to be paid or provided for a supply made under or in connection with these conditions, unless specifically described in these conditions as GST inclusive, does not include an amount on account of GST.
- GST gross up*
- 6A.3 Despite any other provision in these conditions, if a party (Supplier) makes a supply under or in connection with these conditions in respect of which GST is imposed (not being a supply the consideration for which is specifically described in these conditions as GST inclusive):
- (a) the consideration payable or to be provided for that supply under these conditions is increased by, and the recipient of the supply (Recipient) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
  - (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- Reimbursements (net down)*
- 6A.4 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense.
- Tax invoice*
- 6A.5 A party need not make a payment for a taxable supply made under or in connection with these conditions until it receives a tax invoice for the supply to which the payment relates.
- Adjustment events*
- 6A.6 If an adjustment event arises in respect of a supply made under or in connection with these conditions, then:
- (a) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier will refund the difference to the Recipient; or
  - (b) if the Supplier's corrected GST amount is greater than the previously attributed GST amount, the Recipient will pay the difference to the Supplier; and
  - (c) the Supplier must issue an adjustment note to the Recipient.
- 7. Lien**
- 7.1. TOLL has a general lien on the Goods and on any other goods of the Sender or the person nominated by the Sender for all Charges due or which become due on any account whether for the Services concerning the Goods or any other goods or any other TOLL service.
- 7.2. If the Charges are not paid or the Sender or the person nominated by the Sender or Receiver fails to take delivery or return of the Goods, TOLL may without notice and, in the case of perishable or dangerous Goods immediately:
721. store the Goods as TOLL thinks fit at the Sender's or the person nominated by the Sender's risk and expense; or
  722. open any package and sell all or any of the Goods as TOLL thinks fit and apply the proceeds to discharge the lien and costs of sale.
- 7.3. TOLL may deduct or set-off from any monies due from TOLL to the Sender or the person nominated by the Sender under any contract, debts and monies due from the Sender to TOLL under these conditions or any contract.
- 8. Claims**
- 8.1. If TOLL is liable for damage to or loss of the Goods or any part of the Goods, no claim for the loss or damage may be made unless notice of the claim is lodged in writing within 2 days of the date of delivery or, for non-delivery, within 7 days of the anticipated date of delivery.
- 8.2. The failure to notify a claim within a time under 8.1 is evidence of satisfactory performance by TOLL of its obligations.
- 8.3. Despite any other condition other than 10, TOLL will be discharged from all liability for loss or damage or the Services unless an action is brought within 6 months of completion of the Services or the anticipated date of completion of the Services.
- 8.4. Time is of the essence in relation to all time periods in this condition.
- 9. Exclusions and Limitations**
- 9.1. Subject to 10, TOLL excludes from these conditions all conditions, warranties and terms implied by statute, general law or custom.
- 9.2. Subject to 10, the Goods will at all times be at the risk of the Sender and TOLL excludes all liability to any Person, including the Sender, for acts or omissions of TOLL in tort (including negligence), contract, bailment or otherwise for loss of, damage to or deterioration or contamination of the Goods, or any delay, non-delivery or other failure to supply the Services or arising out of the Goods, the Services or these conditions.
- 9.3. Subject to 10, TOLL excludes all liability for, and the Sender and Receiver release and indemnify TOLL against all loss, damage, cost and expense from any claim by any Person in tort (including negligence), contract, bailment or otherwise for loss or damage to any property, injury to, or death of any Person arising out of any acts or omissions of TOLL or any or all of the Goods, the Services, any delay, non-delivery or other failure to supply the Services or these conditions.
- 9.4. These conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental term.
- 9.5. TOLL, in addition to acting for itself, also acts as agent of and trustee for each of its servants, agents and Sub-Contractors so they are entitled to the full benefit of these conditions, including any exclusions or limitations of liability, to the same extent as TOLL.
- 9.6. Even if TOLL breaches any of these conditions, all the rights, immunities and limitations of liability in these conditions continue to have their full force and effect in all circumstances.
- 9.7. TOLL is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments for any Person.
- 9.8. Any dates specified or nominated by Toll for completion of the Services are estimates only and Toll is not liable for any delay or failure to complete the Services by those dates.
- 10. Limitation of Liability**
- 10.1. The parties acknowledge that:
- 10.1.1. under applicable state, territory and Commonwealth law (including the Competition and Consumer Act 2010 Cth), certain conditions and warranties may be implied in any contract based on these conditions and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (the "Non-Excludable Rights"); and
  - 10.1.2. notwithstanding any clause of these conditions, the Non-Excludable Rights are not excluded, restricted or modified by these conditions except to the extent permitted by law.
- 10.2. Notwithstanding any other clauses in these conditions, if any liability is found to attach to TOLL to the Sender or any Person acting for the Sender, TOLL'S liability is limited to:
1021. the supplying of the Services again; or
  1022. the cost supplying the Services.
- 10.3. Notwithstanding any other clause in these conditions TOLL does not accept liability for Consequential Loss under any circumstances.
- 11. Force Majeure, Delay and Demurrage**
- 11.1. Without limiting 9.8, if TOLL cannot carry out an obligation to the Sender under these terms and conditions either in whole or in part due to a Force Majeure Event:
- 11.1.1. TOLL's obligations will be suspended in whole or in part for the duration of the Force Majeure Event, to the extent advised in writing by TOLL to the Sender; and
  - 11.1.2. the Sender must pay TOLL any costs and charges incurred by Toll arising out of or in connection with a Force Majeure Event. This includes, but is not limited to, standby or detention rates for equipment, labour costs and storage costs.
- 11.2. The Sender must pay TOLL any additional charges as reasonably determined by TOLL if:
1121. the Receiver is not present during normal trading hours or the time specified; or
  1122. if there is any delay outside TOLL's control in loading or unloading greater than 30 minutes.
- 12. Law**
- 12.1. These conditions are governed and must be construed under the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State.
- 13. Precedence of Conditions**
- 13.1. The use of any Sender issued documentation does not derogate from the application of these conditions regardless of timing of issue of documentation, any statement to the contrary in the documentation or any acceptance by TOLL of the documentation for use in relation to the Goods and Services.
- 14. Severability**
- 14.1. If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition.
- 15. Variations and Waiver**
- 15.1. TOLL is not bound by any waiver, discharge or release of a condition or any agreement which varies these conditions unless it is in writing and signed for TOLL under Power of Attorney.
- 15.2. If TOLL waives a breach of a condition the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.
- 16. Temperature Controlled Services**
- 16.1. If a temperature control section is completed on the front or on TOLL documentation:
- 16.1.1. the Sender acknowledges temperature variations can occur; and
  - 16.1.2. TOLL will endeavour to ensure the Services are provided at temperatures within accepted tolerance levels.
- 16.2. Any temperature record maintained by TOLL will be conclusive of the temperatures during the Services.
- 17. Container Hire**
- 17.1. Should the Sender wish to hire any containers from TOLL, such hire shall be governed by the terms set out in *TEM SD 021 Container Hire Terms*.
- 18. Assignment**
- 18.1. TOLL may assign any of its rights and obligations under these conditions, or novate these conditions, without Sender's written consent. TOLL will provide notice to Sender of any such assignment or novation.
- 18.2. Sender may not transfer, assign or otherwise dispose of or deal with its rights or obligations under these conditions without TOLL'S prior written consent.