

## Service Conditions - DX

TOLL TRANSPORT PTY. LIMITED

### A.C.N. 006 604 191 Trading as DX Mail

Toll Transport Pty Limited trading as DX Mail ("DX") operates a document exchange facility and document handling service for its Members and supplies services to Customers.

For a basic Membership Fee, Members are entitled to utilise the Exchange facilities to exchange Documents and Goods with other Members. Members and Customers may also choose from the Additional Services range offered by DX.

Please read the following Terms of Agreement carefully before you:

- (1) proceed to apply for Membership by using the DX Membership Application; or
- (2) proceed to make use of the Services offered by DX.

The Terms of Agreement are comprised of two parts:

- (1) Part A (General Conditions) which apply to all Customers and Members; and
- (2) Part B (Member Conditions) which apply only to Members.

By either completing the Membership Application, providing the essential information required in the Membership Application, or by acquiring the Additional Services, you will be deemed to have accepted the Terms of Agreement as governing your business transactions with DX.

### PRIVACY STATEMENT

DX collects the information about Members requested on the Membership Application in order to be able to provide you and other DX Members with our document exchange facilities and document handling services. From time to time, we will send you information about the Additional Services we offer to Members and these will be sent to the contact details which you most recently provided to DX. We provide a publicly available online directory ("**Directory**") containing details of DX addresses and postal addresses of existing Members in order to enable you and our other customers to use our service effectively.

It is a condition of membership that a Member consents and authorises DX to collect, use and disclose the information obtained from the Member at the time the Member elected to join DX, along with any updates and additional information provided by the Member, for the purposes of providing products and services, improving customer service, including by means of research, marketing and planning and DX marketing its products or services, to improve the provision of the Services. In particular, Members consent to their inclusion in the Directory.

Some laws require us to collect and disclose detailed information about the sender of goods. If this is the case, you may be asked to provide us with additional information when

using our Services.

If you wish to view information DX holds about you or have questions about this privacy statement, please contact us at Toll Transport Pty. Limited, DX 1 Melbourne VIC, 2 Douglas Street, Port Melbourne, Victoria 3207 or email [dxmail@tollgroup.com](mailto:dxmail@tollgroup.com).

## DEFINITIONS AND INTERPRETATIONS

### 1. Definitions

In this Agreement unless the context otherwise requires:

- (1) “**Additional Services**” means additional services available to Members in addition to the Standard Services provided by DX as Notified by DX from time to time and includes but is not limited to Bulk Mail, DX Premium, DX Express, DX Stationery, Concierge Services, Clear and Lodge, interstate Document exchange and International Services;
- (2) “**Agent**” means an officer, employee, consultant, agent, representative, director or Related Entity of a Member;
- (3) “**Agreement**” means these Terms of Agreement;
- (4) “**Australian Consumer Law**” means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time;
- (5) “**Bulk Mail**” means the use of the Exchange facilities to deliver Documents or Goods (as the case requires) containing substantially identical documents;
- (6) “**Business Day**” means a day that is not a Saturday, Sunday or any other day which is a public holiday or bank holiday in the place where an act is to be performed or a payment is to be made;
- (7) “**Clear and Lodge**” means the pickup and/or drop off delivery service for both DX and/or Australia Post mail including:
  - a. the clearing of incoming Documents/Goods from an Exchange or PO Box and delivery to the relevant Member or Customer; and
  - b. the collection of outgoing Documents/Goods from the Member or Customer and lodgement in the appropriate mail centre;
- (8) “**Claim**” includes a claim, notice, demand, action, proceeding, litigation, investigation, judgement, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, bailment, tort (including negligence) or statute and whether involving a third party or a party to this Agreement;
- (9) “**Concierge Services**” means access to a mailhouse service for the print, preparation, fulfilment and lodgement in mail networks of direct marketing and other Bulk Mail lodgements;
- (10) “**Consumer**” means a consumer within the meaning of section 3 of the Australian Consumer Law;
- (11) “**Customer**” means any person, sole practitioner, firm, corporation, association or

government department or instrumentality who is not a Member and acquires the Services for business or commercial purposes;

- (12) "**Dangerous Goods**" means any articles or substances which are, or may become, a risk to health, safety, property or the environment and include, without limitation, articles or substances so classified, specified or listed in laws, including the IATA Dangerous Goods Regulations, the Australian Dangerous Goods Codes for Transport and the Aviation Transport Security Act 2004 (Cth);
- (13) "**Document**" means any goods, articles, packages, property, document or envelope or package not being larger than 140 x 345 x 290mm or exceeding 5kg in weight of a professional, commercial or business nature received by DX for the provision of the Services;
- (14) "**DX**" means Toll Transport Pty. Limited A.C.N. 000 604 191 a company registered in Australia its successors and assigns;
- (15) "**DX Agent**" means any person who is a contractor, Subcontractor or who at any time during the provision of the Services is or becomes a servant, representative or agent of DX or any contractor of DX;
- (16) "**DX Box**" means a receipt point, whether a physical DX Box or another designated point of receipt of Documents or Goods (as the case requires);
- (17) "**DX Express**" means the delivery of Documents or Goods from a Member to a street address in Australia or a DX exchange centre in Australia to the stated weight on the product;
- (18) "**DX Number**" means the addressing protocol used by DX to identify a Member's DX Box;
- (19) "**DX Premium**" means the delivery of Documents or Goods to the stated weight on the product to a DX address in Australia;
- (20) "**DX Stationery**" means the range of envelopes and satchels (whether pre-printed or not) developed for lodgement via the DX network available for Members to purchase;
- (21) "**Exchange**" means in respect of a Member the Service Centre stated on the Membership Application as accepted by DX and at which that Member is located and has rights of reception and lodgement of Documents or Goods (as the case requires);
- (22) "**Force majeure event**" means anything outside DX's or any DX Agent's reasonable control, including without limitation, 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, strikes, weather conditions, traffic restrictions or other restrictions imposed by any governmental agency, fuel shortage, act or omission of air traffic control, airline pilot or any third person or public authority;

- (23) “**Goods**” means the goods, articles, documents, envelopes, packages and other property received by DX that are not Documents for the provision of the Services;
- (24) “**GST**” means a tax on goods, services and other things including any value added tax, broad based consumption tax or other similar tax introduced in any jurisdiction in Australia and includes taxed levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999;
- (25) “**Home State**” means, in relation to a particular Member, the state or territory in which the Member’s Exchange is located;
- (26) “**Insolvency Event**” means in respect of the Member or Customer as appropriate, it is the subject of or an order is made for a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an administrator, controller or managing controller, receiver, receiver and manager, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity is appointed to it or any of its assets, or an analogous or equivalent event or proceeding in any jurisdiction or where the Customer or Member makes an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them or the Customer or Member becomes insolvent, or presumed by a court to be insolvent, or stops or suspends payment to creditors generally or is taken to be unable to pay its debts as and when they fall due;
- (27) “**International Services**” means the provision of Services to an address or delivery location outside of Australia;
- (28) “**Interstate Letters**” means an envelope not being larger than 360 x 260 x 20mm and weighing no more than 250g addressed to a DX address in a State other than in the Home State;
- (29) “**Liabilities**” means all liabilities (whether actual, contingent or prospective), losses, damages, outgoings, charges, harm, fees, costs, penalties, compensation, fines and expenses of whatever description, including legal costs on a full indemnity basis;
- (30) “**Member**” means any sole practitioner, firm, corporation, body corporate, association or government department or instrumentality who or which has applied for Membership for business or commercial purposes by completing and submitting the Membership Application to DX, who are renewing an existing Membership, or who has proceeded to acquire the Services but whose Membership has not formally been processed by DX or has expired and includes an Agent of that sole practitioner, firm, corporation, association or government department or instrumentality;
- (31) “**Membership**” means membership of DX;
- (32) “**Membership Application**” means the membership application form for DX Services as Notified and provided by DX which forms part of this Agreement;

- (33) “**Membership Fee**” means the annual fee payable by Members for annual membership in accordance with clause 6 for provision of Standard Services;
- (34) “**Notice**” means a written communication provided to Members and Customers by DX whether by way of brochures, letters, emails or information published online on DX’s website and “**Notified**” has a corresponding meaning;
- (35) “**Owner**” means a person who, at any time during the Agreement, owns or has any proprietary, legal or beneficial ownership or possession interest in or any contractual or equitable right to or in respect of the Documents or Goods and includes any deliverer of the Documents or Goods;
- (36) “**Related Body Corporate**” has the meaning ascribed to that expression in section 9 of the Corporations Act 2001 (Cth);
- (37) “**Related Entity**” has the meaning ascribed to that expression in section 9 of the Corporations Act 2001 (Cth);
- (38) “**Service Centre**” means a place conducted by, or under the control of DX where, under this Agreement, Members may:
- (a) deposit Documents or Goods (as the case requires) for carriage by DX; and
  - (b) collect Documents or Goods (as the case requires) carried by DX;
- (39) “**Services**” means any or all of the operations and services, Standard Services and including any of the Additional Services undertaken by DX, any Related Body Corporate of DX or any DX Agent in connection with Documents and/or Goods including their collection, carriage, transportation, storage or delivery;
- (40) “**Specified Rate**” means the interest rate prescribed by the Penalty Interest Rates Act 1983 (Vic) from time to time plus four percent (4%) per annum.
- (41) “**Standard Services**” means services provided by DX, any Related Body Corporate of DX or any DX Agent from an Exchange via an allocated DX number in accordance with clause 32.1 and does not include Additional Services; and
- (42) “**Subcontractor**” includes any person, firm, corporation, government authority, state or federal government who under a contract or arrangement with any person (whether or not DX) performs or agrees to perform any of the Services.

## 2. Interpretation

In this Agreement unless the context otherwise requires expressions in the singular will include the plural and vice versa, expressions denoting one gender will include all genders and a reference to a person will include a corporation and every other entity recognised by the law. A reference to this Agreement includes any amendment or variation to, or replacement of, it from time to time.

## **PART A. TERMS AND CONDITIONS APPLICABLE TO ALL CUSTOMERS AND MEMBERS**

### 3. Establishment of Terms of Contract with Customers and Grant of Membership

- 3.1 The Customer or Member agrees to comply with this Agreement and acknowledges and agrees that all Services provided by DX to the Customer or Member will be provided in accordance with the terms of this Agreement.
- 3.2 By acquiring the Services, the Customer will be deemed to have accepted the terms and conditions of this Agreement and provided the consents specified in the Privacy Statement.
- 3.3 By lodging a copy of the Membership Application with DX and/or payment of the relevant Membership Fee, the applicant will be deemed to have accepted the terms and conditions of this Agreement and provided the consents specified in the Privacy Statement.
- 3.4 For existing Members, by continuing to request Services from DX after the expiry or cancellation of its current Membership or upon payment of the relevant Membership Fee for renewal of the Membership, the Member will be deemed to have accepted the terms and conditions of this Agreement and provided the consents specified in the Privacy Statement.
- 3.5 Membership is offered at the discretion of DX. DX has the right to accept or reject any Membership Application. DX is under no obligation to provide the Services to an applicant until the applicant has received written confirmation of acceptance of Membership from DX.
- 3.6 Each Member must update their name, addresses and other details as soon as practical after a change has occurred, by logging into their account at dxmail.com.au.
- 3.7 DX may, at its sole discretion, amend this Agreement from time to time.
- 3.8 Amendments to this Agreement will have effect from the time at which the Customer or Member is Notified of the amended Agreement.
- 3.9 Acceptance of the amended Agreement will be deemed by the Customer's or Member's continued use of the Services after the amended Agreement has been Notified to the Customer or Member as appropriate.
- 3.10 Any person purporting to enter into a contract or agreement on behalf of the Customer or Member as appropriate warrants that for all purposes of this Agreement they are the duly authorised Agent of the Customer or Member as appropriate and if they are not the duly authorised Agent of the Customer or Member as appropriate, then that person will be deemed to be the Customer or Member as appropriate and will be bound by the terms and conditions of this Agreement.

### 4. Termination of Membership and Customer Rights

- 4.1 DX reserves the right, in its absolute discretion and at any time, to:
  - (i) suspend or cancel the Membership of a Member; or
  - (ii) suspend, cancel or limit a Customer's use of the Services.

4.2 If DX cancels or suspends a Member's Membership, or at the expiry of a Member's Membership that is not renewed, the Member must immediately return to DX any DX Box or Exchange key and tag in the Member's possession or control and the Member is required to collect from DX all mail belonging to the Member currently in DX's control and possession.

4.3 If DX cancels or suspends a Member's membership, DX will reimburse pro rata the periodical membership fees already paid by the Member after the deduction of reasonable costs and expenses.

#### 5. Subcontractors

DX and any DX Agent are entitled to subcontract the Services on any terms.

#### 6. Fees

6.1 The DX fee structure is as Notified to Customers/Members from time to time by DX.

6.2 The Member agrees to pay to DX in advance the Membership Fee as determined by DX from time to time or as agreed between the parties and acknowledges that, unless Notified by DX otherwise, the Membership Fee does not include provision of Standard Services in respect of Goods (rather than Documents).

6.3 The Customer agrees to pay to DX in advance of the provision of the Services, the fees and charges relevant to the provision of the Services as determined by DX from time to time or as agreed between the parties.

6.4 All quotations for Additional Services are valid only for a period of 30 days and DX may, at its sole discretion, refuse any purported acceptance after that time, without being liable to give any reason.

6.5 DX will have the right to vary any quotation by notice in writing in the event that any legislation or regulation by any government authority varies any cost component of the Additional Services.

6.6 The Customer or Member must pay any fees and charges relating to Standard Services within 7 days from the date of the DX invoice and any fees and charges relating to Additional Services within 14 days from the date of the DX invoice unless otherwise Notified by DX.

6.7 The Membership Fee and any other applicable fees, rates and charges may be varied by DX from time to time at the absolute discretion of DX to reflect any increased usage of the Services by the Member.

6.8 Without limiting clauses 6.1 to 6.3, clause 6.7 and clause 35.5, the quoted fees or charges, the Membership Fee and the price for Additional Services will be subject to variation by DX where:

(i) there is a material change in any of the components of the costs of DX in providing the Services; or

(ii) any cost component of the quoted price is altered by the enactment, changes or



application of any statutory provision or regulation or any procedure or practice of any applicable authority or regulatory body.

- 6.9 In addition to the transport fees and charges, the Customer or Member must also reimburse DX for certain costs and expenses incurred relating to the Services and pay certain additional charges including:
- (i) DX's costs to comply with any laws or requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority not included in DX's fees and charges;
  - (ii) any excise, customs duty or applicable taxes (including any fine or penalty);
  - (iii) the cost, expense or loss to DX of destruction and disposal under clause 11.2 (Dangerous Goods), of opening and inspecting under clause 21.2 and of sale under clause 19.3 and clause 21.1;
  - (iv) an additional charge as reasonably determined by DX from time to time if DX provides Standard Services in respect of Goods (rather than Documents); and
  - (v) an additional charge as reasonably determined by DX if clause 19.3 applies (for the redelivery, storage, return of Documents or Goods if delivery cannot be effected) and if clause 19.4 applies (if there is any delay outside DX's control in loading or unloading greater than 30 minutes).
- 6.10 Additional Services are not included in the Membership Fees and payment of the Membership Fee does not entitle the Member to utilise the Additional Services, which shall be charged in accordance with clause 35.
- 6.11 If the Customer or Member as appropriate:
- (i) fails to pay any sum payable to DX or any Related Body Corporate of DX in accordance with this Agreement; or
  - (ii) suffers any Insolvency Event;
- then, without prejudice to any other remedy available to DX:
- a. all money which would become payable by the Customer or Member to DX or any Related Body Corporate of DX at a later date on any account becomes immediately due and payable without the requirement for notice;
  - b. DX may cease or suspend, for such period as it thinks fit, further supply of the Services to the Customer or Member; and
  - c. the Customer or Member must pay interest on the unpaid amount from the due date of payment until the sum is paid in full, at the Specified Rate. Interest payable under this clause will accrue and be payable from day to day and shall be calculated on the basis of actual days elapsed and a 365 day year.

## 7. GST

- 7.1 Words or expressions used in this clause 7 which are defined in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- 7.2 Any consideration to be paid or provided for a supply made under or in connection with this Agreement unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.
- 7.3 Despite any other provision in this Agreement, if a party ('Supplier') makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):
- (i) the consideration payable or to be provided for that supply under this Agreement, but for the application of this clause ('GST exclusive consideration'), is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable on the supply ('GST Amount'); and
  - (ii) the GST Amount 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.
- 7.4 If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.
- 7.5 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- 7.6 The Recipient need not pay the GST Amount until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- 7.7 If and to the event an adjustment event arises in respect of a supply made under or in connection with this Agreement, then:
- (i) if the Supplier's corrected GST Amount is less than the previously attributed GST Amount, the Supplier shall refund the difference to the Recipient;
  - (ii) Supplier's corrected GST Amount is greater than the previously attributed GST Amount, the Recipient shall pay the difference to the Supplier;
  - (iii) the Supplier must issue an adjustment note to the Recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event; and
  - (iv) any payment under clauses 7.7(i) or 7.7(ii) must be paid to the Supplier or Recipient (as the case may be) within 15 days of the adjustment note being issued by the Supplier.

8. No agency or partnership

The Customer or Member as appropriate acknowledges and agrees that nothing in this Agreement or in the use of Services will be construed or deemed to constitute a partnership, joint venture or agency as between DX and the Customer or Member.

9. Indemnity

Subject only to clause 13.1, the Customer or Member as appropriate is solely responsible for and agrees to indemnify DX any Related Body Corporate of DX, any DX Agent and all persons who are or might be liable, vicariously or otherwise, for the acts or omissions of any of the aforementioned persons or corporations for all Liabilities suffered or incurred by DX, any Related Body Corporate of DX, or any DX Agent and against all Claims by any person, including any Owner, in relation to, caused or contributed to by, or arising from or in connection with the provision of the Services including:

- (a) any act or omission of the Customer or Member as appropriate, any Owner, or their respective Agents, including any breach or non-performance of this Agreement, whether express or implied and including any negligent, unlawful or fraudulent act or omission or wilful misconduct; and
- (b) any loss, damage, misdelivery, delay, deterioration, contamination or DX's failure to deliver any Document or Goods, and whether arising because of DX's, any Related Body Corporate of DX's or any DX Agent's breach of contract, bailment, tort including negligence, wilful act or omission or breach of statutory duty; and
- (c) any Document or Goods, including any loss of or damage to any property of any person, including but not limited to DX's or any DX Agent's property, or injury to or death of any person.

10. Customer/Member Warranties

10.1 The Customer or Member as appropriate warrants that:

- (i) it is the Owner or the authorised agent of each Owner and accepts the Agreement for itself and as authorised agent for each Owner;
- (ii) the Customer or Member as appropriate has full authority to enter into this Agreement and deal with the Documents and/or Goods (free from any Claims by any third party);
- (iii) the purchase by the Customer or Member of and the performance by DX, any Related Body Corporate of DX, or any DX Agent of the Services will not give rise to a breach by the Customer or Member as applicable of any agreement, infringe the intellectual property rights of any third person or infringe or contravene any applicable law;
- (iv) the Documents and/or Goods are classified, packaged, labelled, stored and carried in compliance with all relevant laws and regulations, are fully and

accurately described, and are packed in a manner to withstand the ordinary risks of storage and or transport having regard to their nature and the Customer or Member will provide all information and do all acts necessary for DX, any Related Body Corporate of DX, or any DX Agent to comply with its obligations under the relevant laws and regulations;

- (v) the Documents and/or Goods do not contain and will not become Dangerous Goods and are not or will not become material of an obscene, inflammable, poisonous, illegal, offensive or dangerous nature;
- (vi) the Documents and/or Goods do not contain any cash, bearer securities of any kind, gold and other precious metals, jewellery, gems and other valuables; and
- (vii) the Documents and/or Goods do not contain anything which would be unlawful for DX to deliver, carry or collect.

10.2 The Customer or Member as appropriate indemnifies DX, each Related Body Corporate of DX and each DX Agent for any Liabilities whatsoever, as a result of or arising from any breach of the warranties in this clause 10.

#### 11. Dangerous Goods

11.1 The Customer or Member must give DX an appropriate declaration about any Dangerous Goods and notify DX if any Documents or Goods require special handling.

11.2 The Customer or Member acknowledge and agree that if any of the Documents and/or Goods are or are liable to become obscene, inflammable, poisonous, illegal, offensive or dangerous, or if DX suspects that the Documents and/or Goods contain Dangerous Goods or may become Dangerous Goods, DX may at any time, destroy, dispose of or otherwise deal with those Documents and/or Goods without Liability to the Customer or Member and without prejudice to DX's other rights under this Agreement or at law.

#### 12. Labelling and packaging

12.1 The Customer or Member is responsible for the conformity of any containers or packaging with any requirements of the addressee and for any expense incurred by DX, any Related Body Corporate of DX and any DX Agent, arising from any failure to so conform.

12.2 The Customer or Member must address mail in accordance with the addressing standards of DX.

#### 13. Limitation of Liability

13.1 No exclusion or limitation

- (i) To the extent that Customer/Member acquires Services or products from DX, any Related Body Corporate of DX and any DX Agent, as a Consumer, Customer/Member may have certain rights and remedies (including, without

limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.

- (ii) Nothing in this Agreement operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would:
  - a. contravene that statute; or
  - b. cause any term of this Agreement to be void,

**(Non-excludable Obligation).**

13.2 Exclusion of implied obligations

- (i) Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on DX are expressly excluded under this Agreement.

13.3 Limitation of liability

- (i) Except in relation to Non-excludable Obligations, DX's (and each Related Body Corporate of DX and any DX Agent's) liability to Customer/Member arising directly or indirectly under or in connection with this Agreement or the performance or non-performance of any Services under this Agreement and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:
  - a. DX, each Related Body Corporate of DX and each DX Agent will have no liability whatsoever to Customer/Member for any Liability in the nature of special, indirect or consequential loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data); and
  - b. DX, each Related Body Corporate of DX and each DX Agent excludes all Liability to any person, including the Customer, Member and any Owner for, and the Customer and Member releases DX, each Related Body Corporate of DX and each DX Agent from all Claims by any person, including any Owner, under any circumstances or in any capacity in relation to, caused or contributed to by, arising from or in connection with:
    - i. any damage to or loss or deterioration of any property, including any Documents or Goods, or injury to, or death of any person; or
    - ii. any failure, defect or deficiency of any kind in relation to the Services, any delivery, delay in delivery, non-delivery of Documents, Goods or other things whether between or to Exchanges, DX Boxes or otherwise or the transmission of or delay

or failure to transmit Documents by facsimile transmission or other electronic means or the failure to supply any Services,

whether due or alleged to be due to any act, omission, default or negligence of DX, any Related Body Corporate of DX or any DX Agent.

- (ii) In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption (in respect of which DX's liability is not so limited under this Agreement), DX's liability to Customer/Member for a failure to comply with any Non-excludable Obligation is limited to the cost of supplying the Services again or payment of the cost of having the Services supplied again.

#### 13.4 General

Subject to clause 13.1:

- (i) all the exclusions and limitations of DX's Liability in this Agreement apply in respect of any Liability suffered or incurred in any way by the Customer, Member or any Owner however caused, including, but not limited to, for defective services or defective performance, breach of contract, negligence at law or equity, lost, damaged or stolen goods and any other Liability which may arise in connection with its performance or non performance under the Agreement, other than as a result of fraud or deliberate misconduct by DX;
- (ii) the Customer or Member as appropriate must not make and must ensure that no Owner makes a Claim against DX, any Related Body Corporate of DX, or any DX Agent which is inconsistent with this clause 13 or clauses 9, 14, 15 and 16;
- (iii) the limitations and exclusions of DX's Liability in this Agreement including in clauses 13, 15 and 16 and the indemnity in clause 9 and clause 10 apply in respect of and in favour of each Related Body Corporate of DX and each DX Agent (whether or not a Related Body Corporate of DX or a DX Agent is expressly mentioned). For the purpose of this Agreement, DX, in addition to acting for itself, also acts as agent of and trustee for each Related Body Corporate of DX and each DX Agent and, accordingly, may take action in that capacity to recover on behalf of any Related Body Corporate of DX and any DX Agent, and they are entitled to the full benefit of this Agreement, including any indemnity, exclusions or limitations of liability, to the same extent as DX; and
- (iv) all exclusions and limitations of liability in this Agreement are separate and independent and do not either expressly or by implication limit each other.

#### 14. Complaints process

- 14.1 DX will investigate any complaint in relation to DX's failure to meet its contractual obligations provided that the complaint is made in writing addressed to the DX National Product Manager at DX 1 Melbourne, Victoria or 2 Douglas Street, Melbourne, Victoria 3207 within 7 days of provision of the Services complained of.

14.2 DX has certain procedures to monitor the performance of the Services and to address any Customer or Member inquiries regarding the Services, however, the Customer or Member acknowledges that it will promptly notify DX regarding any errors or defects arising from DX's provision of the Services and DX will endeavour to correct any or all errors or defects arising out of provision of the Services by DX.

#### 15. Claims or demands

15.1 Subject to clause 13.1 and without limiting the generality of clause 13.3, if there is any damage to, or loss of, the Goods or Documents or any part of the Goods or Documents, no Claim in respect of the loss or damage may be made by any Customer, Member or Owner against DX, any Related Body Corporate of DX or any DX Agent unless:

- (i) notice of the Claim is given to DX in writing within 2 days after the delivery of the Goods or Documents was effected or, in the case of non-delivery within 7 days of the anticipated date of delivery; and
- (ii) legal proceedings in respect of the Claim are instituted within 6 months from the delivery of the Goods or Documents or, in the case of non-delivery, within 6 months from the date which, in the ordinary course of business, delivery would have been effected.

15.2 Time is of the essence in relation to all time periods in this clause 15.

15.3 The failure to notify a Claim within a time set out under clause 15 is evidence of satisfactory performance by DX or any DX Agent of its obligations.

#### 16. Not common carrier

DX is not a common carrier and does not accept any Liability as a common carrier and reserves the right to refuse to provide the Services at its sole discretion.

#### 17. No knowledge of Documents and/or Goods

The Customer acknowledges and agrees that:

- (i) DX has no, and will not be deemed to have any, knowledge of the contents of Documents and/or Goods; and
- (ii) DX does not insure and is not required to insure any of the Documents and/or Goods against any risk.

#### 18. Carriage and route of Goods and Documents

18.1 The Customer or Member as appropriate authorises DX to adopt any reasonable method for the collection, handling, carriage or route of carriage, transportation or storage of the Documents and/or Goods including any method other than the method instructed by or agreed with the Customer or Member. DX may carry, store, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the Documents or Goods with others at its sole discretion.

## 19. Delivery

- 19.1 DX will be conclusively presumed to have delivered the Documents and/or Goods in accordance with this Agreement if the Documents and/or Goods are delivered to the addressee at its address on the Documents or Goods or lodged with Australia Post for delivery to the addressee at its address on the Documents or Goods.
- 19.2 DX reserves the right to deliver Documents and/or Goods addressed to a Member to that Member's DX Box irrespective of whether the Documents and/or Goods are addressed to the Member's DX Box. If DX elects to deliver Documents and/or Goods in accordance with this clause 19.2, it will be conclusively presumed to have delivered the Documents and/or Goods in accordance with this Agreement.
- 19.3 If delivery cannot be effected, DX or any DX Agent may store, redeliver or return the Documents and/or Goods to the Customer, Member or the Owner as appropriate. DX may sell or dispose of any uncollected or undeliverable Documents and Goods 30 days after making reasonable efforts to contact the Customer or Member as appropriate and DX does not have to account to the Customer or Member for the sale or disposal unless required by law.
- 19.4 The Customer or Member is responsible to DX for all charges properly incurred by DX or any DX Agent for any reason including, without limitation, arising from or in connection with any delay in excess of 30 minutes in loading or unloading of the Documents and/or Goods occurring other than due to any default by DX or any DX Agent. The Customer or Member is responsible for the provision of any labour or equipment required to load or unload the Documents and/or Goods at any premises of the Customer, Member or Owner or at any other delivery address nominated by the Customer or Member as appropriate.

## 20. Acceptance of Documents and/or Goods

- 20.1 DX's charges will be deemed fully earned as soon as the Documents and/or Goods are loaded and dispatched from the Customer's or Member's premises or accepted by DX for the Services and are payable and non refundable in any event.
- 20.2 All Documents and/or Goods are accepted by DX subject to the condition that DX accepts no responsibility, and is not liable, for the collection of cash on delivery or any other payments on behalf of the Customer /Member or any other person. DX is not bound by any instructions to collect cash on delivery or any other payments for any person, notwithstanding that DX accepts the Documents and/or Goods and performs the Services in relation to them.

## 21. Lien

- 21.1 DX has a lien over the Documents and/or Goods and over any other goods of the Customer or Member in the possession of DX, any Related Body Corporate of DX or any DX Agent and on related documents ("**Subject Documents and Goods**") for all sums, fees, charges and payments due or which become due and payable by the Customer or Member to DX or any Related Body Corporate of DX on any account. If the sums and other payments owing to DX or any Related Body Corporate of DX are not paid when due, DX may, without any notice to the



Customer or Member, as the case may be, remove all or part of those Subject Documents and Goods and store them in such place and manner as DX thinks proper at the risk and expense of the Customer or Member, or open any package and sell all or any of the Subject Documents and Goods on such terms as DX thinks fit and apply the proceeds in or towards the discharge of the lien and costs of sale, or destroy the Subject Documents and Goods, in any event without any Liability to any person (including the Customer, Member or Owner).

- 21.2 DX, any Related Body Corporate of DX and any DX Agent may, without Liability to any person including the Customer, Member or Owner open any document, wrapping, package or other container in which the Documents and/or Goods are placed or carried to inspect the Documents and/or Goods either to determine their nature or condition or to determine their ownership or destination, including, but not limited to, circumstances where any customer dispatch record or identifying document or mark is lost, damaged, destroyed or defaced, or if otherwise required by any governmental agency or law.
- 21.3 DX and each Related Body Corporate of DX may deduct or set-off from any monies due from DX or any Related Body Corporate of DX to the Customer or Member under any contract, debts and monies due from the Customer or Member to DX or any Related Body Corporate of DX.

## 22. Force Majeure

- 22.1 If DX cannot carry out an obligation under this Agreement either in whole or in part because of a Force majeure event, then DX's obligations under this Agreement will be suspended for the duration of the Force majeure event or waived to the extent applicable.
- 22.2 Without limiting any of exclusions or limitation of liability in this Agreement, DX will not pay for any loss of or damage to Documents or Goods or for any other Liability as a result of, or arising, directly or indirectly, in connection with ordinary loss in weight or volume, shrinkage, ordinary leakage, ordinary wear and tear, insufficient and/or unsuitable packing or preparation, delay, inherent vice, a Force majeure event, electrical or mechanical derangement.

## 23. Continuation of terms and conditions

Any provision of this Agreement by its nature intended to survive termination, including any indemnity, survives termination of the Agreement. All the rights, immunities and limitations of Liability in this Agreement will continue to have their full force and effect in all circumstances despite any breach of this Agreement by DX, any Related Body Corporate of DX, any DX Agent or any other person entitled to the benefit of such rights, immunities and limitations.

## 24. Entire Agreement

The Agreement constitutes the entire agreement between the parties in connection with its subject matter, supersedes any prior agreement or understanding between the parties in connection with the subject matter and cannot be varied except by written agreement of the parties.

25. Variations and Waiver

- 25.1 DX 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 DX by an authorised officer.
- 25.2 If DX waives a breach of a condition that waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.

26. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

27. Assignment

DX can assign or otherwise deal with this Agreement. The Customer or Member may not assign or otherwise deal with this Agreement without the prior written consent of DX.

28. Governing Law and Jurisdiction

The law of Victoria governs this Agreement and the parties irrevocably submit themselves to the jurisdiction of the courts of Victoria.

29. Joint and several liability

If the Customer or Member consists of more than one person, this Agreement binds them jointly and each of them severally.

30. Costs

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with the Agreement or the Services must be paid by the Member or Customer as appropriate.

31. Additional documents

If requested by DX, the Customer or Member must do all things and execute all documents necessary or as required by DX to give full effect to the transactions contemplated by this Agreement.

## **PART B. MEMBERS CONDITIONS ONLY**

32. Member Services

- 32.1 Without limiting clause 6.9(iv), basic membership entitles the Member to utilise the Exchange facilities in the Home State to deliver Documents and/or Goods to other Members in the Home State, and Interstate Letters to other Members interstate ("**Standard Services**").
- 32.2 DX will, as required, allocate to the Member a DX Box with a distinguishing DX

Number at the Exchange and the Member will accept delivery of any Document and/or Goods left at the DX Box by other Members or DX as delivery to the Member. DX may at any time by notice to a Member allocate that Member a different DX Box or DX Number in substitution for the DX Box or DX Number previously allocated to that Member.

- 32.3 Any person having in their possession a DX Box key and tag to a DX Box at an Exchange will be admitted to the relevant Exchange and such key and tag will be sufficient evidence that the person is a Member or duly authorised representative of the Member and DX will not be obliged to make any further inquiry in relation thereto. DX may deny entry to an Exchange to any person not producing on request a key and tag relating to a DX Box at the Exchange.
- 32.4 A Member will be entitled to deliver Documents or Goods to DX addresses in the Home State and DX will (subject to this Agreement) make or cause to be made delivery of such Documents or Goods to the relevant addressee Members. DX reserves the right to refuse to deliver any Documents or Goods without assigning a reason.
- 32.5 DX will publish or advertise the time of the usual arrival and departure of inter-Exchange deliveries, but DX will not be obliged to adhere to or in any way be bound by such times of arrival or departure.

### 33. Member obligations and responsibilities

- 33.1 Every Member other than those Members who have acquired Clear and Lodge, will clear the DX Box allocated to the Member of all Documents and Goods at least once every Business Day unless, with the written consent of DX, a different mode or frequency of clearance is shown on the outside of the Member's DX Box.
- 33.2 A Member will not deliver to any Exchange any Document, Goods or other material to or for another Member on behalf of any person who is not a Member unless the Member is appointed an addressee for service of Documents or notices pursuant to either Court proceedings or a contract between third parties, where the Member is a representative in a professional capacity of one or more of those parties.
- 33.3 A Member will not deliver to DX, cause to be collected by DX or deliver through any Exchange to other Members any advertising or promotional Document or material except with the written consent of DX and on terms agreed by DX.
- 33.4 A Member will not invite or authorise or purport to authorise any non-Member to access any Exchange or deliver any Documents, Goods or other material to any Exchange or Member's DX Box in any Exchange or to collect any Documents, Goods or other material from the Member's DX Box in any Exchange.
- 33.5 A Member will be responsible for the delivery of Documents and/or Goods to the correct DX Box of another Member at the same Exchange and will stamp or print in legible characters in a conspicuous position on the outside of any Document and/or Goods delivered through an Exchange the other Member's name, DX Number and Exchange.

- 33.6 Any Member receiving a Document or any Goods delivered to its DX Box at the Exchange in error will immediately cause such Document or Goods to be placed in the correct DX Box at the Exchange or, where the Member concerned has a DX Box allocated at another Exchange, in the DX Box for that Exchange.
- 33.7 A Member agrees to the delivery of Documents and Goods to the Member's DX Box irrespective of whether or not the Documents and Goods are addressed to the Member's DX Box.
- 33.8 A Member agrees that Documents and Goods sent by the Member may be delivered to another Member's DX Box irrespective of whether the Documents or Goods are addressed to the Member's DX Box.

#### 34. Member Directory

- 34.1 Any Directory produced by DX will be used by Members exclusively to ascertain or determine the names of other Members and the Exchange at which such Members are located for the purpose of delivery of Documents and Goods. A Member will not at any time use or rely upon any Directory produced by DX or any other publications of DX in the compilation of any directory, list or manual for distribution to or use by Members or any other person or corporation whatsoever.
- 34.2 Only a Member is entitled to a listing in the Directory produced by DX and only the Member's name as it appears in the Directory will be displayed on the DX Box allocated to a Member except if the prior written approval of DX is obtained and the prescribed fee if any, is paid. Another name (or names) may be listed in Directory and may be displayed on the Member's DX Box, provided that such name is the title of an entity or organisation with substantially similar and/or common management and/or proprietorship to that of the Member.

#### 35. Additional Services

- 35.1 All orders for Additional Services placed with DX or quotations accepted by any Member will only be accepted subject to the applicable terms and conditions in this Agreement and as otherwise Notified by DX.
- 35.2 Additional Services are separate services not covered by the Membership Fees and all Additional Services will be provided in accordance with the fee schedule as Notified by DX from time to time or by a separate written quote provided on request by DX.
- 35.3 All quotations for Additional Services are valid only for a period of 30 days and DX may, at its sole discretion, refuse any purported acceptance after that time, without being liable to give any reason.
- 35.4 DX will have the right to vary any quotation by notice in writing in the event that any legislation or regulation by any government authority varies any cost component of the Additional Services.
- 35.5 The fees and charges for Additional Services may be adjusted from time to time at the absolute discretion of DX.

36. Acceptance of terms and conditions for International Services

All Members agree and acknowledge that International Services are subject to separate and additional terms and conditions which govern the provision of the International Services for the Member by DX. These terms may be accessed or downloaded at [www.dxmail.com.au](http://www.dxmail.com.au) and by acquiring the International Services, the Member is deemed to have accepted those terms and conditions.

## DX International - Air Waybill Conditions

### 1. Definitions:

**"Container"** means any container, pallet or packaging used for the carriage of the Documents, including a container we provide to you.

**"Carriage"** includes carriage, storage, handling, packing, unpacking and operations and services for the Documents whether requested or authorised by you or not.

**"Charges"** mean our quoted charges for Services calculated under our rates schedule or other agreed rates, and any duties and any tax including valued added or goods and services taxes ("GST") levied directly on a transaction or supply under these conditions.

**"Collection Point"** means a DX Exchange or a DX member's premises as nominated by the DX Member.

**"Consumer"** means an individual who acquires our Services wholly or predominantly for personal, domestic or household use or consumption.

**"Consumer Contract"** means a contract for the supply of Services to a Consumer, where the contract is subject to provisions of Consumer Protection Law that makes void terms that are unfair.

**"Consumer Protection Law"** means, in the case of Australia, the Australian Consumer Law (Schedule 2 to the *Competition & Consumer Act 2010 (Cth)*), and, in any other case, any applicable laws or regulations for the protection of consumers covering matters similar to the Australian Consumer Law.

**"Conventions"** means either the Warsaw Convention or the Montreal Convention as applicable.

**"Dangerous Goods"** means any goods of a dangerous or hazardous nature whether dangerous at the time of consignment or not, and whether you were aware of the dangerous or hazardous nature of the Documents or goods or not, and includes, without limitation, goods prohibited or restricted from time to time by:

- the International Air Transport Association;
- the International Civil Aviation Organisation; or
- applicable law, regulation, guideline or requirement of a regulatory body or government department of a country from which, through which or into which the Documents are carried.

**"Deliver, Delivery"** means leaving the Documents at the Delivery Point, or as close to the Delivery Point as we reasonably and practically can.

**"Delivery Point"** is the place outside of Australia you specify for us to deliver the Documents.

**"Documents"** means any typed, printed or written material or matter.

**"DX Exchange"** means a place conducted by, or under the control of us where, under these conditions, a DX Member may deposit Documents for carriage by us and collect Documents carried by us.

**"DX Member"** means anyone who has either applied for membership by completing and submitting the Membership Application to us, or who are renewing an existing membership, or who has proceeded to access the Services but whose membership has not formally been processed by us or has expired and includes an agent of that firm, corporation, association or government department or instrumentality.

**"\$"** means Australian dollars.

**"Force Majeure Event"** means anything outside our reasonable control, including without limitation, fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, customs inspection, delay or requisition, labour dispute or shortage, nuclear contamination or explosion, act or omission of air traffic control, airline pilot or any third person or public authority.

**"Implied Terms"** means those terms, conditions, consumer guarantees and warranties implied by laws, general law or custom into contracts for the supply of goods and services including, without limitation, those terms implied by the operation of Consumer Protection Law.

**"Montreal Convention"** means the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal, 28 May 1999.

**"Notified"** means a written communication provided to DX Members by us whether by way of brochures, letters, emails or information published online on the DX Website.

**"Prohibited Goods"** means any goods or material including Documents which have attached commercial value or any goods or materials other than Documents including but not limited to Dangerous Goods or those goods listed at [www.tollglobalexpress.com/en/unacceptable\\_prohibited\\_goods](http://www.tollglobalexpress.com/en/unacceptable_prohibited_goods) or currency or negotiable instruments in bearer form (like cheques, activated credit cards, money orders, promissory notes, uncashed travellers cheques, bankers drafts, bonds, open tickets), plants, fish and animals and their produce, human remains, artwork, antiques, pornography, precious metals or stones, jewellery, weapons, cigarettes, porcelain, china, crystal, marble or enamel goods, perishable or fragile goods and regulated waste and any other goods which may from time to time be listed as such by us at our absolute discretion.

**"Service, Services"** means the whole or any part of the Carriage we undertake for the Documents whether completed or not where the Delivery Point is an address or location outside of Australia.

**"Sub-Contractor"** means any person we arrange to provide Services for the Documents and any person who is an employee, agent or sub-contractor of that person.

**"Warsaw Convention"** means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, 12 October 1929, or that convention as amended at the Hague, 28 September 1955, and as amended by the Montreal Additional Protocol 4, whichever may be applicable.

**"Waybill"** means the Air Waybill for the Carriage of Documents.

"**we, us, our**" means Toll Transport Pty Ltd (ACN 000 604 191) a company registered in Australia, its successors and assigns and its Related Bodies Corporate, officers, servants, agents and Sub-Contractors.

"**you, your**" includes the DX Member, receiver/consignee and any other person(s) for whom we provide the Services.

## **2. What you need to know about us**

- 2.1 These Services are available only to a DX Member and shall be provided in accordance with and governed by these conditions.
- 2.2 Subject to these conditions, we will use our best endeavours to collect the Documents at the Collection Point and Deliver them in the same condition as we receive them, fair wear and tear excepted.
- 2.3 We are not common carriers and do not accept any liability as common carriers and may refuse to perform Services for the Documents for any person or DX Member.
- 2.4 You expressly authorise us to sub-contract any part of the Services on any terms, and through any methods of Carriage and routes we think fit, in our absolute discretion.
- 2.5 We may, without liability, pack, repack, open and inspect the contents of any Container at any time without notice to you.
- 2.6 Our Charges are indicative only and subject to change and we may calculate and charge you according to any rates we think fit or deem appropriate.
- 2.7 Condition 2.6 does not apply to a Consumer Contract.
- 2.8 We rely on the details you supply to us on the Waybills but we cannot verify and do not admit their accuracy or completeness and a signature by us is only an acknowledgement for the number of items received.
- 2.9 We contract as agent and trustee for each of our employees, agents and Sub-Contractors and they are entitled to the full benefit of these conditions to the same extent as us and as if they were expressly parties to this contract.
- 2.10 If we cannot Deliver the Documents as required by you for any reason whatsoever, we may in our absolute discretion and at your expense and without liability on our part, store the Documents or return them to you, always at your risk and expense. If, after reasonable efforts by us, the Documents cannot be returned to you, you authorise us to deal with the Documents in any way we think fit, including disposing of the Documents.



### 3. Your obligations and warranties

- 3.1 You must not lodge for Delivery any Prohibited Goods.
- 3.2 You must give us clear, accurate and complete instructions about the nature of the Documents to be carried and the Collection and Delivery Points.
- 3.3 You must pay us within 7 days of the date of invoice all Charges and any costs, demands or other levies associated with the Services and 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, Australia). Our Charges are fully earned by us as soon as we receive the Documents for Carriage.
- 3.4 You must pay the Charges if the receiver fails to do so.
- 3.5 You grant us a general and a particular lien over the Documents for all Charges arising under this or any other contract between us, whether the subject of any demand or not.
- 3.6 If requested you must do all things and provide all information necessary to enable us to perfect our security interest in the Documents and complete any financing statement.
- 3.7 To the extent permitted by law, you waive your rights to receive notices or any statements relating to the enforcement or exercise of any security interest under these conditions
- 3.8 You warrant:
  - (a) the adequacy and accuracy of any instructions you give us, including that the Documents may be lawfully carried to and entered into the country of the Delivery Point;
  - (b) the Documents are not Dangerous Goods and are safe and securely and appropriately packed to withstand the ordinary risks of carriage at all times;
  - (c) you have fully complied with all applicable customs and other laws, regulations and guidelines about the import, export, notification, classification, description, labelling, transport and packaging of the Documents of the country of the Collection Point, the country of the Delivery Point, and any other country through or over which the Documents may pass;
  - (d) the Documents are not to be carried into or from any jurisdiction which is subject to sanction by the UN, Australia or the country of the Collection Point or for any sanction designated individuals or entities;
  - (e) you will not make any claims against any of our employees, agents or Sub-Contractors;
  - (f) you are either the owner or the authorised agent of the owner of the Documents and that the receiver has authorised you to enter into this contract on its behalf and as its agent and to bind it to these conditions; and
  - (g) the person delivering the Documents to us is authorised to do so and to sign this contract.

3.9 You indemnify us against any claim, loss, cost or liability arising from a breach of these warranties, your obligations or the conditions of this contract.

#### **4. When are we liable?**

- 4.1 Subject to condition 1, the Documents are at your risk at all times. Subject to condition 1, the compulsory application of the Conventions as referred to in condition 4.3 and any compulsory application of Consumer Protection Law, we are not liable to you or to any third party in tort, contract, bailment or otherwise for any loss, damage, delay or deterioration to, or misdelivery or failure to deliver the Documents whatsoever arising from the Services for any reason including any failure by us to perform the Services, any negligence or breach of contract or wilful misconduct or default by us.
- 4.2 Subject to condition 1, condition 4.1 applies to all, and the consequences of all loss, damage, delay, deterioration, misdelivery or failure by us whether it occurs in events which are in our or your contemplation or in events which are foreseeable by you or us, or in events which could constitute a fundamental breach or breach of a fundamental term of this contract.
- 4.3 If the Carriage involves an ultimate destination or stop in a country other than the country of the Collection Point, the Conventions may be applicable and govern and, in most cases, limit our liability for loss of, or damage to, or delay in Delivery of the Documents.
- 4.4 The Warsaw Convention's liability limits may vary depending on the country of the Delivery Point. If either the Warsaw Convention as amended by Montreal Additional Protocol 4 or the Montreal Convention apply to your Documents our liability, subject to condition 1, is limited to 19 Special Drawing Rights per kilo. The liability limits under the Montreal Convention may be adjusted for inflation every 5 years. The Conventions also contains time limits for notification of claims to us and for commencement of any proceedings against us.
- 4.5 If the Conventions do not apply by virtue of the law of any country, then our liability for any loss, damage or delay to the Documents, whether occurring during carriage by air or otherwise is subject to these conditions and in particular condition 4.1.
- 4.6 If condition 4.1 does not apply by virtue of condition 4.10 or is deemed invalid by any laws whatsoever of any country including those which apply to damage occurring during international carriage by air, then our liability, subject to condition 1, is limited to a sum not exceeding \$100 per consignment of Documents.
- 4.7 As to Implied Terms:
- (a) we exclude from these conditions all Implied Terms, except where the exclusion of which would contravene any laws or cause this condition to be void (Non Excludable Conditions); and
  - (b) our liability to you for any breach of a Non-Excludable Condition is limited, at our option, to supplying the services again, or the cost of supplying the services again.
- 4.8 You must notify us in writing of any claim against us under this contract within 7 days of Delivery or the date when the Documents should have been Delivered. If you do not institute formal legal proceedings for any claim against us within 9 months of the

Delivery date or the date when the Documents should have been delivered, you release us from all liability under this contract.

4.9 Subject to condition 1, you release us from and indemnify us against any loss, cost, claim, demand or liability that arises from any loss, damage, injury, illness or death howsoever caused, including any claim by the receiver or any other party in connection with the Documents or the Services.

4.10 Conditions 4.1, 4.2, and 4.9 do not apply to a Consumer Contract.

## **5. Force Majeure**

5.1 If we cannot carry out an obligation under the contract either in whole or in part because of a Force Majeure Event, then our obligations under the contract will be suspended for the duration of the event or waived to the extent applicable.

## **6. General**

6.1 These conditions represent the entire agreement between us and may not be varied unless the variation is recorded in writing and signed by us. If any part of this contract and these conditions is unenforceable, it shall be severed from the remainder of these conditions.

6.2 Each contract incorporating these conditions is governed by the laws of Victoria, Australia.