

## SERVICE CONDITIONS

### 1. Definitions

**"charges"** means our quoted charges for services calculated under our rates schedule or other agreed rates, any taxes, duties and government charges levied on the services and any other amounts under conditions 6.3 or 7.

**"consumer"** means an individual who acquires our services wholly or predominately for personal, domestic or household use or consumption.

**"contract"** means the transport or services contract between you and us including these conditions as may be amended from time to time (see <https://www.mytoll.com/web/guest/terms-and-conditions>).

**"credit note"** means a document entitled "Credit Note" we give you or a person you nominate in writing.

**"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 or the International Air Transport Association dangerous goods regulations.

**"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, labour dispute or shortage, act or omission of air traffic control, airline pilot or any third person or public authority.

**"goods"** means the goods picked up or received from you or on your behalf.

**"laws"** means all applicable laws, regulations, guidelines, codes, standards or policies of the Commonwealth of Australia, any state, territory or local authority.

**"Pallet"** mean pallets or other pooled equipment (wooden, metal, plastic or otherwise) used to assist in moving freight which incurs third party hire costs such as pallets provided by Chep, Loscam or another company which may join the pallet hire pooling in the Australian supply chain.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).

**"Personal Information"** has the meaning given in the *Privacy Act 1988* (Cth).

**"Privacy Laws"** means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and all other laws, mandatory and applicable codes of practice and regulations in Australia which relate to the privacy, protection, use or disclosure of Personal Information.

**"services"** means the operations we undertake for the goods including our IT systems, processes and software.

**"sign"** or **"signature"** includes provision in electronic form.

**"subcontractor"** means any person we arrange to provide services for the goods and any person who is an employee, agent or subcontractor of that person.

**"Toll collection point"** means any premises used as an alternate delivery address or drop-point for the collection and storage of parcels.

**"Safe"** means Toll has placed the goods in a location that Toll believes is not in public view, is in a weatherproof position, is not likely to be interfered with by pets/animals, the goods are not visibly damaged, the address is clear and unambiguous and the delivery does not contain alcohol.

**"us", "we", "our"** means Toll Holdings Ltd ABN 25 006 592 089 and its related bodies corporate within the meaning of that expression in section 9 of the *Corporations Act 2001* (Cth) carrying on business in their own names and any business names and their officers, employees, agents and subcontractors.

**"writing"** means any representation of words, figures or symbols capable of being rendered in visible form.

**"you"** and **"your"** means the person contracting with us.

### 2. Consumer contract

If you are a consumer:

- (a) these conditions do not affect any rights you have under Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (b) conditions 6.5 (change in rates), 5.3 (contracting out of certain provisions in the PPSA), 7 (Toll Extra Service) and all of condition 8 (Limitations and exclusions of liability) except for conditions 8.4\* and 8.5\*, do not apply to the contract unless and only to the extent:
  - (1) the contract is for the carriage of goods by ship, or

(2) services are supplied outside Australia; and

(c) the laws in force in the place in which the contract is made apply to the contract.

\* Condition 8.4 is a list of goods for which we provide services at your risk and we will not pay for any loss or damage.

\* Condition 8.5 is a list of causes of loss or damage for which we will not pay.

### **3. What you need to know about us and our services**

3.1 We are not common carriers, do not accept any liability as common carriers and may refuse to provide services to any person or goods for any reason.

3.2 We rely on the details supplied to us but we do not admit their accuracy or completeness and our signature is only an acknowledgement for the number of items picked up or received by us.

3.3 Our services commence when we pick up or receive the goods and we earn our charges then.

3.4 We will not exchange any Pallet and you must not transfer any Pallet to our pallet accounts unless we agree in writing. We do not and will not accept any responsibility or liability for any other pallet(s) delivered into our possession, custody or control.

3.5 We will not collect any cash on delivery unless we agree in writing.

3.6 We will have delivered the goods if at the delivery address we obtain an acknowledgement of delivery or if delivery occurs under condition 3.7.

3.7 We may at your risk and expense leave the goods at the delivery address if it is Safe to do so or if you so authorise us; store the goods; return or take them to a Toll collection point or return them to the sender (each of which constitutes delivery) if:

(a) the delivery address you or your agent give us is unattended for any reason at all; or

(b) the receiver fails to take delivery of the goods.

3.8 We can:

(a) deviate from any usual route or method of transport to provide the services;

(b) subcontract the whole or any part of our services;

(c) do anything appropriate including disposing or destroying goods if we think the goods are misdescribed, you haven't given us an appropriate declaration about them, or they may become dangerous goods;

(d) open and inspect the goods at any time without notice to you to determine their nature, condition, ownership or destination;

(e) carry, store, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the goods with others;

(f) lease, hire or enter into any agreement for, or use, any aircraft, ship, container, pallet or rail wagon to provide the services; and

(g) complete any documents required to comply with any laws.

3.9 If we store the goods:

(a) we can require you to remove them if you do not pay the charges when due;

(b) we do not have to make them available until all charges have been paid and you sign, or a person authorised in writing by you signs, a receipt for them; and

(c) we can return them to you at your last known address if you do not remove them when we require or we give you notice to remove them.

3.10 We may sell or dispose of any uncollected or undeliverable goods 30 days after making reasonable efforts to contact you and do not have to account to you for the sale or disposal unless required by laws.

3.11 We:

(a) claim a general or particular lien over the goods for all charges under the contract and under any other contract between us and whether the subject of a demand or not;

(b) may under the lien sell the goods by public auction or private sale to recoup any overdue charges without any notice to you; and

(c) may set-off or deduct from any payment due to you any amount you owe us.

3.12 If a temperature control section is completed on our or your documentation, then:

- (a) we will try to provide the services at temperatures within accepted tolerance levels;
  - (b) you acknowledge temperature variations can occur; and
  - (c) any temperature record maintained by us will be conclusive of the temperatures during the services.
- 3.13 We contract as agent and trustee for our employees, agents and subcontractors so they also have the benefit of the contract and these conditions (including any exclusions or limitations of liability we have) to the same extent as us and as if they were parties to it.
- 3.14 We will comply with the Privacy Laws in respect of any Personal Information which we receive or have access to in connection with the provision of our services.

#### **4. Your promises**

You promise us:

- (a) you are either the owner or the authorised agent of the owner of the goods and have authority to enter into the contract;
- (b) you or your agent have fully and accurately described the goods and their value; and
- (c) you will comply with all laws and the goods can be safely handled and transported and are packed to withstand the ordinary risks of the services.

Further, you acknowledge and agree that if we give you possession of our plant, container or equipment ("personal property") at any time during our provision of the services:

- (d) the personal property is and remains at all times our property and at all times you hold the personal property as bailee for us; and
- (e) you 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 our rights over the personal property; and
- (f) we are permitted at any time to retake possession of the personal property; and
- (g) you 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.

#### **5. What you must do and not do**

5.1 You must, or cause your agent to:

- (a) provide us with all necessary documentation for the services and fully, accurately and legibly complete the label on the goods and the sender and receiver panel on the front of the contract or any of our, or your, documentation;
- (b) give us an appropriate declaration about any dangerous goods and notify us if the goods require special handling;
- (c) if you are not the receiver, make the goods conform to the receiver's requirements;
- (d) if our services include storage or holding of goods:
  - (1) give us at least 7 days notice if you intend to collect them or have them collected or redelivered; and
  - (2) remove the goods within 7 days if we give you notice to remove them; and
- (e) if requested by us, do all things and execute all documents necessary or we require to give full effect to the contract and the transactions contemplated by it.

5.2 You indemnify us against any cost or liability we incur, pay or have to pay in dealing with any claim against us for loss or damage to property or illness, injury or death, to the extent caused:

- (a) by the goods or your breach of contract or these conditions;
- (b) because one of your promises is incorrect; or
- (c) by a negligent or unlawful act or omission or wilful misconduct of you or the receiver or any person acting for you or the receiver,

and there is no need for us to suffer loss or damage before enforcing this right of indemnity.

5.3 You irrevocably waive any right you may have to receive notices under sections 124(2) (seizure of collateral – 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.

## 6. Our charges

- 6.1 You or the person you nominate must pay our charges within 7 days of the date of invoice unless otherwise advised by us.
- 6.2 You must pay the charges if the person nominated to pay the charges doesn't do so.
- 6.3 You must also pay:
- (a) any applicable fees and/or surcharges notified to you;
  - (b) our cost to comply with any laws or requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority not included in our charges;
  - (c) any excise, customs duty or applicable taxes (including any fine or penalty);
  - (d) the costs, expenses or losses to us: of destruction or disposal under condition 3.8(c); of opening or inspecting under condition 3.8(d); of futile delivery, redelivery, storage or return under conditions 3.7 or 3.9; of sale under conditions 3.10 or 3.11 or if there is any delay outside our control in loading or unloading greater than 5 minutes;
  - (e) the cost of labour or machinery or both to load, unload, maintain or protect the goods; and
  - (f) interest at the rate under the *Penalty Interest Rates Act 1983* (Vic) if any charges are not paid on the date for payment.

6.4 If you do not pay our invoice in full, we may:

- (a) elect not to continue to provide our services to you;
- (b) suspend work until further payment is made; and
- (c) instigate legal proceedings without further notice.

Without prejudice to the above, we may take further action to recover any outstanding amounts due to us. Any costs, fees or disbursements that we incur in the recovery of the outstanding amounts, together with any interest, will be added to the amount due from you.

6.5 We may change our rates schedule or other agreed rates at any time with notice to you.

6.6 We will provide our services at our GST inclusive charges up to the dollar amount of a credit note, within 12 months of its date.

6.7 We do not have to repay you any amount you overpay us on an invoice unless you claim that amount within 12 months of the overpayment.

- 6.8
- (a) Any consideration to be paid or provided for a supply made under or in connections with this Agreement, unless specifically described in this Agreement as GST inclusive, does not include an amount on account of GST.
  - (b) Despite any other provision in this Agreement, if a party (Supplier) makes a supply under or in connection with this Agreement in respect of which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as GST inclusive):
    - (1) the consideration payable or to be provided for that supply under this Agreement 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
    - (2) 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.

## 7. Toll extra service (TES)

7.1 This condition 7 about Toll Extra Service (TES) applies if you require TES or we have agreed TES will apply to the services and you pay us the charge for TES.

7.2 If goods other than those listed in condition 8.4 are lost or damaged due to our negligence or wilful misconduct we will pay you, or the person you nominate, the lesser of:

- (a) \$500 or the amount agreed between you and us from time to time (to a maximum of \$5,000 or other maximum advised by us);
- (b) the substantiated cost of repairs to the goods; or
- (c) the fair value of the goods as reasonably determined by us.

- 7.3 We will not pay if you or the receiver do not substantiate the amount of the loss or damage when and as we request.
- 7.4 If we pay the fair value of the goods we may retain or recover them and they become our property.
- 7.5 TES is subject to the limitation and exclusion of liability in condition 8.5 and is for physical loss or damage only to the goods so condition 8.7 applies to TES.
- 7.6 For us to pay you, you must make a claim by mail to our address on the front of the contract or any of our documentation within 7 days of completion of the services or the date on which they should have been completed.
- 7.7 You must bear all expenses directly or indirectly incurred by you in making a claim under condition 7.
- 7.8 TES applies in addition to other rights and remedies you have as a consumer under a law about the services.

## **8. Limitations and exclusions on our liability to you**

- 8.1 We do not exclude or limit the application of any laws, including Schedule 2 of the *Competition and Consumer Act 2010* (Cth), where to do so would contravene those laws or cause any part of these conditions to be void.
- 8.2 We exclude from these conditions all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any the exclusion of which would contravene any laws or cause this condition to be void ("Non-Excludable Condition").
- 8.3 The goods are, and our services are provided, at your risk at all times and we exclude all liability to you or any other person for, and you indemnify us against any liability, claim by any person about, any loss, damage, personal injury, death, costs, expenses, misdelivery, delay, deterioration, contamination, howsoever arising whether from our failure to deliver the goods or perform the services, and whether arising because of breach of contract, bailment, tort including negligence, our wilful act or omission or breach of statutory duty, unless and to the extent TES applies.
- 8.4 We will not pay for any loss or damage to documents, goods in prepaid wallets, satchels or envelopes, appliances with electrical components, computers, jewellery, pictures or picture frames, porcelain china, ceramic items, crystal, marble or enamel goods, goods the production, sale, import or export of which is prohibited by laws, dangerous goods, glass (including bottles and their contents), windscreens, car panels, precious stones or metals, currency or negotiable instruments, produce, liquids, perishable goods, floor or wall tiles, fragile goods, regulated waste, cigarettes or goods under bond.
- 8.5 We will not pay for any loss of or damage to goods if it is caused by 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 or you or your agent overload or incorrectly load the transport vehicle.
- 8.6 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.
- 8.7 We will not pay any indirect, economic, special or consequential loss or damage, loss of revenue, profit, production, business, anticipated savings or claims by your customer, even if we know they are possible or otherwise foreseeable.
- 8.8 These conditions apply even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

## **9. Force majeure**

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.

## **10. Other matters which affect the contract**

- 10.1 The laws of Victoria apply to the contract and you must bring any proceedings against us in a court of Victoria.
- 10.2 If a condition or part of a condition is unenforceable, it must be severed from and does not affect the rest of the contract.
- 10.3 We are not bound by any waiver, discharge or release of a condition or any agreement which changes the contract, unless it is in writing and signed by or for us.
- 10.4 Conditions 3, 5, 6, 8 and 9 are essential conditions of the contract.
- 10.5 A reference to any law includes any statutory modification, substitution or re-enactment of it.