

## SERVICE CONDITIONS

(No liability)

### 1. Definitions

1.1. In these conditions :

"**TOLL**" means **TOLL HOLDINGS LIMITED** ABN 25 006 592 089 and its related bodies corporate within the meaning of that expression in Section 9 of the Corporations Act 2001 carrying on business in their own names and under any business names and their officers, servants, agents and **Sub-Contractors**.

"**Sub-Contractor**" means:

1.1 any **Person** **TOLL** arranges to provide **Services** for the **Goods**; and

1.2 any **Person** who is a servant, agent, employee or sub-contractor of **TOLL** or any person in 1.1.

"**Person**" includes any person, firm, corporation, governmental authority or state or federal government.

"**Services**" means the whole of the operations and services undertaken by **TOLL** in anyway whatsoever connected with or concerning the **Goods**, including innovative IT Services developed by **TOLL**.

"**Goods**" mean the goods accepted from the **Sender** with any container, packaging or pallets supplied by or for the **Sender**.

"**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.

"**Sender**" includes, in the event of storage, the Storer.

### 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.

### 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, inflammable 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 **Services**,

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.

### 5. TOLL's Rights

5.1. Generally:

5.1.1 If in **TOLL's** opinion the **Goods** are or are liable to become dangerous, inflammable, 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.

5.2. 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 railroad.

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**, an additional charge of \$10.50 per item;

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 if **TOLL** requires, pay an additional charge at industry rates if the Receiver is not present during normal trading hours or the time specified, or if there is any delay outside **TOLL's** control in loading or unloading greater than 30 minutes;

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;

6.1.12 if a copy of a contract or any part is required, pay **TOLL** a charge of \$5.00; and

6.1.13 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 \$10.00 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's** quoted charges represent the exclusive value of the supply for GST purposes, unless specifically stated to include GST.

## 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 :

7.2.1 store the **Goods** as **TOLL** thinks fit at the **Sender's** or the person nominated by the **Sender's** risk and expense, or

7.2.2 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. The exclusions, releases and indemnities in 9.2 and 9.3 extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if **TOLL** knows they

are possible or otherwise foreseeable.

- 9.5. These conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental term.
- 9.6. **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**.
- 9.7. 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.
- 9.8. **TOLL** is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments for any **Person**.

#### **10. Limitation of Liability**

- 10.1. The parties acknowledge that:

10.1.1 under applicable state, territory and Commonwealth law (including the Trade Practices Act), 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:

10.2.1 the supplying of the **Services** again; or

10.2.2 the cost supplying the **Services**.

#### **11. Law**

- 11.1. 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.

#### **12. Severability**

- 12.1. If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition.

#### **13. Variations and Waiver**

- 13.1. **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** by an authorised officer.

- 13.2. 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.

#### **14. Temperature Controlled Services**

- 14.1. If a temperature control section is completed on the front or on **TOLL** documentation is completed:

14.1.1 The **Sender** acknowledges temperature variations can occur, and

14.1.2 **TOLL** will endeavour to ensure the **Services** are provided at a temperature within accepted tolerance levels.

- 14.2. Any temperature record maintained by **TOLL** will be conclusive of the temperature during the **Services**.