

STANDARD CONDITIONS OF CONTRACT

1.0 GENERAL CONDITIONS

V1-1106

1.1 DEFINITIONS

In these Conditions:

Abandoned Goods means Goods which have not been accepted for delivery and which have remained in the possession of Toll for 90 days.

Conditions means these Standard Conditions of Contract.

Container means any container, trailer, transportable tank, pallet, flat rack, bolster or any device used to consolidate and carry cargo.

Customer means the person at whose request or on whose behalf Toll provides the Services.

Dangerous Goods means dangerous goods as defined in the Australian Dangerous Goods Code, and any Goods which are dangerous, volatile, explosive, inflammable or offensive, or which may become dangerous, volatile, explosive, inflammable or offensive, or which may become harmful to any person, property or the environment whatsoever.

Goods means the cargo, baggage, Motor Vehicle or item in relation to which any part of any Services have been or are to be performed and any receptacle, Container, package, packaging, or item in or on which they are contained or with which they are stored or handled.

Government Agency means a government or government department or other body, a governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.

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

Invoice means a tax invoice issued under the GST Law.

Toll means Toll Air Services Pty Limited.

Responsible Persons means the Customer and anyone enjoying the benefit (whether directly or indirectly) of any part of the Services whether as principal, servant or agent.

Services means the whole of the operations provided by Toll for the Customer including any and all computer systems used by Toll to provide the Services.

Services Agreement means, where applicable, the agreement forming part of this contract which includes specific provisions relating to the Services.

Subcontractor means any person, and its servants or agents, who pursuant to a contract or arrangement with any other person (whether or not Toll) provides or agrees to provide the Services or any part of the Services.

Tariff means Toll's tariff of charges as applicable from time to time.

Temperature Controlled Goods means Goods which require temperature control.

1.2 APPLICATION

1. Toll is not a common carrier and accepts no liability as such. Toll reserves the right to agree or to refuse to contract with the Customer in its absolute discretion.
2. Toll is not, and will not be deemed to be, a consignor as defined by the Road Transport Reform (Dangerous Goods) Regulations 1997 (Cth), and accepts no liability as such. The Customer authorises Toll to name the Customer or another person as the consignor in any documentation where applicable.
3. All Services are provided by Toll subject only to these Conditions, the conditions which are incorporated into any bill of lading, waybill or consignment note issued by Toll, and the applicable Tariff and Services Agreement.
4. In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into any bill of lading, waybill or consignment note issued by Toll, the conditions in the bill of lading, waybill or consignment note shall prevail.
5. All rights, immunities, indemnities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or of these Conditions by Toll or any other person entitled to the benefit of such provisions.
6. If any provision or any part of a provision in these Conditions is unenforceable such unenforceability shall not effect any other provision or any other part of a provision.
7. These Conditions are subject to any warranty implied by the Trade Practices Act 1974 (Cth) to the extent to which the Act is applicable to these Conditions and prevents the exclusion, restriction and modification of such warranty.
8. Toll shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement is in writing and signed by an authorised person.

1.3 CUSTOMER'S WARRANTIES

The Customer warrants that:

1. It is either the owner and/or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this contract on its own behalf and/or as authorised agent of that person or persons.
2. The Goods are packed to withstand the ordinary risks of the Services having regard to the nature of the Goods, and the Container has been secured.
3. It has accurately and fully described the Goods and has provided all necessary instructions and information regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods.
4. It has complied with the requirements of any applicable law (including the Australian Dangerous Goods Code) relating to the nature, condition, packaging, handling, labelling, storage and carriage of the Goods and it shall provide all necessary assistance, information and documentation to enable Toll to comply with any of its obligations under such laws.
5. It shall not tender any Dangerous Goods or Temperature Controlled Goods for the provision of Services by Toll without presenting a full description of the Goods and disclosing their nature, and where relevant, information relating to the manner in which the Services must be provided.
6. Other than a claim or allegation by the Customer against Toll, no claim or allegation shall be made by any person (including the Customer) against any other person (including Toll) who provides the Services or any part of the Services, which imposes or attempts to impose any liability whatsoever and howsoever arising in connection with the provision of the Services and/or the Goods.

1.4 CUSTOMER'S INDEMNITIES

The Customer shall indemnify Toll in all circumstances arising out of the provision of the Services and/or in respect of the Goods for:

1. any loss or damage incurred by, any claim or allegation made against, or any claim for death of or bodily injury to a person made against, Toll or others (other than by the Customer); and
2. breach by the Customer of any warranty in these Conditions or any applicable Services Agreement.

1.5 TOLL'S RIGHTS

1. Toll may provide the Services by any method which Toll in its absolute discretion deems fit notwithstanding any instructions of the Customer that the Services are to be supplied by another method.

2. Toll may comply with any orders, directions or recommendations made by a Government Agency in relation to the Goods and/or the provision of the Services without recourse by, and at the risk and expense of, the Customer.
3. If the Customer or the receiver fails to accept delivery of the Goods, Toll shall be entitled to store the Goods at the risk and expense of the Customer.
4. Toll shall dispose of Abandoned Goods at the expense of the Customer in any way it deems fit and without compensation to the Customer. The Customer shall be given 14 days written notice of Toll's intention to dispose of the Goods.
5. If, in the opinion of Toll, the Goods are liable to become Dangerous Goods, Toll in its absolute discretion may refuse to provide the Services, or may at any time destroy, dispose of, abandon or render harmless the Goods without compensation to and at the expense of the Customer.
6. If, in the opinion of Toll, the Goods do not meet the requirements of all applicable laws relating to the Goods and Services, or are unsuitable to be handled by Toll using the equipment and operating procedures normally employed by Toll in providing the Services, Toll in its absolute discretion may:
 - a) refuse to provide the Services in respect of the Goods or any part of them; or
 - b) take whatever measures deemed necessary at the risk and expense of the Customer to cause the Goods to comply with the requirements of all such laws or to make the Goods suitable to be handled by Toll.
7. If, in the opinion of Toll it is necessary and reasonable to do so to render the Goods or Services in relation to the Goods safe, Toll may open any Container, package, wrapping or document.
8. Toll may subcontract the Services (in whole or in part) on any terms and Toll is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of a Subcontractor and/or any person who is or may be vicariously liable for the acts or omissions of Toll or a Subcontractor, each of whom shall to this extent be or be deemed to be parties to this contract.

1.6 TOLL'S LIABILITIES

1. Every exemption, limitation, condition, right, defence and immunity available to Toll shall be available and shall extend to protect a Subcontractor or any person who is or may be vicariously liable for the acts or omissions of Toll, or a Subcontractor.
2. Toll accepts no responsibility for the accuracy of any part of any description of, or any declaration in relation to, the Goods on any document to which the Services relate.
3. Except as provided in clause 1.6.4, Toll shall not be responsible in tort, contract, bailment or otherwise for any, or the consequences of any:
 - a) breach by the Customer of any warranty in these Conditions and/or any applicable Services Agreement;
 - b) loss of or damage to the Goods, concealed damage, deterioration, contamination or evaporation of the Goods, misdelivery of the Goods, or delay in delivering or failure to deliver the Goods; or
 - c) delay in providing or failure to provide or perform the Services.
4. The liability of Toll in respect of an incident is limited to supplying the Services again or to the payment of the cost of having the Services supplied again, subject to the loss of or damage to the Goods exceeding AUD500.00.
5. Any claim for loss of or damage to the Goods or relating to performance of the Services must be notified in writing to Toll within 7 days of delivery of the Goods or Container or the date by which the Goods should have been delivered.
6. In any event, Toll shall be discharged from all liability whatsoever unless suit is brought within 6 months of the provision of the Services, delivery of the Goods or Container, when the Services should have been provided, or when the Goods should have been delivered.

1.7 ADVICE & INFORMATION

1. Toll shall not be responsible in tort, contract or otherwise for any, or the consequences of any, loss or damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of Toll to the Customer or others as to the classification of or any matter material to the valuation of or the liability for the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or cargo.

2. In giving or making such quotation, advice, statement, representation or information Toll relies solely on the particulars provided by the Customer in relation to the Goods or cargo and in relation to the transaction(s) relating to the Goods or cargo.

1.8 CARRIAGE AND RETURN OF CONTAINERS

1. The Customer shall be responsible for the return of any Container to the person who owns or has the right of possession of a Container or its agent and the Customer indemnifies Toll against any claims, demands or liabilities which may arise as a result of a failure by the Customer to do so.
2. Toll shall not be responsible for the safe and proper packing and stowage of the Goods in any Container, having regard to the requirements of the Container, if such packing and stowage is done by the Customer.
3. Any Container supplied by Toll shall be:
 - a) inspected by the Customer prior to packing and stowage to ensure that the Container is undamaged and suitable for carriage of the Goods; and
 - b) returned to Toll clean and undamaged to the place and by the date nominated by Toll, failing which the Responsible Persons shall be jointly and severally liable for demurrage which shall be charged in accordance with the applicable Tariff or Services Agreement, and for all resulting costs and expenses incurred by Toll.

1.9 NO INSURANCE

Toll does not hold an Australian financial services licence and, in accordance with the Corporations Act 2001 (Cth), shall not arrange or provide insurance for the Customer. The Customer must obtain its own insurance in respect of the Goods and/or the Services.

1.10 PAYMENT

1. Toll's charges must be paid in full within 7 days of the date of the Invoice issued by Toll without discount, deduction, counterclaim or set-off, and regardless of any dispute between Toll and the Customer. Interest shall be payable on any sum which remains due and unpaid after the date for payment and shall be charged at the relevant Reserve Bank of Australia Cash Rate Target plus 3% p.a. In the event of a breach by the Customer of this clause 1.10.1, Toll reserves the right to suspend or to refuse to provide the Services to the Customer in its absolute discretion.
2. Toll may charge by weight, measurement or value and may at any time re-weigh or re-value, or re-measure or require the Goods to be re-weighed, re-valued or re-measured and charge proportional additional charges accordingly.
3. Toll's charges shall be considered earned as soon as the Goods are delivered to Toll and under no circumstances shall those charges be refunded.
4. Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that person does not pay those charges within 7 days of the date set for payment, or if no date is set for payment within 7 days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges within 7 days of being notified of that person's failure to pay.

1.11 LIEN

1. Toll shall have a lien on the Goods and/or any other cargo or items of the Customer in the possession or control of Toll and any documents relating to those Goods, cargo or items for all sums payable by the Customer to Toll.
2. Toll shall have the right to charge for storage and/or may remove to a warehouse or bond store the Goods, cargo or items subject to a lien at the risk and expense of the Customer.
3. Toll may sell, on 28 days notice, such Goods, cargo or items by public auction or private treaty and retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, cargo or items from their proceeds and shall pay any surplus to the entitled person.

1.12 FORCE MAJEURE

Toll shall be released from its obligations under these Conditions to the extent that performance is delayed, hindered or prevented due to any event or circumstance beyond the control of Toll.

1.13 JURISDICTION

These Conditions shall be governed and construed in accordance with the laws of the State or Territory in which this contract was made and the parties submit to the exclusive jurisdiction of the courts of that State or Territory.