

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 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.