



# TOLL GLOBAL FORWARDING (USA) GENERAL TERMS AND CONDITIONS OF SERVICE

## 1. DEFINITIONS

"*Authority*" means any duly constituted legal or administrative body or Person, that exercises jurisdiction or authority within any nation, state, municipality, port, or airport;

"*Carriage Document*" includes, for carriage by air, an air waybill; for carriage by sea, a bill of lading or a sea waybill; for carriage by rail or by road, a consignment note or similar document; and for multimodal transport, or a combined transport document;

"*Charges*" includes all freight, costs, fees, expenses, commissions, duties, penalties, taxes, surcharges, or other amounts payable to Toll or any Authority with respect to the Services or the Goods;

"*Conditions*" means these General Terms and Conditions of Service as amended from time to time;

"*Customer*" means any Person at whose request or on whose behalf Toll provides a Service;

"*Dangerous Goods*" includes Goods that are or may become dangerous, hazardous, noxious, toxic, explosive, inflammable, or radioactive; Goods likely to damage, taint or adversely affect other goods; Goods that are likely to or do cause contamination; or Goods likely to harbor or encourage vermin or other pests;

"*Force Majeure Event*" includes fire, strike, labor dispute, civil disturbance, riot, war, Act of God, terrorism, governmental order or regulation, cyber-attack, or other similar contingency or event beyond the reasonable control of Customer or Toll;

"*Goods*" means the whole or any part of the cargo, packaging, and any Transport Unit accepted from Customer in connection with the Services;

"*Information*" means data, messages, advice, or information (including electronic data) in any form;

"*Information System*" means any computer hardware, computer software, website, portal, communication lines and information processing technologies operated or used by Toll, Customer or any third party used in connection with the Services (including any computer, tablet, phone, or other mobile device);

"*Instructions*" means a statement of the specific requirements issued by Customer, an Authority, or any other Person;

"*Owner*" includes all and any of the following (except Customer): the owner, shipper or consignee of the Goods, any other Person who is or who may become interested in or otherwise entitled to the possession of or title to the Goods, and anyone acting on behalf of any of these Persons;

"*Person*" means an individual, corporation or other legal entity, or a duly appointed representative of such corporation or other legal entity;

"*SDR*" means Special Drawing Rights as defined by the International Monetary Fund, calculated as at the date of the court judgment, arbitration award or settlement;

"*Services*" means the whole or any part of any activities of whatsoever nature undertaken by Toll with respect to Customer or in relation to Goods;

"*Subcontractors*" means carriers, forwarders, brokers, or other direct and indirect subcontractors (of any degree or tier) engaged by Toll from time to time to fulfill the performance of the Services;

"*Toll*" means (i) Toll Global Forwarding SCS (USA) Inc., (ii) Toll Global Forwarding (USA) Inc., (iii) entities that are controlled by, that are under common control with, or that control them (collectively, the "*Toll Affiliates*"), and (iv) their respective officers, directors, employees, agents, and any applicable Subcontractors;

"*Transport Unit*" includes any container, trailer, pallet, or other device used for and in connection with the carriage, consolidation, or storage of Goods;

"*Unlawful Goods*" includes Goods that (i) are intended to be used in the design, development, or production of nuclear, chemical, or biological weapons (ii) are subject to trade controls or sanctions in their country of origin, passage, or destination, (iii) contain contraband or prohibited items or any item that infringes or may infringe intellectual property or other rights of any Person, or (iv) any other Goods that may be subject to detention by Authorities;

"*USD*" means United States Dollars;

"*Valuable Goods*" means any Goods of a valuable nature, including without limitation: bullion, bank notes, cash money, coins, drafts, credit cards, documents or papers of value of all kinds, articles or materials containing information or data of value in any form, precious stones, jewelry, antiques, or works of art; and

"*Warehouse*" means any building, facility, yard, or other real property leased or owned by Toll for the storage and related handling of Goods.

## 2. APPLICATION

These Conditions apply for the benefit of Toll on its own behalf and also as agent for and on behalf of the Toll Affiliates. Toll, and specifically including the Toll Affiliates and any Subcontractors providing Services hereunder, shall be entitled to all benefits, limitations, exclusions, and defenses set forth in these Conditions. These Conditions shall govern the Services performed or to be performed by Toll for Customer or Owner, including any advice or information provided, whether gratuitously or not, except in the following instances: (i) Toll and Customer have

signed a bespoke agreement, in which case such agreement shall govern to the extent inconsistent with these Conditions; (ii) any mandatory or compulsory law, statute, regulation, convention, or treaty compulsorily applies to all or part of the Services, in which case such law, statute, regulation, convention, or treaty shall govern to the extent inconsistent with these Conditions; (iii) Toll has issued a Carriage Document as the Carrier, in which case such Carriage Document shall govern to the extent inconsistent with these Conditions; or (iv) Customer uses or accesses any Information System operated by Toll, in which case any applicable Toll user terms as published on the relevant Information System or otherwise provided by Toll shall govern to the extent inconsistent with these Conditions.

## 3. GENERAL

3.1 The failure by Toll to exercise any rights under these Conditions shall not constitute a waiver of such rights.

3.2 In the event that any of these Conditions is found to be unenforceable, then the remainder of these Conditions shall continue to be in full force and effect.

3.3 Toll may unilaterally amend these Conditions at any time by publishing the updated version on Toll's website or by providing the updated version to Customer. All Services provided by Toll after such publication shall be governed by the updated version of these Conditions.

3.4 Neither Toll nor Customer shall be liable to the other for default in the performance or discharge of any of these Conditions if such default is caused by a Force Majeure Event; provided, however, the obligation to timely pay any sums hereunder, whether by Toll or Customer, shall not be excused by a Force Majeure Event.

3.5 Toll and Customer agree that the Services provided hereunder are provided on a non-exclusive basis. Toll may provide service to any other shippers or customers, and Customer may obtain similar services from other carriers or providers. Nothing contained herein shall obligate Toll to accept any or every shipment tendered to it by Customer, and nothing contained herein shall obligate Customer to tender any shipment to Toll.

## 4. CAPACITY OF TOLL

4.1 Toll acts as an "agent" of Customer for the purpose of performing Services under Sections 4.2, 6, and 8 and in connection with the entry and release of Goods, post entry services, the securing of export licenses, the filing of export and security documentation on behalf of Customer and other dealings with governmental agencies, in all other respects Toll acts as a principal and independent contractor.

4.2 If applicable, in all dealings with any Authority in the European Union for and on behalf of Customer or Owner, Toll is deemed to be appointed as, and acts as, Direct Representative only under Article 5 of Council Regulation (EEC) No. 2913/92, such that Customer, and not Toll, is solely responsible for any customs debt that may arise as a consequence of the import or export declaration.

4.3 Toll shall operate as an independent contractor in performing the Services. Nothing contained in these Conditions nor in any dealings or activities between Toll and Customer shall be construed in any way as creating any relationship of employment, partnership, or joint venture between Toll and Customer. Except as expressly provided herein, neither party shall act or purport to act or represent itself, directly or by implication, as the agent, legal representative, partner or joint venture of the other party, nor in any manner assume or create or purport to assume or create any obligations in the name or on behalf of the other party.

## 5. CUSTOMER'S OBLIGATIONS

5.1 Customer expressly warrants that it is either the Owner or authorized agent of the Owner, and that it is authorized to accept and does accept these Conditions not only for itself but also for and on behalf of the Owner. Customer warrants that it is the lawful owner or has lawful possession of the Goods that may be tendered for transportation or warehousing by Toll. Customer warrants that it has sole legal rights to authorize the transportation of the Goods, storage of the Goods, to authorize the release of the Goods, and to instruct Toll regarding the delivery or disposition of the Goods. Customer agrees to notify all parties acquiring any interest in the Goods of these Conditions and further agrees to indemnify and hold Toll harmless from any claim by third parties related to the ownership, transportation, storage, handling, or delivery of the Goods, and from any other services provided by Toll under these Conditions. Such indemnification shall include any attorneys' fees or other costs incurred as a result of any claim asserted against Toll by a third party, regardless of whether or not suit is actually filed.

5.2 Where Services are to be provided by Toll on a continuing basis, Customer shall, on a continuing basis, provide Toll with forecasts of cargo throughput at such intervals and with such details as Toll may reasonably require for the performance of the Services.

5.3 Customer acknowledges that, in preparing and submitting customs entries, export declarations, applications, security filings, documentation or other required data, Toll relies on the timeliness, completeness, accuracy, and correctness of all information furnished by or on behalf of Customer, and Customer warrants that all information furnished to Toll by or on behalf of Customer relating to the Goods, their description, classification, bar-coding, marks, number, weight, condition, volume and quantity of the goods, as furnished by Customer or on its behalf, is timely, complete, correct, accurate, and correct. On any import or export, in no



event shall Toll be responsible or liable for any increased duty, penalty, fine, or other expense unless caused by the gross negligence or willful misconduct of Toll, in which event its liability to Customer shall be limited to 50 SDR per entry.

5.4 Customer is responsible for and hereby represents and warrants to Toll as follows:

5.4.1 Customer is in compliance with, and shall at all times comply with, all applicable laws, rules and regulations, including, but not limited to, the import and export laws and government regulations of any country to, from, or through which the Goods may be carried, and the Goods do not require Toll to obtain any specific license or permit for transportation, storage, import, or export of the Goods and, to the extent required by applicable law or regulation, the Customer has obtained all necessary export, and/or import licenses or permits.

5.4.3 Transportation, storage, import, or export of the Goods by Toll, as applicable, is not prohibited by any applicable law or regulation, including comprehensive economic or trade sanctions maintained by the United States, the European Union, the United Nations, the country of origin, or the country of destination.

5.4.4 Goods presented for any Services are not Unlawful Goods, the Goods, nor any component thereof, are not intended to be used in the design, development, or production of nuclear, chemical, or biological weapons, and neither Customer, nor any party with whom Customer trades, is a party identified on the United States Department of Commerce Denied Persons List or Entity List, the United States Department of Treasury's Specially Designated Nationals List, the United States Department of State Debarred Parties List, European Union Sanction List, or any list of prohibited, denied, or blocked parties maintained by any country, territory, or other Authority.

5.4.5 Customer undertakes to review all documents and declarations prepared or filed with any Authority, and will immediately advise Toll of any errors, discrepancies, incorrect statements, or omissions on any declaration or submission.

5.5 Except where Toll has agreed in writing to accept responsibility for the preparation, packing, stowage, labeling or marking of the Goods, Customer warrants that all goods have been properly and sufficiently prepared, packed, stowed, labeled and marked, and that the preparation, packing, stowage, labeling and marking are appropriate to withstand the ordinary risks of handling, storage and carriage.

5.6 Toll will not knowingly accept or deal with any Unlawful Goods. Toll will not accept or deal with any Dangerous Goods, except under special arrangements previously made in writing and duly executed by both Toll and Customer. Should any Customer nevertheless deliver any Unlawful Goods or Dangerous Goods in violation of this Section 5.6, Customer shall be liable for all loss or damage caused by or to or in connection with the Dangerous Goods or Unlawful Goods however arising and shall defend and indemnify Toll from and against all penalties, claims, losses, damages, costs and expenses arising in connection therewith. Dangerous Goods or Unlawful Goods or Dangerous Goods tendered to Toll may be destroyed or otherwise dealt with, at Customer's sole cost and expense, and in the sole discretion of Toll or any other Person having custody of such Unlawful Goods or Dangerous Goods. If Dangerous Goods are accepted in accordance with this Section 5.6, such Dangerous Goods so accepted may nevertheless be destroyed or otherwise dealt with, at Customer's sole cost and expense, and in the sole discretion of Toll, should such Dangerous Goods create or be deemed to reasonably create a threat or damage to other goods or property.

5.7 If Toll agrees to accept for Service any Goods that require temperature or atmosphere control, Customer warrants that it shall not tender such Goods without having previously given written notice of their nature and particular temperature range to be maintained and, in the case of a temperature controlled Transport Unit packed by or on behalf of Customer, Customer further warrants that (i) the Transport Unit has been properly pre-cooled or pre-heated as required; (ii) such Goods have been properly stuffed and packed in the Transport Unit; (iii) the Transport Unit thermostatic controls have been properly set; and (iv) the Transport Unit has been maintained in accordance with its manufacturer's directions and recommendations and is fit for purpose. Toll shall not be liable for any loss or damage of or in relation to such Goods caused by a breach of these warranties by Customer, and Customer shall defend, indemnify and hold harmless Toll from and against any liabilities, losses, damages or expenses arising from such breach. Toll shall have no liability for the continued maintenance of any temperature inside the Transport Unit, whether such Goods were packed by or on behalf of Customer or Toll.

5.8 Without prior agreement in writing, Toll will not accept Valuable Goods or other Goods, whether prone to theft or otherwise, that require special handling regarding carriage, handling, or security, (including, but not limited to, human remains, livestock, pets, and plants). Should Customer nevertheless tender any such goods to Toll, or cause Toll to handle or otherwise deal with any such goods, Toll shall have no liability whatsoever for or in connection with such goods.

5.9 Toll assumes no liability to Customer, Owner, nor any other Person for any loss or expense, including, but not limited to, fines and penalties, arising from Customer's failure to comply with any applicable export laws, rules, regulations, or licenses.

## 6. CASH ON DELIVERY ARRANGEMENTS

Where Toll has to engage third parties to comply with Instructions from Customer relating to the delivery or release of the Goods in specified circumstances, Toll

does so only as an agent for Customer. When Goods are accepted or dealt with upon Instructions to collect Charges from the consignee or any other person, Customer shall remain fully liable for the same if they are not paid by such consignee or other person. Toll shall not have any liability for such arrangements, unless agreed in writing and duly executed by both Toll and Customer. In such event, Toll's liability for the performance of, or arranging the performance of, such Instructions shall not exceed the limit set forth in Section 15.3(iv)(2) of these Conditions.

## 7. EXCESS VALUE DECLARATION

Toll may, but shall not be required to, agree to accept liability in excess of the limits set forth in these Conditions, specifically Section 15 hereof, only upon (i) Customer's agreement to pay Toll's additional charges for accepting such increased liability, and (ii) Toll's agreement to accept such increase in liability in writing. Details of Toll's additional charges for such increased liability will be provided upon request.

## 8. CARGO INSURANCE

No cargo insurance will be arranged through Toll unless Toll has agreed otherwise in writing with Customer. In such event, Toll will act solely as agent for Customer, and will lead to the formation of a separate contract for insurance between Customer and the insurance carrier. Toll shall have no liability for any acts, omissions, or decisions of any such insurance carrier whatsoever. Should any such insurance carrier dispute liability or refuse to settle a claim for any reason whatsoever, Customer agrees it will have no recourse against Toll.

## 9. INDEMNITY

Customer shall defend, indemnify and hold harmless Toll from and against any claim, cost, or demand whatsoever and by whomsoever made in connection with any and all acts or omissions of Customer, including but not limited to breach or alleged breach of any obligation, representation, or warranty set forth in these Conditions or any agreement with Toll, the violation of any applicable law, regulation, or convention, the untimeliness, incompleteness, or inaccuracy of entry, export, security, description, weight, classification, origin, or any other attribute of the Goods, or for any duties, taxes, imposts, levies, deposits, or outlays of any kind levied by any Authority at any port or place for or in connection with the Goods or Services, and for any related payments, fines, expenses, loss or damage whatsoever, including lost profits, attorneys fees and costs of litigation, incurred by Toll. The foregoing indemnity excludes claims to the extent arising from the gross negligence or willful misconduct of Toll.

## 10. INFORMATION SHARING

10.1 Customer and Toll may cooperate in the exchange of Information via their respective Information Systems. Unless otherwise expressly agreed in writing, Toll shall not be liable for any loss, damage, cost, or expense arising out of or in connection with Toll entering or sending incorrect or incomplete Information or damaging, corrupting, losing, or disclosing Customer's or any third party's Information or Information System.

10.2 To the fullest extent allowed by law, Customer agrees that Toll shall have no liability whatsoever with respect to any Information System or Information. To the extent that Toll is held liable for any matter arising out of, or in connection with, any Information System or Information, Toll's liability shall be limited as set forth in Section 15.3(vii) of these Conditions.

## 11. QUOTATION AND PAYMENT

11.1 Quotations are given for immediate acceptance and Toll may (subject to the following) withdraw or revise a quotation at any time until it is accepted by Customer. Unless otherwise agreed in writing, customs duties, levies, deposits, taxes, and other outlays are in addition to quoted rates.

11.2 Customer shall be liable for any Charges of any kind charged by any Authority at any port or place for or in connection with the Goods or Services. Customer shall, upon request, make immediate full payment, whether in advance or in arrears, to Toll to cover any such Charges. Toll shall be entitled to retain and shall be paid all brokerage fees, commissions, allowances, and other remunerations customarily retained by or paid to freight forwarders.

11.3 Charges for the Services shall be deemed fully earned upon the earlier of Toll's receipt of the Goods or commencement of the Services by or for Toll. Customer shall pay to Toll all sums immediately when due, without reduction or deferment on account of any claim, dispute, counterclaim or set-off. Unless otherwise agreed by Toll in writing, Toll's invoices shall be due for payment immediately upon presentation and shall be deemed delinquent if not paid within ten (10) business days following Toll's presentation of the associated invoice or other document setting forth the amounts owed by Customer.

11.4 If any money owing to Toll is not paid when due, Toll may at any time by notice in writing to Customer and without liability whatsoever immediately terminate the provision of any or all Services, whether or not such Services relate to such delinquent payment or any credit arrangements otherwise provided to Customer, whereupon all sums due and owing by Customer shall become immediately due and payable.

11.5 All billing or invoice inquiries or disputes must be presented to Toll or Customer, as applicable, within six months after receipt of invoice. Any inquiries or disputes not presented within the time frame set forth herein shall be deemed waived. Notwithstanding the foregoing, Toll may at any time offset any amounts owed or paid by Customer to Toll against any amounts owed by Toll to Customer,



including, without limitation, unidentified payments and credits in Customer's favor, duplicate payments made by Customer, and accounts payable to Customer.

## 12. PERFORMANCE

12.1 Toll will perform the Services with a reasonable degree of care, skill, and judgment.

12.2 Except as otherwise agreed in writing, Toll, in its sole and absolute discretion, shall be entitled to engage in such conduct as may be necessary or required to fulfill Toll's obligations hereunder. If, in the opinion of Toll, it becomes necessary or desirable in the interest of Customer, Owner or the Goods to deviate from any applicable Instructions provided by Customer or Owner, Toll may do so, and Customer hereby expressly authorizes any such conduct by Toll.

12.3 Toll may at any time comply with orders or recommendations given by any Authority, and Toll's responsibility with respect to the Goods shall terminate upon delivery or other disposition of the Goods pursuant to any Authority's orders or requirements.

12.4 Where Goods, Transport Units, or vehicles are to be delivered to Toll, such items shall not be deemed as received by Toll unless and until the Person making such delivery has reported to Toll's reception office or other area designated by Toll for the receipt of Goods, Transport Units, or vehicles.

12.5 Toll reserves the sole right to choose the means, routes, and procedures to be followed with respect to the performance of the Services. Toll is hereby authorized by Customer, at Toll's sole discretion, to engage carriers, agents, brokers, and other service providers, without the necessity of obtaining Customer's consent or providing notice, to perform the Services.

12.6 Customer hereby authorizes Toll, at its option and without obligation, to open any Goods, packages, or Transport Units tendered by or on behalf of Customer, without notice, so that Toll may verify, inspect, examine, weigh, or measure the contents thereof, and any expenses associated therewith shall be the responsibility of Customer. All Goods tendered for transportation or storage are subject to inspection by (i) Toll, including any applicable Subcontractor, and (ii) any Authority. Notwithstanding the foregoing right to inspect Goods, Toll is not obligated to perform such inspection except as mandated by applicable law.

12.7 Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods onto and off the Transport Unit, and Customer shall be responsible, at its sole cost and expense, for providing adequate and suitable facilities and equipment for loading and unloading the Goods onto and off the Transport Unit.

12.8 Unless Toll has agreed in writing to complete the performance of a Service by an agreed point in time ("Time Guaranteed Performance"), Toll agrees to perform the Services with reasonable dispatch and does not undertake that Services will be completed or the Goods (or documents relating thereto) will be delivered or made available within a particular time. Dates specified for completion of carriage or any other Service are estimates only. Toll will make commercially reasonable efforts to keep Customer reasonably advised of delays.

12.9 In addition to the foregoing, the following terms and conditions shall apply in the event the Services include warehousing, storage, or other handling services provided or performed by Toll at a Warehouse:

12.9.1 Goods may be warehoused or otherwise stored at any Warehouse, and such warehousing, storage, or other handling charges shall be at Customer's sole cost and expense. Toll shall have no obligation to accept Goods that are not properly packaged or which, in the reasonable opinion of Toll, are not suitable for movement or storage within the warehouse. Prior to delivery at any Warehouse, Customer shall furnish Toll with a manifest showing marks, brands, or sizes to be accounted for separately, together with the class of storage desired by Customer, if applicable.

12.9.2 If Toll determines, in its sole discretion, that the original palletization of Goods must be broken down for storage purposes, Toll shall be authorized to break down the pallets without further notice to Customer.

12.9.3 Toll will store the Goods at its discretion at any one or more Warehouses. The identification of any specific location on any warehouse receipt or other storage document does not guarantee that the Goods shall be stored at such location. Toll may, in its sole discretion, move Goods to any Warehouse.

12.9.4 Toll may provide services in addition to simple warehousing and storage upon Customer's request and to the extent agreed by Toll in writing. Additional handling charges will apply whenever Goods are pulled for distribution or release, whenever physical inventories are requested by Customer, and whenever additional services are provided by Toll that are not explicitly included in the applicable storage charge quoted to Customer. Such additional charges will be provided to Customer and will be invoiced to Customer in addition to any storage charges due.

12.9.5 Toll reserves the right to terminate storage at any Warehouse where Goods are stored or otherwise being handled. In such event, Toll may require the removal of the Goods or any portion thereof by giving Customer not less than thirty (30) days prior written notice. Customer shall be responsible for the payment of all charges attributable to the storage said Goods through the date of such termination in addition to the cost of removing and arranging for the removal of the Goods. If the Goods are not removed within the time frame required by Toll, Customer shall remain liable for any ongoing storage and

handling charges, and Toll may exercise its rights under applicable law, including, but not limited to, selling or otherwise disposing of the Goods.

12.9.6 For all Goods tendered for storage, Customer shall supply such information and documents as are necessary to comply with all laws, rules, and regulations. For all Goods, Customer shall provide to Toll all documents or other information necessary, useful, or required for the safe and proper warehousing, handling, and storage of the Goods. If such information and documents are not fully, accurately, and timely provided to Toll, Customer shall indemnify Toll for any consequences of such failure.

12.9.7 Unless specifically agreed to in writing, Toll shall not be responsible for storage of any Goods in a temperature or humidity controlled environment. Customer knowingly accepts that the Goods will be warehoused, stored, or handled in a non-temperature/humidity controlled environment. Toll will not be responsible for any loss or damage to the Goods that results from fluctuations in temperature range or in humidity levels of the Warehouse.

## 13. DUE DELIVERY

13.1 Toll shall be deemed to have performed all of its obligations and completed its performance of the Services in compliance with these Conditions ("Due Delivery"), if: (i) at any time, in the opinion of Toll, performance of the Services is, or is likely to be, affected by any hindrance, risk, delay, difficulty, or disadvantage of any kind occurring before or after commencement of the Services, whereby Toll, in its sole discretion, may treat the performance of the Services as terminated; (ii) the Goods are tendered to the custody and control of any Authority in accordance with applicable customs, practices, laws, or regulations; (iii) Customer or Owner entitled to delivery of the Goods fails to take delivery of the Goods; or (iv) the Goods are delivered to any Person presenting a Carriage Document stating that such Person is authorized to take delivery or possession of the Goods, including any forged or fraudulent Carriage Document unless Toll had a reasonable basis to know that such Carriage Document was forged or fraudulent.

13.2 In case of Due Delivery pursuant to Section 13.1, Toll shall have the right to store the Goods at any place at Customer's sole risk, cost, and expense, at which point, Toll's obligations hereunder shall be deemed fully performed. Toll's liability, if any, in relation to such storage, shall be governed by these Conditions. All costs incurred by Toll as a result of Due Delivery pursuant to Section 13.1 shall be deemed as freight earned, and such costs shall, upon demand, be paid by Customer.

13.3 Toll, in its discretion, shall be entitled, at Customer's sole cost and expense, and subject to compliance with any applicable laws and any express Instructions issued by Customer, to: (i) immediately, and without notice, sell or dispose of any of the Goods that, in Toll's reasonable opinion, cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed, or if any Temperature Controlled Goods or other Goods appear to be perishing or deteriorating; and (ii) at least thirty days after Due Delivery, and following not less than thirty days prior written notice to Customer thereof, sell or dispose of any Goods that cannot be delivered.

## 14. LIEN

Toll shall have a general lien on any and all Goods (and documents relating thereto) of Customer or Owner, in Toll's actual or constructive possession, custody or control, for all amounts owed by Customer to Toll in connection with any Services or otherwise owed by Customer to Toll pursuant to these Conditions. If any claim for payment remains unsatisfied for thirty (30) days after demand for its payment is made, Toll may sell at public auction or private sale, upon ten (10) days written notice to Customer or Owner, sent certified or registered mail with return receipt requested, the Goods (and documents relating thereto), or so much thereof as may be necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of any amounts then due to Toll. The surplus, if any, from any such sale shall be transmitted to Customer by Toll, and Customer shall remain liable for any deficiency from any such sale.

## 15. LIABILITY

15.1 Toll shall not be responsible nor liable for any damage, loss, non-delivery or mis-delivery of Goods, nor for any delay or deviation howsoever arising or caused except to the extent such damage, loss, non-delivery, mis-delivery, delay, or deviation was caused by the negligence or willful misconduct of Toll while the Goods were in the actual custody of Toll and under its actual control.

15.2 Toll shall be entitled to the full benefit of all privileges, rights and immunities available to any Subcontractor, in particular but not limited to air, ocean, and ground carriers under their applicable Carriage Document, warehousemen or other providers, and any other Subcontractors under their standard trading terms and conditions. Additionally, any Subcontractors utilized by Toll hereunder shall be entitled to the full benefit of all privileges, rights and immunities available to Toll under these Conditions.

15.3 In all cases where liability has not been excluded or limited by these Terms or by any mandatory applicable statute or convention of law, the liability of Toll is limited as follows:

(i) in the case of loss of or damage to Goods where the predominant service provided or arranged by Toll is air transport, to the lesser of: (1) the manufactured or landed cost to Customer of the Goods, excluding the value of all salvage obtained or obtainable ("Landed Cost"); (2) the replacement cost of the Goods or the equivalent of such Goods ("Replacement Cost"); (3) the cost to repair of the Goods ("Repair Cost"); (4) in the case of international air



transport, the amount determined by and specified in the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929 (the "Warsaw Convention"), as amended by the Protocol to Amend the Warsaw Convention, done at the Hague on September 28, 1955 and the Montreal Protocol No. 4 to Amend the Warsaw Convention, signed at Montreal on September 25, 1975, and the Convention for the Unification of Certain Rules for International Carriage (the "Montreal Convention"), together with any subsequent amendments to the Warsaw Convention or the Montreal Convention; or (5) in the case of air shipments with pickup and delivery occurring in the same country, or in the event the Warsaw Convention or the Montreal Convention do not apply, the lesser of USD \$0.50 per pound or USD \$50.00 per occurrence.

(ii) in the case of loss of or damage to Goods where the predominant service provided or arranged by Toll is ocean transport, to the lesser of: (1) the Landed Cost; (2) the Replacement Cost; (3) the Repair Cost; or (4) the amount determined by and specified in the International Convention for the Unification of Certain Rules Relating to Bills of Lading, August 25, 1924 (commonly referred to as the Hague Rules), the Protocol to Amend the Hague Rules, February 23, 1968 (commonly referred to as the Hague-Visby Rules), or the United States Carriage of Goods by Sea Act, 46 U.S.C. App. §§ 1300 et seq. (commonly referred to as COGSA), as applicable.

(iii) in the case of loss of or damage to Goods where the predominant service provided or arranged by Toll is ground transport, to the lesser of: (1) the Landed Cost; (2) the Replacement Cost; (3) the Repair Cost; (4) the amount determined by and specified in the mandatorily applicable treaty or national law with regard to claims concerning inland transportation (such as the Convention of the International Carriage of Goods by Road, May 19, 1956 (commonly referred to as CMR); (5) the lesser of USD \$0.50 per pound or USD \$50.00 per occurrence; or (6) solely with respect to full truckload shipments transported within the United States and Canada, the lesser of the amounts set forth in this Section 15.3.(iii)(1) through (4) up to a maximum of USD \$100,000 per occurrence.

(iv) in the case of loss of or damage to Goods where the predominant service provided or arranged by Toll is warehouse, storage, or other handling services, to the lesser of: (1) the Landed Cost; (2) the Replacement Cost; (3) the Repair Cost; (4) USD \$0.50 per pound of the gross weight of the lost or damaged Goods; or (6) USD \$50.00 per occurrence.

(v) in the case of an error or omission, or a series of errors or omissions not involving loss of or damage to Goods, the actual loss incurred by Customer up to a maximum of 25,000 SDR per calendar year in the aggregate.

(vi) in the case of vehicles, Transport Units or other equipment, the lesser of: (1) the actual value of such equipment lost or damaged; (2) the reasonable cost to repair such equipment; (3) the amount specified by applicable law, treaty, or accord; or (4) 10,000 SDR per occurrence.

(vii) in the case of claims that are not otherwise covered in these Conditions, the lesser of: (1) the cost to provide replacement Services, whether such replacement Services are provided by Toll or another third party; (2) the amount specified by applicable law, treaty, or accord; or (3) 25,000 SDR per occurrence.

As used in this Section 15.3 and elsewhere in these Conditions, the term "occurrence" shall mean each event or events arising from a common cause.

15.4. In the event Toll is liable for performance delays as determined pursuant to Section 15.1 hereof, Toll's liability shall be limited to the portion of the rates applicable to the relevant stage of the performance of Services at the time such delay occurred. If Toll has agreed to Time Guaranteed Performance pursuant to Section 12.8 hereof, Toll's liability shall be limited to liquidated damages of the rates applicable to such shipment multiplied by three.

15.5 With respect to all claims against Toll hereunder, unless and to the extent arising from the gross negligence or willful misconduct of Toll, and to the fullest extent allowed by applicable law, in no event shall Toll's total liability exceed USD \$1,000,000 in the aggregate for the duration in which Services are provided to Customer.

15.6 The defenses and limits of liability provided for by these Conditions shall apply in any action whether such action(s) are founded in contract, tort, negligence, or otherwise.

15.7. TO THE FULLEST EXTENT ALLOWED BY LAW, TOLL SHALL IN NO CIRCUMSTANCES BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL OR ECONOMIC LOSS OR DAMAGE INCLUDING, WITHOUT LIMITATION, ANY LOSS OF OR DAMAGE TO PROFITS, MARKET, REVENUE, SAVINGS, USE CONTRACT, GOODWILL OR BUSINESS, WHATSOEVER AND HOWSOEVER CAUSED, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS REASONABLY FORESEEABLE OR TOLL WAS ACTUALLY TOLD OF THE POSSIBILITY OF SUCH LOSS.

15.8 Notwithstanding anything contained herein to the contrary, in no event shall Toll have any liability hereunder if and to the extent attributable to any of the following: (i) any act or omission of Customer or Owner or any Person (other than Toll) acting on behalf of Customer or Owner; (ii) compliance with Instructions given by or on behalf of Customer, Owner, Authority, or other Person authorized to provide Instructions; (iii) insufficient packing, marking, labeling, or numbering of the Goods; (iv) handling, loading, stowing, unloading of Goods by Customer or

Owner or any Person other than Toll; (v) inherent vice or defect of the Goods; (vi) any Force Majeure Event; (vii) computer software or hardware defect, problem or virus that materially interrupts the business of Customer or Toll; (viii) saving or attempts to save life during the performance of Services; or (ix) pilferage or theft, unless such loss or damage is caused by the failure of Toll to exercise such ordinary care required by law.

15.9. If Customer considers the liability limits set forth herein to be inadequate, Customer is advised to, at Customer's sole cost and expense, obtain appropriate insurance cover its interests or to make an Excess Value Declaration in accordance with Section 7.

15.10 Notwithstanding anything contained herein to the contrary, if loss of or damage to Goods occurs at sea or on an inland waterway, and the ocean carrier, Authority, or any other Person entitled to do so establishes a limitation fund, the liability of Toll in such circumstances shall be limited to the lesser of (i) the limits set forth in this Section 15.3(ii) or (ii) the proportion of the said limitation fund allocated to the Goods.

15.11 Should Toll provide any Services gratuitously or at no charge to Customer, such Services will be provided at Customer's sole risk, and Toll shall have no liability whatsoever and howsoever arising in connection with such Services.

15.12 Should the Services include any ground transportation into, within, or out of the United States, Toll and Customer expressly waive any or all rights and remedies under Part B, 49 USC §13101 et. seq. as provided for by 49 USC §14101(b) to the extent such rights and remedies conflict with these Conditions.

## 16. NOTICE OF CLAIM AND FILING OF SUIT

16.1 Notice of any claim by Customer must be received in writing by Toll or its designated agent within fourteen (14) days after the date specified in Section 16.2, except where Customer can show that it was impossible to comply with such deadline and such claim is made as soon as reasonably practicable. Unless otherwise required by applicable law, treaty, or convention, any suit to enforce these Conditions or to pursue remedies available to Customer hereunder or in connection with the Services must be filed in the proper forum as specified in Section 19 within nine months after the date specified in Section 16.2. Notwithstanding the foregoing, prior to the filing of any suit, (i) Customer shall first provide written notice of the claim, dispute, or alleged breach of these Terms, and Toll shall have failed to cure or otherwise commenced the curing of such claim, dispute, or alleged breach within thirty days after the date Toll received such notice, and (ii) Toll and Customer shall have taken commercially reasonable steps to resolve such claim, dispute, or alleged breach in a commercial setting attended by senior representatives of Toll and Customer.

16.2 The date referred to in Section 16.1 shall be: (i) in the case of loss or damage to Goods, the date of scheduled or actual delivery of such Goods; (ii) in the case of delay or carriage of the Goods to an incorrect destination, the scheduled date of delivery; (iii) in the case of errors or omissions, the date of discovery of the relevant error or omission giving rise to such claim; and (iv) in any other case, the event giving rise to the claim. Otherwise any claim shall be deemed to be waived and absolutely barred.

## 17. GENERAL AVERAGE AND SALVAGE

Customer shall indemnify and hold Toll harmless from and against all claims of a general average or salvage nature, and Customer shall provide on demand such security to Toll, or to any other party designated by Toll, as may be required in connection therewith, with such security being made prior to the delivery or release of the Goods.

## 18. INTELLECTUAL PROPERTY

Unless otherwise agreed in writing by Customer and Toll, all intellectual property rights used by Toll in the performance of the Services hereunder shall belong to Toll or (if applicable) to the entity that has licensed the use thereof to Toll. No authority to use any technology or property subject to such intellectual property rights is, nor shall be construed as, being provided hereunder.

## 19. APPLICABLE LAW AND JURISDICTION

These Conditions and any arrangement to which they apply shall be governed by and construed according to the federal laws of the United States, or, if federal law is not applicable, by the state laws of the State of New York, notwithstanding that law's choice of law rules; provided, however, if these Conditions is held to be subject to the law of any other jurisdiction, then these Conditions shall continue to apply unless otherwise barred by or inconsistent with such laws. All claims, disputes, or questions arising from these Conditions, including those relating to limitation of liability, shall be determined in the United States District Court for the Southern District of New York, which shall have exclusive jurisdiction over all claims, disputes, or questions arising from these Conditions to the exclusion of the jurisdiction of any and all other courts. Notwithstanding the foregoing, Toll may also bring any legal proceedings against Customer or Owner in any other court of competent jurisdiction, and proceedings by Toll in any one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdictions, whether concurrent or not. Without prejudice to any other rights or remedies that Toll may have, in the event of Customer (or Owner) bringing any proceedings against Toll in breach of this Section 19, Customer and Owner shall indemnify Toll from and against all consequences thereof including, without limitation, attorneys fees and other legal costs and expenses incurred by Toll.