

# STANDARD TRADING CONDITIONS

## TERMS OF CONTRACT

Toll Global Forwarding (SA) (Pty) Ltd Reg No 1988/006773/07 (the company) will only contract, conduct business or operate subject to its Standard Trading Conditions which are as follows:

1. All and any business undertaken, including any advice, information or service provided whether gratuitously or not by the Company is and shall be subject to the conditions herein after set out and each condition shall be deemed to be incorporated in and to be a condition of any agreement between the Company and its customer.
2. The company is not a common carrier or public carrier and deals on this basis only with goods.
3. If any legislation is compulsorily applicable to any business undertaken, these conditions shall as regards such business be read as subject to such legislation and nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these conditions be repugnant to such legislation to any extent such part shall as regards such business be void to that extent but no further.
4. No agent or employee of the Company has the Company's authority to alter or vary these conditions either by an oral or written undertaking or promise given before or after receipt of these conditions, nor shall any act or omission of the Company be construed as a variation or waiver of any of these conditions.
5. (i) Every customer engaging the Company to undertake business shall do so and shall be deemed to do so in every respect and in relation to all the terms of the transaction including these conditions not only on his own behalf but also as agent and on behalf of:
  - (a) every person then owning or otherwise interested in any goods of the transaction undertaken, and
  - (b) every person acquiring ownership of or interest in any such goods subsequent to the engagement of the Company and prior to the completion of the transaction undertaken.
  - (c) Every customer engaging the Company shall be deemed to have warranted that he either has the authority to engage the Company as owner of such goods or as the authorized agent on behalf of the persons referred to in (i) (a) and (b) above.
6. Without prejudice to Clause 5 above the Company shall have the right to enforce any liability of the customer under these conditions or to recover any sums to be paid by the customer under these conditions not only against or from the customer but also if it thinks fit against or from the consignor and/or consignee and/or owner of the goods.

## NATURE OF GOODS

7. "Goods" wherever used in these conditions shall mean any goods coming under the control of the Company on behalf of the customers and shall include any container, transportable tank, flat, pallet, package or other covering not supplied by or on behalf of the Company.
8. (i) (a) No goods, including radio-active materials, which are or may become dangerous, inflammable or noxious, or which by their nature are or may become liable to cause injury or damage to any person, goods or property whatsoever, shall be tendered to the Company without its express consent in writing. The goods or the container, package or other covering in which the goods are to be tendered to the Company or its agents shall be prominently marked on the outside so as to indicate the nature and character of the goods, and so comply with any applicable laws, regulations or requirements of any authority or carrier.
  - (b) Whether or not the customer was aware of the nature of the goods and whether or not the Company's written acceptance thereof was obtained, the customer shall be deemed to have indemnified the Company against all loss, damage or liability caused to the Company as a result of the tender of the goods to the Company.
  - (c) The expression "goods liable to cause damage" shall include goods likely to harbour or encourage vermin or other pests.
- (ii) The Customer shall be responsible for compliance with all regulations relating to such goods as aforesaid in force in any country or its territorial waters.
- (iii) If any goods are tendered to the Company without its written consent or without being marked as aforesaid, the same may at any time be destroyed, disposed of, abandoned or rendered harmless at the sole discretion of the Company and at the entire risk and expense of the customer, without compensation to him, or to any other party and without prejudice to the Company's rights to its charge of fees including the cost of destruction or disposal.
9. The Company shall not accept liability for the handling of any bullion, coins, precious stones, jewellery, valuables, antiques, pictures, bank notes, securities and other valuable documents or articles, livestock or plants unless special arrangements have previously made in writing to the Company, whether or not it is aware of the nature of the goods, shall bear no liability whatsoever for or in connection with any loss of or damage to goods. This paragraph shall not in any way affect the generality of Clause 33.

## RIGHT TO DISPOSE OF GOODS

10. Notwithstanding the acceptance of the goods with its express consent, the Company may nevertheless for good reason, such as the risk to other property, life or health, destroy or otherwise deal with the goods at the entire

risk and expense of the customer, without compensation to him or any other party, without prejudice to the Company's rights to its charges of fees including the cost of destruction or disposal.

11. The Company shall be entitled to sell or dispose of all non-perishable goods in any circumstances:
  - (i) where a customer cannot be identified,
  - (ii) where the goods cannot be delivered because they are insufficiently addressed, or
  - (iii) where the goods have not been collected or accepted by the customer or any other person; where the Company has an address for the customer then sale or disposal shall be effected only after the expiration of 21 days from the posting to that address of written notice to do so.

All charges and expenses arising in connection with the storage or disposal of the goods shall be for the account of the customer. A communication from any agent or correspondent of the Company or from any third party referred to in Clause 16 to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of the fact.

12. Perishable goods in the care, custody or control of the Company which have begun or are likely to deteriorate or which are insufficiently addressed or marked or otherwise not readily identifiable, may be sold or otherwise disposed of without any notice to the customer, sender, owner, or consignee and payment or tender of the net proceeds of any sale after deduction of charges and expenses shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the goods shall be for the account of the customer and may be deducted.

## CUSTOMER'S OBLIGATIONS

13. The customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes, and shall be deemed to have indemnified the Company against all claims, losses, penalties, damages, expenses and fines whatsoever arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.
14. Except where the Company is instructed in writing to pack the goods, the customer warrants that all goods have been properly and sufficiently packed and/or prepared.

## INSURANCE

15. It shall not be obligatory upon the Company to effect insurance except upon detailed instructions given in writing by the customer and all insurance effected by the Company pursuant to such instructions will be subject to such exceptions and conditions as may be imposed by the insurance company or the underwriters taking the risk and the Company shall not be obliged to obtain separate cover for any risks so excluded. The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason, the customer shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customer.

## PERFORMANCE BY THE COMPANY

16. (i) (a) Any instructions or business accepted by the Company may at the absolute discretion of the Company be fulfilled by the Company itself, by its own servants performing part or all of the relevant services, or by the Company employing or instructing or entrusting the goods to third parties on such conditions as may be stipulated by or negotiated with such third parties for the purpose of such services, or such part thereof as they may be employed to carry out.
  - (b) Conditions of carriage of goods are at all times subject to the conditions of the original liner bill of lading/airway bill as issued on the date of shipment.
- (ii) Where the Company employs independent third parties to perform all or any of the functions required of the Company, the Company shall have no responsibility or liability to its customers for any act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges, but the Company shall, if suitable indemnified against all costs, including attorney and client costs, take action against the third party on its customer's behalf as its customer may direct.
- (iii) All goods dealt with by the Company subject to the conditions, whether or not inconsistent with these conditions, stipulated by the carriers, warehousemen, Government Departments, and all other parties (whether acting as agents or sub contractors to the Company or not) into whose possession or custody the goods may pass, or subject to whose authority they may at any time be.
17. (i) Wherever it is necessary, for the purpose of these conditions or any other purpose whatsoever, for any instructions to be given to the Company, such instructions in writing shall be recognized by the Company as valid, only if timeously given specifically in relation to the matter in question. Standing or general instructions, or instructions given later, even if received by the Company without comment, shall not be binding upon the Company.

- (ii) If at any stage in any transaction the Company should consider that there is good reason, making it advisable in the Customer's interest to depart from any of the customer's instructions, the Company shall be permitted to do so, and it shall not thereby incur any additional liability.
18. (i) In the absence of special instructions, it shall be at the entire discretion of the Company to decide at what time to perform any or all of the various acts which may be necessary for the completion of its services in relation to any particular matter. The Company shall have no liability or responsibility by virtue of the fact that there may be a charge in the rate of duty, wharfage, freight, railage or cartage, or any other tariff, before or after the performance by the Company of any act involving a less favourable rate of tariff, or by virtue of the fact that a saving might have been effected in some other way had any act been performed at a different time.

- (ii) in the absence of written instruction the Company reserves to itself the absolute discretion as the means, route and procedure to be followed in performing all or any of the acts or services required.
19. The Company shall not be obliged to make any declaration for the purpose of any statute or convention or contract as to the nature of any goods or as to any special interest in delivery or otherwise unless expressly instructed by the customer in writing in particular in the Republic of South Africa, the Company shall be under no obligation – unless written instructions to the effect are given to the Company – to make any declaration or to seek any special protection or cover from Transnet, or from any other carrier, in respect of any goods which are, or fall within the definition by that body of (i) dangerous or very dangerous goods, or (ii) goods liable to be stored in the open.
20. In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other person, it shall be at the entire discretion of the Company as to what declaration, if any, shall be made and what liability, if any, shall be imposed on the carrier, warehousemen, underwriter or other persons, unless express instructions in writing are timeously given by the customer.
21. Pending forwarding and delivery, goods may be warehoused or otherwise held at any place at the sole discretion of the Company at the customer's risk and expense.
22. The Company shall have no obligation to take any action in respect of any goods which may become recognizable as belonging to its customer unless it has received suitable instructions relating to such goods together with all necessary documents. In particular the Company shall not be obliged to notify the customers of the existence or whereabouts of the goods or to examine them or to take any other steps for their identification, protection or preservation, or for the preservation of any claim by its customer for any other party the carrier, insurer or any third party,
23. Where it is necessary for an examination to be held or other action to be taken by the Company, in respect of any discrepancy in any goods which are landed from any vessel, aircraft, vehicle, or container, no responsibility shall attach to the Company for any failure to hold such examination or to take any other action unless the Company has been timeously advised by the landing agent that such goods have been landed, which reflect any discrepancy.

#### **RATES AND CHARGES : COMPANY REMUNERATION**

24. estimates where given shall be on the basis of immediate acceptance and shall be subject to withdrawal or revision by the Company. Further, unless otherwise agreed in writing, the Company shall notwithstanding acceptance be at liberty to revise estimates or charges with or without notice, in the event of changes occurring in currency, exchange rates, rates of freight, surcharges, insurance premiums, equipment rental rates, labour rates or any other charges applicable to the handling of the goods.
25. The Company is entitled to the benefit of any discounts obtained and to retain and be paid all brokerages, commission, allowances and other remunerations of whatsoever nature and kind and shall not be obliged to disclose or account to its customers, or principals or for any such remuneration received by it.
26. (i) When goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the customer shall remain responsible for the same if they are not paid by such consignee or other person immediately when due.
- (ii) If accepted by the Company, instructions to collect payment on delivery (C.O.D) in cash or otherwise shall be subject to the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
27. The customer, sender, owner and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits or outlays of whatsoever nature levied by the authorities at any port or place or in connection with the goods, and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by the Company in connection therewith.
28. Unless otherwise specifically agreed by the Company all sums shall be paid to the Company in cash immediately upon presentation of account without deduction, and payments shall not be withheld or deferred on account of any claim, counterclaim or set off.
29. Notwithstanding any prior dealings between the Company and its customer, all documents and other matter including cash, cheques, bank drafts and other remittances, sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company by the Postal Authorities.
30. The Company shall under no circumstances be precluded from raising a debit and obtaining payment in respect of any fee or disbursements lawfully due to it, notwithstanding the fact that a previous debit or debits, whether excluding or partly including the items now sought to be charged, had been raised and whether or not any notice was given that further debits were to follow.

#### **LIEN**

31. All goods and documents relating to goods including Bills of Lading and import permits, as well as all refunds, repayments, claims and other recoveries, shall be subject to a special and general lien or pledge, either for monies due in

respect of such goods or for other monies due to the Company from the Customs, sender, owner, consignee, importer or the holder of the Bill of Lading or their agents. If any monies due to the Company are not paid within 14 (fourteen) days after such notice has been given to the person from whom the monies are due that such goods or documents are being detained, they may be sold by auction or otherwise or in some other way disposed of for value at the sole discretion of the Company and at the expense of such person, and the nett proceeds applied in or towards satisfaction of such indebtedness.

#### **LIMITATION OF LIABILITY**

32. The company shall not in any circumstances be liable for any loss of or damage to goods or mis-delivery whether on grounds of breach of contract or negligence, unless it is proved that the loss, non-delivery or mis-delivery occurred whilst the goods were in the actual custody of the Company and under its actual control. Furthermore, the Company shall be under no liability whatsoever whether on grounds of breach of contract or negligence in respect of or in connection with any goods or any instructions, business, advice, information or services, or otherwise unless it is proved that the loss or damage was caused by the gross negligence of the Company.
33. Notwithstanding anything herein before contained the Company shall not, in any circumstances be liable for damages arising from loss of market, or attributable to delay in forwarding or in transit, or failure to carry out the instructions given to it or any other consequential loss, however caused.
34. Notwithstanding anything herein before contained the Company shall be discharged from all liability:
- (i) for loss or non-delivery of any separate package forming part of a consignment or for loss from a package or an unpacked consignment or for damage or mis-delivery, however caused, unless notice be received in writing within 5 (five) days after the end of transit end where the transit ends in the Republic of South Africa or within 14 (fourteen) days after the end of transit where the transit ends at any place outside the Republic of South Africa.
- (ii) For loss or non-delivery of the whole of a consignment, however caused, unless notice be received in writing within 14 (fourteen) days of the date when the goods should have been delivered.
35. In no case whatsoever shall any liability of the Company, however arising, exceed the value of the goods or the value declared by the customer for insurance, customs or carriage purposes, or the following respective amounts whichever is the least:
- (i) Inward and outward consignments received or to be forwarded by airfreight – R50 per consignment.
- (ii) Inward and outward consignments received or to be forwarded by seafreight or other surface carriage, excluding parcel post – R100 per ton of 1000 kilograms.
- (iii) Inward and outward parcel post consignments – R25 per consignment.
- If it is desired that the liability of the Company should not be governed by these limits, written notice thereof must be given to the Company before any goods or documents are entrusted to the Company, together with a statement of value of the goods. Upon receipt of such notice the Company may agree to its liability being increased to a maximum amount equivalent to the amount stated in the notice, in which case it should be entitled to effect special insurance to cover its maximum liability and the party giving the notice shall be deemed by so doing to have agreed and undertaken to pay to the Company the amount of the premium payable by the Company for such insurance.
36. Where as a result of any act or omission by the Company, duty, railage, wharfage, freight, cartage or any other impost or charge has been paid or levied, which should not have been paid or levied, or has been paid or levied in an incorrect amount then any responsibility or liability to the customer which the Company might otherwise bear will cease and fall away if the customer does not:
- (i) within a reasonable time, having regard to all circumstances, and in particular to the circumstances, and in particular to the time allowed for the recovery from the payee of the amount overpaid advise the Company that an incorrect amount has been paid or levied, and
- (ii) do all such acts as are necessary to enable the Company to effect recovery of the amount overpaid having regard to the conditions required for such recovery.

Provided that the customer is aware of the actual amount paid or levied, the fact that he may not be aware that such an amount is incorrect shall not constitute a circumstance to be taken into account in calculating what is a reasonable time, nor shall such ignorance excuse any act or omission which may prejudice the Company's right of recovery.

37. The Company shall not be liable under any circumstances for any loss, damage or expense arising from or in any way connected with marks, weights, measurements, numbers, brands, contents, quality or description of any goods.

#### **INDEMNITY**

38. In addition to and without prejudice to the foregoing conditions, the customer shall be deemed to have indemnified the Company against all liabilities whatsoever suffered or incurred by the Company arising directly or indirectly from or in connection with the Customer's instructions or their implementation in relation to the goods and in particular in respect of any liability whatsoever it may be under to:
- (i) any servant, agent or sub-contractor or any haulier, carrier, warehousemen, or other person whatsoever at any time involved with the goods arising out of any claim made directly or indirectly against any party by the customer or by any consignor, consignee or owner of the goods or by any person interested in the goods or by any person whatsoever, or
- (ii) any owner or consignee of the goods who is not the customer of the Company where the Company performs the service of a deconsolidation agent, or any other service, or
- (iii) any carrier of the goods if the Company is the consignor or consignee of the goods.

#### **FOREBEARANCE**

39. No act, omission, cause of dealing, forbearance, delay or indulgence by the Company in enforcing any of these conditions or any of its rights in terms thereof or any granting of time by the Company shall prejudice or affect the

rights and remedies of the Company under these conditions and no such matter shall be treated as any evidence or waiver of the Company's rights thereunder nor shall any waiver of a breach by a customer of any one or more of these conditions operate as a waiver of any subsequent breach thereof. The Company shall at all times and without notice be entitled to insist on strict application of these conditions and on their strict enforcement on its customers.

**GOVERNING LAW AND JURISDICTION**

40. These conditions and all agreements made by the Company with its customers wherever made shall be governed and construed according to the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.