



**Toll Group (NZ) Limited
(NZBN 9429036510214)
Standard Trading Conditions**

All and any business undertaken by the Company shall be subject to the following Terms and Conditions:

Introduction

Except where the Company issues a Sea-Carriage Document or house air waybill in which it is described on its face or the reverse as the "Carrier", these Terms and Conditions shall apply to every Service.

Where the Company issues a Sea-Carriage Document or house air waybill in which it is described on its face or the reverse as the "Carrier", these Terms and Conditions shall apply to every Service encompassed by the Sea-Carriage Document or house air waybill except where inconsistent with the terms of the Sea-Carriage Document or house air waybill. In the event of such inconsistency, the terms of the Sea-Carriage Document or house air waybill shall prevail to the extent of the inconsistency but no further.

1. Definitions

In these Terms and Conditions, unless the context indicates otherwise:

"Associated Person" means a party's affiliates, officers, directors, shareholders, employees, agents and other intermediaries, any other person acting directly or indirectly on its behalf.

"Company" means Toll Group (NZ) Limited and its employees, servants, subsidiaries and associated entities;

"Consumer" means an individual who acquires the Services wholly or predominately for personal, domestic or household use or consumption

"Customer" means any party at whose request or on whose behalf the Company provides any Services, who may be the shipper, consignor, the receiver, the consignee, the owner of the Goods, the bailor of the Goods, or the entity/person acting on behalf of such party;

"Dangerous Goods" means such of the Goods as are, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to anything in which Goods are carried, handled or stored;

"Goods" means the chattels, articles or things tendered by the Customer for carriage or bailment or other services and includes the container or containers, unit load devices or other packaging containing the same and any other pallet or pallets delivered with the same to the Company;

"GST" means the goods and services tax imposed by or under a GST Law.

"GST Law" means the Goods and Services Tax Act 1985.

"Force Majeure Event" means any circumstance, matter or thing beyond its reasonable control including, without limitation, act of God, earthquakes, landslides, floods, fires or other disasters, pandemics, prolonged communication line failures, power failures, traffic gridlock, accidents, mechanical failures, adverse weather conditions, strikes or industrial disputes, civil commotion or restrictions by government

"Improper Payment" means the offering or giving of anything of value or improper advantage, to any individual or entity, including public officials, with the intent of securing a business advantage that is not legitimately due.

"Perishable Goods" means such of the Goods as are, in fact or law, liable to deteriorate in quality and/or value and includes fruits, vegetables, dairy products and meats;

"PPSA" means Personal Property Securities Act 1999;

"Service(s)" means the carriage, transport, movement, storage, customs clearance and/or any other service performed or arranged by the Company;

"Sea-Carriage Document" means a bill of lading, a sea waybill or a ship's delivery order.

"Subcontractor" includes:-

- i) Any person, firm or company with whom the Company may arrange to affect any Service in respect of the Goods;
- ii) Any person, firm or company which is now or becomes a servant, agent, employee or subcontractor of any of the persons or entities referred to in (i) above;
- iii) Any other person, firm or company (other than the Company) by whom the Services or any part thereof are arranged, performed or undertaken;

"Supply" means the same as in the GST Law.

"Taxable Supply" has the meaning given to it in Clause 19 of these Terms and Conditions.

"Terms and Conditions" means these terms and conditions;

"Valuables" means bullion, coins, precious stones, jewellery, antiques or works of art.

Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm and corporation where appropriate.

Words such as "including", "such as" and similar expressions are not words of limitation.

2. Not a Common Carrier

a) The Company is not a common carrier and accepts no liability as such. Services are arranged or performed by the Company subject only to these Terms and Conditions which constitute the entire agreement between the Company and the Customer. No

person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the carriage of the Goods for any Customer or any other Service whether before or after the carriage or Service has commenced and further reserves the right to open and inspect all Goods at its discretion and at the Customer's expense.

b) In respect of the Services, the Company acts as agent only for the Customer and the Customer employs and authorises the Company as its agent to contract either in the Company's own name as principal or as agent with any Subcontractor for the performance of any of the Services. Any such contract may be made upon any terms of contract whatsoever used by the Subcontractor with whom the Company may contract for any of the Services and may be made upon any terms and subject to any conditions of any special contract which the Subcontractor may in a particular case require, including in every case terms which may limit or exclude liability and/or any term that the Subcontractor may employ any other Subcontractor for the performance of any of the Services. Similarly, the Customer authorises any Subcontractor whose services have been subcontracted in respect of any of the Services to further subcontract any of the Services to any party or Subcontractor on the same terms as provided to the Company above. In any event, the Company shall be entitled to the full benefit of all privileges, rights and immunities available to the Carrier or any Subcontractor under any Sea-Carriage Document or any other contract or compulsorily applicable law in respect of the Services with respect to the Goods. Any Subcontractor's terms are available from the Company on request. Whilst not in any way lessening the effect of any other provision in these Terms and Conditions the Company shall not be liable for any loss or damage to the Goods whilst not in its possession.

3. Warranties

a) The Customer warrants that the person delivering the Goods to the Company is authorised to sign the Customer's letter of instruction or waybill and/or consignment note which includes these Terms and Conditions and warrants that he has the authority of the person owning or having an interest in the Goods or any part thereof. Without prejudice to the foregoing warranty, the Customer undertakes to indemnify the Company in respect of any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part thereof.

b) The Customer warrants the accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inaccuracy or omission in this respect.

c) The Customer warrants that the performance of any Service by the Company or arranged by the Company, to effect the instructions of the Customer in respect of the Goods, shall not be in breach of any law.

d) The Customer warrants that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature.

e) To the maximum extent permitted by law, all warranties or guarantees expressed or implied (whether by custom or law) in respect of the carriage of the Goods or any other Service provided by the Company or any Subcontractor pursuant to these Terms and Conditions, are excluded.

4. Limitation and Exclusion of Liability

a) The value of the Goods will not be declared so as to extend the Company's liability as provided for in these Terms and Conditions or under any other mandatory applicable law (including, without limitation, Part 5, Subpart 1 (Carriage of Goods) of the Contract and Commercial Law Act 2017, the Maritime Transport Act 1994, the Civil Aviation Act 1990 or any of the international conventions referred to therein or otherwise compulsorily applicable and as amended from time to time) except on express written instructions given by the Customer to the Company.

b) In all other cases where there is a choice of rates according to the extent of liability assumed by the Company, carrier, warehouseman and/or other Service provider or other company or entity, no declaration will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the Customer.

c) In all cases where liability has not been excluded or limited by this agreement or by any mandatory applicable statute or convention of law, the liability of the Company is limited to the lesser of:

(i) in the case of Goods, any one or more of the following:

- (1) the replacement of the Goods or the supply of equivalent Goods;
- (2) the repair of the Goods;
- (3) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- (4) the payment of the cost of having the Goods repaired; or
- (5) NZ\$100.00.

(ii) in the case of Services:

- (1) the supplying of the Services again;
- (2) the payment of the cost of having the Services supplied again; or
- (3) NZ\$100.00.

d) Subject to these Terms and Conditions, the Company shall not be liable for any loss or damage suffered by the Customer or any other person whatsoever, howsoever caused or arising, whether caused by the negligence and/or recklessness and/or wilful misconduct of the Company's servants, agents, employees, Subcontractors or otherwise, nor from any loss (whether direct, indirect or consequential loss) or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or Subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any Goods in carriage or subject of any Service.

e) Save as otherwise provided herein, the Company shall in no circumstances whatsoever or howsoever arising be liable for direct or indirect or consequential loss or damage of any kind. The defences and limits provided for in these Terms and Conditions shall apply in any action against the Company for loss or damage or delay whether the action be founded in contract, tort, or otherwise.

f) Without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage whatsoever suffered by the Customer or any other person as a result of a failure or inability of the Company or Subcontractor to collect or receive payment or delivery from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.

g) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will be extinguished unless:-

- i) Any claim for loss of or damage to Goods (including short delivery) is lodged in writing to the Company within 3 days of delivery of the Goods or the date by which the Services are completed, whichever date occurs first; or
- ii) in the case of non delivery of Goods any claim must be notified in writing to the Company within 14 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first; and
- iii) if any claim under (i) and (ii) has not been resolved, an action has not been commenced by the Customer in a court of competent jurisdiction within 6 months of delivery, or in the case of non delivery 6 months after the date of dispatch.

h) It is specifically agreed that all rights, immunities and limitations of liability granted to the Company or the Subcontractors by the provisions set forth in these Terms and Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these Terms and Conditions or any condition hereof by the Company or the Subcontractor.

5. Loading and Unloading on and from Transportation Vehicle

a) The Customer shall be responsible for the cost of and arranging for the loading and unloading of the Goods on and from the relevant transportation vehicle and will provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle.

b) In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.

c) The Customer warrants that the Goods will be suitable for carriage in the transportation vehicle.

d) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection or complaint, the transportation vehicle will be deemed to be in an adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall have no rights against the Company or any Subcontractors in respect of any loss of or damage to Goods arising from any inadequacy or unsuitability of the transportation vehicle for the carriage of the Goods.

6. Warehousing

a) The Goods may, in the sole discretion of the Company, at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held, in each and every case at the Customer's risk and expense and the Company will be entitled to charge for that warehousing in addition to all applicable charges for the carriage of the Goods or the provision of any Service hereunder.

b) 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.

7. Customer's Indemnity

a) The Customer shall indemnify the Company and its Subcontractors in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever, howsoever caused, whether arising directly or indirectly from any Service arranged or performed by the Company in respect of Goods and/or in respect of any such cost incurred as a result of any breach of these Terms and Conditions by the Customer.

b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (cash on delivery or otherwise) paid by the Company to any of its agents or Subcontractors which are not subsequently paid to the Company by the Customer or any consignee.

c) The Customer shall defend, indemnify and hold harmless the Company in respect of any claims for general average and costs, and shall provide any security requested by the Company for release of any Goods that are subject to the said claim for general average.

d) The Customer shall indemnify the Company in respect of:-

- i) any loss or damage arising from any inherent defect, quality or vice of the Goods;
- ii) all or any liability in respect of any loss of profits or indirect or consequential loss or damage of any kind arising from the Services performed in respect of the Goods including loss of market, or loss of contracts, howsoever caused;
- iii) the Customer's or any other person's failure to return any container or transport equipment involved in the performance of the Services by the date required under any engagement between the Company and the supplier of that container or transport equipment

8. Insurance

a) The liability of the Company is defined and limited to any amount stated for specified loss and damage. The Customer is therefore advised to seek its own insurance cover generally.

b) Without limiting the generality of the foregoing, the Company can arrange insurance in respect of the Goods upon receipt of instructions given in writing by the Customer, an insurance proposal form properly completed by the Customer, and payment of the Company's insurance charge. The insurance will be on the terms and conditions of the marine open cargo policy that the Company holds. The full policy wording is available on request.

(i) The Company makes no representations and gives no advice regarding any aspect of the policy, including as to the suitability or appropriateness of the policy for the Customer's requirements, the policy's terms, conditions and exclusions, or as to the competitiveness of the cost of the insurance. The Customer warrants that it relies entirely on its own skill and judgment in accepting the policy on the terms offered.

(ii) In the event of a claim the Customer shall have recourse solely against the insurer and the Company shall not be under any responsibility or residual liability in relation to the Customer for the loss of or damage to any of the Goods or the failure of the policy to meet a claim in respect of the same.

(iii) The Customer acknowledges and agrees that the Company pays its insurer an annual or declaration premium for its marine open policy, the effect of this being that the sum charged to the Customer is (a) not directly payable to the insurer and is therefore not held in trust by the Company for either the insurer or the Customer and (b) includes a fee component for the service the Company provides in securing insurance for the Customer. The Customer further acknowledges and agrees that Company is under no obligation to separately identify the fee component.

9. Subcontracting

a) The Company and any Subcontractor shall be entitled to subcontract on any terms the whole or any part of the Services and any exemption, limitation, condition herein contained and every right, exemption from liability, defence and immunity applicable to the Company or to which the Company is entitled shall be available and extend to protect all Subcontractors, every agent or servant of the Company, every other person by whom the carriage or Services or any part thereof is performed and all persons who are or may be vicariously liable for the acts or omissions of any of the persons other than the Company mentioned herein. Similarly, every right, exemption from liability, defence and/or immunity applicable to any Subcontractor shall be available and extend to protect the Company. The Company shall be deemed to be acting as agent or servant on behalf of all such persons who shall to this extent be deemed to be parties to these Terms and Conditions.

b) The Customer undertakes:

- i) that no claim or allegation shall be made, whether by the Customer or any other person who is or may subsequently be interested in the Services and/or the Goods, against any Subcontractor which imposes or attempts to impose upon such Subcontractor any liability whatsoever and howsoever arising (including liability arising from negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods; and
- ii) that, if such claim or allegation should nevertheless be made, the Customer shall indemnify the Company and the Subcontractor against whom such claim or allegation is made against the consequences of such claim or allegation.

10. Quotations

Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion.

11. Routes and Procedures

Subject to the express written instructions of the Customer, the Company reserves the right to choose or vary the means, route and procedure to be followed in respect of the carriage or Services performed in respect of the Goods. The Customer hereby authorises the Company to complete the carriage or Service with reasonable dispatch and to substitute alternate carriers or Service providers without notice to the Customer and with due regard to the interests of the Customer substitute other means of transport or Service.

12. Brokerage and Commission

The Customer acknowledges and agrees that the Company may receive allowances, brokerages and commissions from shipping and forwarding agents, insurance brokers, airlines, and any other persons with whom the Company deals pursuant to this agreement and that the Company shall retain all such allowances, brokerage and commission for its own account and shall not be obliged to disclose receipt of the same or account to the Customer for all or any part of them.

13. Payment of Duties

The Customer authorises the Company and its Subcontractors, but with no obligation on the part of the Company and its Subcontractors to advance any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the Customer indemnifies the Company for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by the Company in connection therewith.

14. Responsibility for Charges, Terms of Credit

- a) The Customer shall be and shall remain responsible to the Company for all charges incurred for any reason for the Services performed in respect of the Goods, or any other directions the Customer may issue either orally or in writing. Such charges shall be deemed fully earned as soon as the Goods are loaded and despatched from the Customer's premises or otherwise delivered by the Customer to the Company and shall be immediately payable and non-refundable. If a Customer instructs the Company to provide any Service the Customer shall remain liable for the cost and charges of that Service.
- b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.
- c) Unless otherwise agreed by the Company in writing, the Customer must pay the full amount of each invoice in cash immediately on receipt of the Company's invoice.
- d) If payment is not made within the period set out above, or as otherwise agreed by the Company in writing, the Customer agrees to pay:
 - i) Interest at the rate of 5% per annum above over the Company's bank overdraft rate as applicable from time to time, such interest to be calculated daily from the day on which any amount becomes overdue for payment until the date of actual payment; and
 - ii) The costs incurred in collecting the debt.
- e) Payment will be first applied to any charges incurred under (d) above, and then to any other outstanding charges.
- f) The Customer agrees not to instruct any third party to invoice the Company for any goods or services unless the Company has previously agreed in writing to this being done and has agreed to pay for the said goods or services.
- g) No credit is granted to the Customer unless expressly agreed in writing by the Company. Where credit is granted to the Customer under this clause and the credit terms are breached by the Customer, such credit shall immediately be withdrawn.
- h) Notwithstanding any other provision under these Terms and Conditions, the Company may with immediate effect and at any time, cancel or change any credit terms in place with the Customer upon written notification to the Customer.

15. Remedies

a) Lien

The Company shall have a particular and general lien on all Goods or cargo of the Customer and any documents relating thereto and on any other goods or cargo of the Customer in the possession or control of the Company or any documents relating thereto and on any other goods or cargo of the Customer which may come into the possession or control of the Company or any documents relating thereto for all sums payable by the Customer to the Company (whether overdue or not) and for that purpose the Company shall have the right to sell any such goods by public auction or private treaty without further notice to the Customer. The lien will also cover the Company's costs and expenses relating to the exercise of its lien and right of sale, including the Company's reasonable legal fees. For the purposes of the lien, the Company will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods. The Company is entitled to retain the proceeds of sale of the Goods in respect of all sums due and owing from the Customer.

b) Suspension of Services

If the Customer does not pay our invoice or any sums payable by the Customer to the Company (whether overdue or not) in full, the Company may:

- i) elect not to continue to provide the Services to you; or
- ii) suspend the Services until further payment is made; and
- iii) withdraw, cancel or change any terms of credit in place with the Customer without notice.

c) Without prejudice to the above, the Company may take further action to recover any outstanding amounts due. Any costs, fees or disbursements incurred in the recovery of the outstanding amounts, together with any interest, will be added to the amount due. In addition, the Customer shall indemnify, defend and hold the Company, its employees, representatives, subcontractors and agents free and harmless from any and all claims, liabilities, demand, losses and/or damages and any cause or expenses of any nature arising out of or in connection with the exercise of its remedies.

16. Valuables, Dangerous Goods, Perishable Goods, Livestock, etc.

- a-i) Except as agreed in writing, the Company will not accept Dangerous Goods, Valuables, Perishable Goods, livestock or plants for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- a-ii) Any such Valuables, Dangerous Goods, Perishable Goods, livestock or plants may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. If such Valuables, Dangerous Goods, Perishable Goods, livestock or plants are accepted pursuant to a written agreement, they may nevertheless be destroyed or dealt with if deemed necessary in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event that the Goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability therefor and the Customer shall indemnify the Company and its Subcontractors from and against all costs and expenses with respect thereto.
- b) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other devices they are carried in) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages, or expenses arising in consequence of any breach of this provision.
- c) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

17. Delivery

- a) The Company is authorised to deliver the Goods to the consignee or his agent at the address nominated to the Company by either the Customer, the Company, the consignee or their agents and it is expressly agreed that the carrier shall be deemed to have delivered the Goods in accordance with these Terms and Conditions if it obtains a receipt or signed delivery docket for the Goods from any person at that address.
- b) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under these Terms and Conditions.
- c) Dates specified for completion of carriage or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date or dates or for any consequences of any delay.

18. Sale and Disposal of Goods

The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to compliance with any applicable law, to sell or dispose of:

- a) Goods which, in the opinion of the Company or Subcontractor, cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the consignee or for any other reason, and
 - b) any Perishable Goods which in the opinion of the Company or the Subcontractor appear to be deteriorating,
- if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.
- Where the Company sells or disposes of Goods;
- i) it does so as principal, not as agent, and is not the trustee of the power of sale;
 - ii) the Customer must pay all costs, charges and expenses incurred by the Company in connection with the storage, sale or return of the Goods, which may be deducted from the proceeds of the sale of the Goods;

- iii) the Company is entitled to recover any deficit from the Customer where the proceeds of sale of the Goods do not satisfy the amounts payable to the Company.

19. GST

Clause 19 applies if the Company is or may become liable to pay GST in relation to any Supply under these Terms and Conditions (a "Taxable Supply"). A Taxable Supply may comprise the whole or any part of the Services.

- a) Unless otherwise stated, all charges quoted by the Company are exclusive of GST. In addition to such charges, the Customer must pay to the Company GST on a Taxable Supply of an amount equal to the Company's GST exclusive charge for the Taxable Supply multiplied by the GST Rate. GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the Company's GST exclusive charge is payable. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the Company's GST exclusive charge is payable under these Conditions.
- b) The Company must issue an Invoice to the Customer for the amount of GST referable to a Taxable Supply. The Company must include in such Invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.
- c) If the Customer makes default in the payment on the due date of any GST payable pursuant to Clause 19 or pursuant to any GST Law, then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand the GST payable and an amount equal to the amount of any damages, penalty, interest or additional GST that may become payable by the Company arising out of the default of the Customer.
- d) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense.
- e) If an adjustment event arises in respect of a supply made under or in connection with these Terms and Conditions, then:
 - i) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier will refund the difference to the Recipient; or
 - ii) if the Supplier's corrected GST amount is greater than the previously attributed GST amount, the Recipient will pay the difference to the Supplier; and
 - iii) the Supplier must issue an adjustment note to the Recipient. In this clause, a Supplier means the party that makes the Taxable Supply, and Recipient means the party that receives the Taxable Supply.
- e) If requested to do so, the Company may agree to pay GST or Duty on the Customer's behalf. The Customer agrees that:
 - i) The Company may charge a handling fee for so doing; and
 - ii) GST and Duty will be invoiced and must be paid in New Zealand dollars within seven days of the date of the Company's invoice for the same.
- f) Where the Company does not agree to pay GST or Duty on the Customer's behalf, the Customer shall, in advance of the arrival of the Goods, pay to the Company the amount notified by the Company as being required. The Company shall be under no liability whatsoever where the Customer's neglect or delay in the payment of the GST or Duty delays the release of the Goods.

20. Regulation Compliance

- a) The Customer shall comply with (and will be solely responsible for compliance with) all applicable laws and Government regulations of any country to, from, through or over which the Goods may be carried, including those relating to packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations. The Company shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision. The Company will not be in breach of any of its obligations to the Customer or liable for any loss suffered by the Customer arising from or connected with the Company's compliance with any law, including disclosing confidential information to government authorities.
- b) Where applicable, the Company requires that all Cargo be packed and restrained consistent with the latest edition of the Truck Loading Code published by the NZ Transport Agency (the "Code").
 - i) The Company may require evidence that the Cargo is compliant with the Code. Such evidence may include a copy of the loading plan, a certified load restraint guide for the specific freight, photographs of the load immediately prior to shipping, and credentials of the person/s packing and/or loading the freight.
 - ii) The Company may open and inspect the freight to ensure compliance. Should it be necessary to unpack and reload freight to ensure compliance this will be at the Customer's expense.
 - iii) Imported containers found to be over-mass or otherwise inconsistent with supplied documentation (e.g. transport documentation) will not be transported. Sourcing alternative suitable vehicle units and/or reloading will be at the Company's sole discretion and at the Customer's expense.
 - iv) Failure to load in accordance with the Code may result in the immediate cessation of service.

- v) The Company may (but is not obliged to) report to regulatory authorities any Customer(s) found to be loading in a manner constituting an imminent and serious risk to the public safety.

21. Law and Jurisdiction

This agreement and these Terms and Conditions shall be governed by the laws of New Zealand and any dispute arising under this agreement shall be determined exclusively by the courts of New Zealand.

22. Enforceability

It is hereby agreed that if any provision or part of any provision of these Terms and Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof. Further, should the Company elect not to exercise any of its rights under these Terms and Conditions, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

23. Customer's Forms

Any use or acceptance of an order on the Customer's own form is will not derogate from the application of these Terms and Conditions which shall prevail over any other terms submitted by the Customer or the Customer's agent.

24. Other Provisions

- a) These Terms and Conditions shall remain valid as a binding contractual agreement between the Company and Customer, unless terminated by the Company upon provision of 30 days' prior written notice.
 - b) Any relief from liability contained in these Terms and Conditions is to be read subject to any restriction on contracting out of liability provided in any legislation binding on the Company so that the provisions for relief contained in this agreement are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective and all the provisions hereof are severable and effective independently of any provisions which are null and void or ineffective by reason of any legislation.
 - c) If the carriage of Goods involves an ultimate destination or stop in a country other than the country of departure, the **Warsaw Convention (1929) or the Warsaw Convention as Amended at the Hague (1955) or the Montreal Convention (1999)** may be applicable and may govern and in most cases limit the liability of the carrier in respect of loss, damage or delay to cargo, unless a higher value is declared in advance by the Customer and a supplementary charge paid if required.
 - d) Any personal information about the Customer may be collected and held by the Company and may from time to time:
 - i) be used by the Company to assess the creditworthiness of the Customer, including disclosing any personal information to the a credit reference agency;
 - ii) be given to any other person in response to a credit enquiry by that other person or for debt collection purposes;
 - iii) be given to any other company in the Company's group of companies or used by the Company for sending the Customer marketing, promotional or other material relating to the services provided by the Company or group of companies.
- Under the Privacy Act 1993, the Customer has the right to access to and correction of its personal information held by the Company.

25. Force Majeure

Where the Company is unable to carry out any obligation under these Terms and Conditions due to any Force Majeure Event, the Company shall be excused from such obligation to the extent of such prevention, restriction or interference so caused.

26. Return of Goods

If the Customer, owner or consignee of the Goods is insolvent, placed under external administration, bankrupt or deceased, the Company is authorised to return any Goods to the shipper, exporter or supplier of those Goods, where the Company has not received authority from the shipper, exporter or supplier of the Goods to release the Goods to the Customer, owner or consignee.

27. Assignment

The Company may, on written notice, assign, transfer, novate or otherwise deal with all of its obligations under these Terms and Conditions or any part or parts thereof, to any third party including its related body corporate or affiliates, which will execute the respective assigned, transferred or novated rights and obligations under these Terms and Conditions.

28. PPSA

- a) Terms used in this clause 28 that are defined in the PPSA have the same meaning as in the PPSA.
- b) Without limitation to other rights of the Company, from the time the Goods are in the possession of the Company or a subcontractor, the Goods are subject to a continuing security interest in favour of the Company for the payment of all amounts due and owing by the Customer under these Terms and Conditions.



- c) The Customer acknowledges and consents to the Company's registration and perfection of the Company's security interest ("Security Interest") under these Terms and Conditions for the purposes of the PPSA.
- d) The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.
- e) On or at any time after the Company becomes entitled to terminate these Terms and Conditions (whether the Company has terminated or not):
- i) the Security Interest will become immediately enforceable;
 - ii) all amounts then due and unpaid to the Company by the Customer will, without notice (where the law permits), become immediately due and payable and the Customer will immediately pay such amounts; and/or
 - iii) the Company may enforce the Security Interest by exercising rights which are exercisable after the Security Interest becomes enforceable.
- f) After the Security Interest becomes enforceable, the Company (in addition to any powers granted at law or otherwise), to the maximum extent permitted by law, has the power to do anything in respect of the Property that the Customer could do. Without limitation to those powers, the Company may store the Property (at the Customer's risk and expense), open any package and sell all or any of the Property as the Company thinks fit (including on a deferred payment or vendor finance basis).
- g) To the extent permitted by law, the Customer irrevocably waives any right it may have:
- i) under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
 - ii) to receive a verification statement.
- h) The Customer further agrees that:
- i) sections 114(1)(a), 133 and 134 of the PPSA will not apply; and
 - ii) where the Company has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.
- i) The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under these Terms and Conditions or comply with any reasonable request by the Company in connection with the PPSA.

29. Anti-Corruption and Anti-Bribery

- a) Customer shall not directly or indirectly give, promise or attempt to give, or approve or authorize the giving of, anything of value to any person or any entity for any purpose prohibited by anti-bribery laws.
- b) Company shall notify the Customer in writing as soon as reasonably practicable should it or any of its Associated Persons be requested at any time in connection with these Terms and Conditions or the Services to make any Improper Payment.
- c) Company and any of its Associated Persons shall have the right to refuse to make any Improper Payment. The Customer acknowledges and agrees that where an Improper Payment has been requested and has been refused by or on behalf of Company or any of its Associated Persons, this may result in a delay in the provision of the Services and that neither Company nor any of its Associated Persons shall have any liability whatsoever and howsoever arising in respect of any such delay.
- d) Company may, without prejudice to any other rights or remedies (whether expressly specified in this Agreement or otherwise), suspend performance of the Services in respect of the shipment to which the Improper Payment relates.
- e) The Customer shall promptly indemnify Company and its Associated Persons and/or their respective employees, servants, agents, insurers or reinsurers against all costs (including the costs of investigating and defending any claims), expenses, claims, losses, liabilities, orders, awards, fines, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered as a result of or in connection with any request to make an Improper Payment.

30. Foreign Trade Controls

- a) The Customer hereby also warrants that the Goods do not require Company to obtain any specific license or permit for transportation, exportation or importation of the Goods and, to the extent required by law or regulation, the Customer has obtained all necessary export, and/or import licenses or permits.
- b) The Customer warrants that transportation, importation or exportation of the goods by Company is not prohibited by any applicable law or regulation, including comprehensive economic and/or trade sanctions maintained by the United States, the European Union, the United Nations, the country of origin or destination.
- c) To the extent applicable, the Customer further warrants that it or any party that the Customer trades with is not a party identified on the U.S Commerce Department's Denied Persons List or Entity List; the U.S. Treasury Department's State Debarred List, the Specially Designated Nationals List, EU Sanction list or any other similar list of prohibited or denied parties maintained by any other country.
- d) The Customer warrants that the Goods are not intended to be used in the design, development or production of nuclear, chemical or biological weapons.
- e) The Customer shall indemnify and hold Company harmless to the full extent of any loss, damage, cost, expense, or liability to Company including lost profits, attorney's fees and court costs for any failure or alleged failure of Customer to comply with applicable export and import laws and regulations of any country or specially granted

licenses from relevant authority permitting export of the Goods supplied to Company for transportation.

f) Company assumes no liability to Customer or any other person for any loss or expense including, but not limited to, fines and penalties, due to Customer's failure to comply with any applicable export laws, rules, regulations, or licenses granting the transaction.

31. Intellectual Property

Unless otherwise agreed in writing by the parties, Company shall own all right, title and interest in, and all copyrights, patents, trademarks, or other intellectual property or other proprietary rights used by Company in the performance of the Services (including all derivatives, improvements, enhancements, modifications or other technology developed in connection with the Services) or (if applicable) to the entity that has licensed the use thereof to Company. No authority to use any technology or property subject to such intellectual property rights is, nor shall be construed as, being provided hereunder.

32. Amendments

The Company may unilaterally amend these Terms and Conditions at any time by publishing the amendments on the Company's website at www.tollgroup.com/gf-terms-and-conditions. Unless otherwise agreed in writing, all contracts concluded by the Company and the Customer after such publication shall be subject to the amended Terms and Conditions.