

Toll QRX and Toll Refrigerated

SUBCONTRACT SERVICES CONDITIONS - WAIVER

1. Definitions

In these conditions:

"Chain of Responsibility" means any State, Territory or Commonwealth legislation or regulations based on or adapted from the provisions of the National Transport Commission (Road Transport Legislation - Compliance and Enforcement Bill) Regulations 2006 or National Transport Commission (Road Transport Legislation - Compliance and Enforcement Regulations) Regulations 2006 as approved by each State and Territory Government; and any State, Territory or Commonwealth legislation or regulations in respect of driver fatigue management;

"Goods" means the goods and all load referred to on the LSD and described on the Transport Contracts as accepted by You from TOLL or TOLL's customer together with any container or packaging for the goods and any pallet picked up with the goods or supplied by or for TOLL's customer but does not mean TOLL Equipment or Trailing Equipment;

"Loss" means loss, damage, deterioration or contamination of the Goods;

"LSD" means the linehaul subcontractor document or other work order given to You (e.g. Contract Carrier Payment Advice, Sub-Contractor's Transportation Order);

"Person" includes any person, firm, corporation, governmental authority or state or federal government;

"Services" means the whole of the operations and services required by TOLL for the Goods;

"Term" means the period required to perform the Services under the LSD;

"TOLL" means Toll Holdings Limited ABN 25 006 592 089 and its related bodies corporate within the meaning of that expression in Section 9 of the Corporations Act 2001 carrying on business in their own names and under any business names and their officers, employees, agents, subcontractors, excluding You, and transferees;

"TOLL Equipment" means TOLL's plant, equipment and containers, owned, leased and/or hired by TOLL and used by You to perform the Services;

"Transport Contract" means a TOLL transport or services contract (consignment note) for the Goods;

"Trailing Equipment" means any trailer and associated equipment TOLL provides to You.

"You" includes your officers, employees, agents, subcontractors and permitted transferees.

2. What You Must Do

You must provide the Services during the Term and:

2.1 Collect the Goods from the TOLL depot or pick-up address provided by TOLL and secure and transport them in the most direct manner and within a reasonable time to the TOLL depot or the delivery address provided by TOLL;

2.2 When picking up Goods from anywhere other than a TOLL depot, sign or have Your driver sign the Transport Contract and obtain a signature and date on it from the sender of the Goods;

- 2.3 If the delivery address is not a TOLL depot, upon delivery of the Goods, obtain a signature and date on the Transport Contract from the receiver of the Goods and promptly return it to the nearest TOLL depot;
- 2.4 If when You pick up the Goods they are not in good order and condition record or have Your driver record this on the Transport Contract;
- 2.5 Account for and pay to TOLL all moneys received for and on TOLL's behalf or for and on behalf of any TOLL customer on the same day on which You receive those moneys or the next business day after receipt at a TOLL depot open for business;
- 2.6 Account to TOLL for all pallets picked up and return them to TOLL or dehire them for TOLL at a Chep or Loscam or other depot and in default pay TOLL \$30.00 per pallet;
- 2.7 If the Services could be delayed, or an accident occurs, advise TOLL's nearest depot of the cause of the delay, the exact location and condition of the Goods and estimate the delay time;
- 2.8 Perform the Services in a conscientious and expeditious manner and with all due care and skill, and on a vehicle driven by a competent licensed driver;
- 2.9 Ensure You or each driver wears the personal protective equipment and other items required by TOLL;
- 2.10 Pay TOLL's costs if it retakes possession of the Goods under 8.1;
- 2.11 Pay TOLL the service fee under clause 10.1; and
- 2.12 At Your own cost comply with the provisions of all acts of Federal, State and Territory parliaments, statutes, ordinances, orders, by-laws and regulations and the lawful requirements of any public, municipal or other authority as far as they apply to You, the vehicles or the Services, including payment of road licence and registration fees and Chain of Responsibility legislation.

3. What Insurances You Must Have

At Your own expense, take out the following insurances:

- 3.1 compulsory third party motor vehicle insurance for each vehicle used to perform the Services;
- 3.2 comprehensive insurance with a dangerous goods extension for packaged or bulk Goods for all Your vehicles and equipment (including Your own trailing equipment) used to perform the Services;
- 3.3 a public risk policy for any single accident or event for not less than \$10M;
- 3.4 insurance for employees under any relevant workers' compensation legislation;

- 3.5 unless otherwise agreed with TOLL, insurance for any TOLL owned Trailing Equipment is not required;
- 3.6 all insurance required by law to be effected by You; and
- 3.7 any other insurance which TOLL notifies You is required,

and upon TOLL's request forward on or before the start of the Term and then on each anniversary of the start of the Term, a copy of the current insurance policies to TOLL.

4. **What You Must Not Do**

You must not:

- 4.1 Seek payment by way of contribution or recompense or any other means from TOLL for any amounts paid or payable by You to any person for a demand upon You other than those relating to a Loss;
- 4.2 Join TOLL as a co-defendant or third party in any proceedings taken by any person for a demand upon You other than those relating to a Loss;
- 4.3 Do anything which may adversely affect any policy of insurance for the Goods; nor
- 4.4 Use a driver for a vehicle who is not approved by TOLL in writing.

5. **Your Warranties**

You warrant that:

- 5.1 You are competent and have the necessary skills to provide the Services;
- 5.2 The vehicles used by You will be appropriately registered, suitable to provide the Services, in roadworthy condition and, if required by TOLL, fitted with speed limiters and tachometers or other monitoring devices;
- 5.3 At all times while performing the Services for TOLL You or any driver engaged by You will comply with all laws and regulations about the licensing, operation and maintenance of the vehicles used for the Services, the manner of driving the vehicles and the medical condition of the drivers while driving the vehicles;
- 5.4 Each driver will be licensed to drive the vehicle in the state in which the driver resides and will not drive while under the influence of non-prescription drugs nor alcohol;
- 5.5 Each driver will observe and comply with all speed limits and road traffic directions, the prescribed driving hours, rest breaks and log book requirements;
- 5.6 You will carry out all the obligations imposed on You by any legislation dealing with health, safety and workers compensation in any State or Territory in which the Services are performed;

- 5.7 You do and will comply with relevant workers' compensation and industrial laws including applicable awards and agreements for Your employees and subcontractors;
- 5.8 The driver who picks up the Goods is authorised to sign the LSD for You;
- 5.9 You will carry out all instructions appearing on the LSD or otherwise provided to You by TOLL or on TOLL's behalf; and
- 5.10 You are the owner or authorised agent of the owner of each vehicle used to supply the Services;

6. **What TOLL Must Do**

- 6.1 TOLL must pay You the amount shown on the LSD, less any deductions shown on the LSD or under 2.6, 8.1 and 10.1, within 14 days of receipt of signed delivery copies of all the Transport Contracts and all pallet documentation required by TOLL, or completion of the Services (if transport from TOLL depot to TOLL depot);
- 6.2 TOLL must provide the following services to You when available and reasonably necessary in TOLL's opinion for performance of the Services:
 - 6.2.1 parking facilities for Your vehicles, where available;
 - 6.2.2 where agreed, recipient created tax invoices;
 - 6.2.3 all necessary documentation for the transportation of the Goods;
 - 6.2.4 notification if any of the Goods are hazardous or require special handling;
 - 6.2.5 induction and ongoing training reasonably necessary for performance of the Services;
 - 6.2.6 payment by electronic funds transfer within 14 days under 6.1.
- 6.3 TOLL must provide you with the following:
 - 6.3.1 minimum number of hours of work – nil: and/or
 - 6.3.2 minimum income level – nil.

7. **Contract Management**

In addition to Your obligation under 2.7 to advise TOLL of a possible delay in the Services or an accident, TOLL and You acknowledge and agree:-

- 7.1 You are a subcontractor to TOLL for the Services and TOLL has a Transport Contract with TOLL's Customer and TOLL has the primary obligation for the Goods.

7.2 If a Loss occurs:

7.2.1 You will notify TOLL immediately and as soon as possible in writing about the Loss and forward any demand, writ, summons or proceedings You receive about the Loss;

7.2.2 You will give TOLL all the assistance TOLL reasonably requires about the circumstances of the delay, accident, Loss, demand, writ, summons or proceedings; and

7.2.3 You will not communicate in any way about that Loss with TOLL's customer or owner of the Goods or their agent or the Person who makes a demand about a Loss other than as You may be legally obliged to do or as directed by TOLL.

7.3 TOLL waives its rights and acknowledges it will not make any claim against You for contribution or payment for any Loss other than Loss arising from unlawful or wilful conduct by You.

8. What TOLL May Do

8.1 If You:

8.1.1 unreasonably delay in providing the Services;

8.1.2. notify TOLL there may be a delay because of your negligence;

8.1.3 fail to take the most direct route to the depot or delivery address;

8.1.4 are guilty of any dishonesty or serious neglect of duty;

8.1.5 refuse to comply with any reasonable instruction or direction given by TOLL;

8.1.6 breach any of these conditions and, if the breach is capable of remedy, fail to remedy the breach or pay reasonable compensation for the breach within 14 days notice of the breach; or

8.1.7 commit an act of insolvency or are declared insolvent or are wound up,

then TOLL may end the subcontract at any time and without prior notice to You and enter any place where the Goods, TOLL Equipment or Trailing Equipment are located and retake their possession and You must reimburse TOLL for all costs and expenses incurred by TOLL in doing that and in completing the Transport Contract.

8.2 If the Owner Driver and Forestry Contractors Act 2005 (Vic) applies to the subcontract, the minimum notice period to end the subcontract is:

8.2.1 3 months where the vehicle used to perform the Services is a heavy vehicle as defined under the Road Safety Act 1986, or

8.2.2 1 month for any other vehicle.

- 8.3 TOLL is entitled to subcontract on any terms the whole or any part of TOLL's obligations under these conditions.
- 8.4 TOLL, in addition to acting for itself, also acts as agent for each of its servants, agents and other subcontractors so they are entitled to the full benefit of these conditions, including any exclusions or limitation of liability, to the same extent as TOLL.

9. Liability and Indemnity

- 9.1 You are liable for and indemnify TOLL against any claim, liability or loss for:
- 9.1.1 personal injury (including death) to any person or loss of or damage to any property, including TOLL Equipment but excluding the Goods, arising from the Services to the extent that the same is due to Your act, default, omission or negligence; and
 - 9.1.2 any Loss arising from any unlawful or wilful conduct by You.
- 9.2 The Trailing Equipment is at Your risk from the time that You pick up or collect it and You are liable for and indemnify TOLL against any claim, liability or loss arising out of or in connection with its loss, theft or damage unless TOLL has agreed that You are not required to take out the insurance in 3.5 in which case You are only liable for a claim, liability or loss arising from any unlawful or wilful conduct by You.
- 9.3 TOLL is not responsible to You or Your servants, agents or subcontractors in tort or contract or bailment for loss of or damage to property of any Person including Your property or for death or of or injury to any Person including You for any reason whatsoever including TOLL's negligence, breach of contract, Your use of TOLL Equipment, the Trailing Equipment, or TOLL's wilful act or default.
- 9.4 TOLL excludes:
- 9.4.1 all liability to You in contract for indirect or consequential damages arising out of or in connection with this sub-contract even if:
 - 9.4.1.1 TOLL knew they were possible; or
 - 9.4.1.2 they were otherwise foreseeable,
- including without limitation lost profits, lease payments or damage suffered as a result of claims by any Person, and
- 9.4.2 all liability to You in tort including negligence or other non-contractual cause of action for which liability can be excluded for TOLL's actions or omissions arising out of or in connection with this subcontract.

10. Service Fee

- 10.1 For the services provided by TOLL to You under this subcontract. You must pay TOLL the service fee shown on the LSD or otherwise agreed or advised to You in writing.

10.2 You authorise TOLL to deduct from the amounts payable to You under the LSD any amounts shown as deductions on the LSD or under these conditions including 2.6, the service fee and monies due from You to TOLL under any contract.

11. **Variation and Waiver**

11.1 TOLL is not bound by any waiver, discharge or release of any condition or any agreement which varies these conditions unless it is in writing and signed for TOLL by an authorised officer.

11.2 If TOLL waives a breach of a condition the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.

12. **GST**

12.1 Unless otherwise stated, all prices, costs or charges stated in the LSD are exclusive of GST (as defined in the *A New Tax System (Goods and Services Tax) Act 1999 as amended*).

12.2 TOLL must pay, or reimburse You for any GST that You must pay on any taxable supply made by You under these conditions and at the same time as the amount in clause 6.1 is payable.

12.3 You must pay, or reimburse TOLL for any GST that TOLL must pay on any taxable supply made by TOLL under these conditions.

12.4 Your right to payment under 12.2, and TOLL's right to payment under 12.3, is subject to You and TOLL in each case delivering a valid tax invoice to the other.

12.5 Despite 12.4 and if TOLL so requires, TOLL may waive its requirement for You to deliver a valid tax invoice to TOLL and itself issue a tax invoice for the taxable supply by You ("a recipient created tax invoice").

12.6 If TOLL issues a recipient created tax invoice, You must not issue a tax invoice for the taxable supply by You.

12.7 You acknowledge that You are registered for GST and You will notify TOLL if You cease to be registered.

12.8 TOLL acknowledges that it is registered for GST and TOLL will notify You if it ceases to be registered.

13. **Subcontractor Status**

13.1 For this subcontract, You are an independent contractor and not an employee or agent of TOLL.

13.2 You acknowledge and agree that goodwill does not attach to or arise out of this subcontract or Your performance of the Services and except as stated in 6.3, TOLL has not given You any guarantee or warranty (considering the charges that TOLL will pay under this subcontract) as to Your earning capacity, the minimum

amount of Services to be provided by You or the minimum level of revenue You may earn under this subcontract.

14. **Non-Assignment**

You may not assign or subcontract Your rights under this subcontract without TOLL's consent but TOLL may do so without Your consent.

15. **Service of Notices**

TOLL's address and Your address on the LSD are the addresses for service of notices.

16. **Law**

This agreement is governed by the laws of Victoria and both parties submit to the non-exclusive jurisdiction of the courts of that State.

March 2007