

CONTRACT SERVICE CONDITIONS

1. In these Terms and Conditions and on the front of this document:
 - 1.1 "TOLL" means TOLL ANL Bass Strait Shipping A.C.N. 138 616 645 PTY LIMITED;
 - 1.2 "ancillary matters" means anything done or to be done to or in relation to any Cargo including (inter alia) moving it to or from or storing or leaving it at any warehouse, terminal, building, yard, wharf, platform or other place or area, loading or unloading it to or from any vessel, aircraft, vehicle, railcar, or other conveyance, packing or placing it in or onto or unpacking or removing it from any Container, fumigating, refrigerating, cooling, trans-shipping, packaging or inspecting it, and handling operations of every description;
 - 1.3 "Cargo" means goods, articles and cargo of whatever description (including the contents of Containers, and Containers not belonging to TOLL or any Carrier's Agent) in respect of which this document is issued or otherwise delivered to and accepted by or on behalf of TOLL for transportation under the cover of this document;
 - 1.4 "the Carriage" means the receipt of the Cargo by or on behalf of TOLL at the place of acceptance and the transportation of the same to, and the delivery thereof at the place of delivery and includes ancillary matters which may be incidental thereto or which TOLL or Carrier's Agents may deem it expedient to effect in relation to Cargo while it is in the possession or under the control of TOLL or any Carrier's Agent;
 - 1.5 "Carrier's Agent" means any person who is a Contractor or who at any time during the Carriage is or becomes a servant or agent of TOLL or of a Contractor;
 - 1.6 "Container" includes any container, crate, case, vehicle, tray, flat, pallet, receptacle, packaging or cargo carrying equipment or unit;
 - 1.7 "the Contract" means the contract of carriage pursuant to which the Carriage is to be effected or arranged by TOLL, being the contract of carriage contained in and evidenced by this document;
 - 1.8 "dangerous cargo" means cargo which is or may become noxious, flammable, hazardous, explosive, offensive, dangerous or damaging;
 - 1.9 "deliverer" means any person who takes delivery, or on whose behalf delivery is taken, or who is entitled to claim and take delivery, of any Cargo from TOLL or any Carrier's Agent at the place of delivery;
 - 1.10 "Place of Acceptance" means the place of acceptance referred to in the space provided for that purpose on the front hereof;
 - 1.11 "Place of Delivery" means the place of delivery referred to in the space provided for that purpose on the front hereof, and also includes any other place at which Cargo is delivered in accordance with clause 19;
 - 1.12 "Governmental Authority" means any government, any governmental statutory or administrative authority or department or other like body and also any servant, agent, officer or representative of any such government, authority, department or other like body;
 - 1.13 "Owner" means a person who at the commencement of the Carriage or at any time thereafter up to and including the time when the Cargo is delivered, or the Carriage otherwise comes to an end, owns or has any proprietary or possessory interest in or contractual or equitable right to or in respect of any Cargo, and includes the Consignor, the Consignee and any deliverer; and
 - 1.14 "person" includes any person, firm, corporation, governmental authority or any other body corporate or incorporate.
2. TOLL is not a common carrier, does not accept the obligations or liabilities of a common carrier and may at its discretion refuse to carry any goods, articles, or cargo.
3. The Cargo is accepted by or on behalf of TOLL from the Consignor upon and subject to these Terms and Conditions. Subject to these Terms and Conditions, TOLL agrees to effect or arrange the Carriage in consideration of the payment to TOLL of freight as herein provided and all other charges payable.
4. Neither any waiver or variation of or addition to these Terms and Conditions, nor any agreement, arrangement, term, condition, warranty or representation of any nature with respect to Cargo or the Carriage, forms part of the Contract or shall bind TOLL, or have any other effect unless it has been made or confirmed in writing by TOLL or it is a term or warranty which is implied in the Contract by reason of a statutory provision the application of which in relation to the Contract cannot be excluded, restricted or modified by any term of the Contract, and provided always that any special freight or price which has been agreed with TOLL in relation to the Carriage pursuant to clause 8 shall be effective and bind TOLL under the Contract although not made or confirmed by TOLL in writing.
5. TOLL may contract or arrange on any terms for the whole or any portion of the Carriage to be performed by any other person or persons and in these Terms and Conditions "Contractor" means any such person.
6. TOLL and any Carrier's Agent may perform or effect all or any part of the Carriage by any means and/or route and shall also be entitled at any time and from time to time, while Cargo is in its custody or control and without notice to any Owner, to transport or move Cargo by any means or transport, by road, rail, air, and/or sea, on any route or routes whatsoever, to or between any place or places whatsoever in Australia either in a contrary direction to or outside or beyond any customary, intended or advertised route, once or more often in any other backwards or forwards, and whether intentionally or unintentionally for any purpose or reason or under any circumstances, with liberty (inter alia) at any time and from time to time to abandon, alter or repeat any voyage or journey for any purpose and in any situation detain, store or leave cargo for any period or periods at any place or places either intentionally or unintentionally, and to effect at any times and places all ancillary matters which TOLL or any Carrier's Agent may deem expedient. Anything done in the exercise of any of the foregoing discretions, rights, powers and liberties, shall form part of the Carriage, and shall be deemed not to be a deviation or breach of the Contract.
7. The Consignor warrants: (i) he has fully and adequately described the Cargo, its nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and packaging of the Cargo and that, given the nature of the Cargo, the Cargo is packed in a proper way to withstand the ordinary risks of Carriage; (ii) the person delivering the Cargo to TOLL for Carriage is authorised to do so and to sign this document; (iii) it is either the Owner or the authorised agent of the Owner of the Cargo and it accepts these Terms and Conditions for itself and the Consignee as well as for any other person for whom the Consignor is acting; and, (iv) neither it nor any other person will make an allegation or claim against TOLL or any other person about the Carriage, and the Consignor indemnifies TOLL from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties, the Consignor's obligations or these Terms and Conditions. Notwithstanding anything in this clause 7, marks, weight, measure, contents, quality, value, numbers, quantity and condition (including packaging) of the Cargo are unknown to TOLL and Carrier's Agent. The Consignor, the Consignee and each deliverer shall be severally liable for any loss, damage, cost or expense which TOLL or any Carrier's Agent may suffer by reason of the condition or packaging of the Cargo or occasioned either directly or indirectly to TOLL or any Carrier's Agent by reason of TOLL or any Carrier's Agent relying upon and incorrectly specified in such description or particulars or other errors or omissions by or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of Cargo. The amount of all such cost, expense, loss and damage shall be a charge payable under the Contract.
8. Freight shall be calculated and charged, at TOLL's option, on any one or more of gross weight, measurement, value or quantity of the Cargo and Containers in which it is carried in accordance with TOLL's standard freight rates and charges operative at the commencement of the Carriage and applicable thereto. Such freight rates and charges are set forth in TOLL's current freight schedules as from time to time amended and are known to the Consignor. If a special rate or price has been agreed to by TOLL in respect of the Carriage, freight shall be calculated and charged as aforesaid in accordance with such specially arranged rate or price. For the purposes of this clause the weight, measurement, value or quantity of the Cargo shall be deemed to be as specified on the front of this document provided that TOLL or any Carrier's Agent shall be entitled (but under no obligation) to check such particulars at any time and if the same are incorrect, the freight shall be adjusted accordingly, and the amount of all expenses incurred by TOLL or any Carrier's Agent in connection with such checking shall be a charge payable under the Contract.
9. Freight shall be deemed earned on acceptance of the Cargo from the Consignor, and all freight and all charges payable under the Contract shall be paid to TOLL and shall be and remain payable notwithstanding any refusal to accept or rejection of Cargo by the Consignee or any other person, and whether or not Cargo is lost, damaged or delayed in transit, and whether or not the Cargo is delivered in accordance with the Contract or at all TOLL will accept payment of freight and charges payable under the Contract at the place at which freight is stated on the front hereof by payable, if that place is not the place where the Place of Acceptance is situated, TOLL may require payment of a collection commission not exceeding 5% of the freight and other charges payable under the Contract. Such collection commission will be payable as an additional charge under the Contract. However, neither TOLL nor any Carrier's Agent shall under any circumstances whatsoever be liable for any failure on its part to demand or collect or cause to be demanded or collected any such freight or charges, either before the Cargo is delivered or at all and the Consignor, the Consignee and each deliverer shall be and remain at all times severally liable for, all freight, charges and other moneys which become payable to TOLL under the Contract, and to pay to TOLL on demand any such freight charges or other moneys which at any time remain unpaid.
10. TOLL shall have a general lien over Cargo for all amounts payable to it by the Consignor, the Consignee or any deliverer including all freight and charges payable under the Contract or on any other account and may refuse delivery of Cargo until all such amounts have been paid in full. If any such amount remains unpaid for more than 30 days after first becoming due for payment, TOLL or any Carrier's Agent may at its discretion and without notice to any Owner sell Cargo by public auction or private treaty deducting all expenses of detaining and selling the same, and apply the net balance of the sale proceeds towards amounts payable to TOLL as aforesaid. Any surplus sale proceeds and any cargo remaining unsold after all such amounts have been paid in full shall be payable to the Consignee. Neither shall nor any such sale shall prejudice or affect the right of TOLL at any time to recover from any person liable thereof any such amount which at that time remains unpaid.
11. TOLL may at its discretion retain and decline to deliver Cargo until all freight and charges are paid and until the identity of the person to whom that Cargo should be delivered is established to the satisfaction of TOLL or a Carrier's Agent. Notwithstanding the foregoing, neither TOLL nor any Carrier's Agent shall be under the obligation to refrain from delivering the Cargo to a person who does not produce or deliver up this document or whose identity is not established to its satisfaction as aforesaid.
12. If Cargo is not made promptly available to TOLL or the Carrier's Agent receiving the same at the Place of Acceptance, at the time arranged between the Consignor and TOLL or any Carrier's Agent, or if Cargo is not claimed and delivery thereof accepted immediately on its arrival at the Place of Delivery or so soon thereafter as TOLL or the delivering Carrier's Agent requires, the amount of all additional cost resulting therefrom, as determined by TOLL, shall be an additional charge payable under the Contract.
13. TOLL does not undertake to notify the Consignee or any other person of the arrival of Cargo, or any vessel, aircraft, vehicle or other conveyance carrying Cargo, at the Place of Delivery. After any Cargo has been discharged or unloaded at that place, TOLL or any Carrier's Agent shall be at liberty to leave and abandon it entirely and thereupon the Carriage shall be deemed to be fully completed. However, TOLL or any Carrier's Agent may, at its absolute discretion, cause any Cargo which remains unclaimed after it has been discharged or unloaded as aforesaid to be held, removed, transferred, stored, forwarded or otherwise handled and/or sold or disposed of in any manner that TOLL or that Carrier's Agent deems to be appropriate or expedient. Anything done by TOLL or any Carrier's Agent in the exercise of this discretion shall be deemed to be done by it solely as a trustee for and at the risk and expense of the Owners in all things, and the amount of all costs incurred by TOLL only or by Carrier's Agent (including charges paid to others) in connection therewith shall be an additional charge payable under the Contract. Nevertheless the provisions of clause 23 shall apply as they would if such arrangements and everything connected therewith-formed part of the Carriage.
14. Perishable and other goods delivered without marks, or with marks which have been obliterated or omitted or which do not correspond with any marks appearing on the front hereof, shall be accepted by the Consignee and all other deliveries, if those goods are of the same general description as the Cargo in satisfaction of which they are delivered, in full satisfaction of that Cargo.
15. The Consignor acknowledges that if any Cargo is to be transported or stored in a temperature controlled environment, temperature variations can occur. TOLL will endeavour to ensure that transport or storage occurs at a temperature within accepted tolerance levels. Any temperature record maintained by TOLL will be conclusive of the temperature at which the Cargo was transported or stored.
16. The Consignor warrants to TOLL that any Cargo which is dangerous cargo is stated on the front hereof to be dangerous cargo and that the true nature and description of that Cargo is fully declared and recorded in the description and particulars of the Cargo furnished by the Consignor which appear on the front hereof. Each Owner shall be severally liable for and to indemnify TOLL and each Carrier's Agent against all loss, damage and expenses whatsoever directly or indirectly caused by any Cargo which is dangerous cargo or which is incurred or otherwise arises as a result of any Cargo being dangerous cargo, and shall indemnify TOLL and all Carrier's Agents against all claims which may be brought against them or any of them in respect of any such loss, damage or expense. The foregoing provisions of this clause shall apply whether or not the nature of the Cargo has been fully disclosed to TOLL or a Carrier's Agent.
17. If TOLL or any Carrier's Agent is at any time of the opinion that any Cargo is dangerous cargo the same may be destroyed, disposed of, abandoned or rendered harmless, as TOLL or any Carrier's Agent considers necessary or desirable, without compensation to the Consignor or any other Owner and without prejudice to the right of TOLL to freight and any other charges or moneys payable under the Contract.
18. TOLL or any Carrier's Agent may at its discretion at any time sell by public auction or private treaty any Cargo being perishable Cargo or Cargo which has deteriorated or become damaged from any cause whatsoever. TOLL shall account to the Consignee for the net proceeds of such sale after deduction of all expenses of selling the same and of all freight, charges and other moneys due to TOLL under the Contract or in respect of which TOLL has or had a lien over such Cargo under clause 10 hereof.
19. If at any time after Cargo is received, TOLL or the Carrier's Agent believes for any reason that to carry out or continue the Carriage in the manner theretofore proposed or intended will be impractical, unsafe, unlawful or imprudent, or may cause loss, damage or delay of any kind, or otherwise concludes for any reason that the Carriage should not be effected or further effected either at all or on any measure or additional arrangement, the animals may be loaded or transported on any vessel either on deck or below, as TOLL or any Carrier's Agent deems expedient. If after the expiration of one hour after the arrival of any of the animals at the place of delivery, there are any which remain unclaimed and undelivered, TOLL or any Carrier's Agent shall be at liberty (but under no obligation) to send them to livery or agistment or cause them to be otherwise provided for at the sole risk and expense of the Owners and the amount of all additional costs incurred by TOLL or any Carrier's Agent in this connection (including any livery or agistment charges or other costs which TOLL or any Carrier's Agent may elect to pay on behalf of the Owners) shall be a charge payable under the Contract.
20. TOLL and Carrier's Agents may (without any obligation to do so) at any time and from time to time inspect Cargo and for this purpose may open or remove any Containers.
21. If the Cargo is or includes live animals the following provisions shall apply in addition to and without limiting or detracting from any of the other provisions of these Terms and Conditions. All freight shall be prepaid. TOLL shall not be required to arrange or provide food or attend to the animals. The animals may be loaded or transported on any vessel either on deck or below, as TOLL or any Carrier's Agent deems expedient. If after the expiration of one hour after the arrival of any of the animals at the place of delivery, there are any which remain unclaimed and undelivered, TOLL or any Carrier's Agent shall be at liberty (but under no obligation) to send them to livery or agistment or cause them to be otherwise provided for at the sole risk and expense of the Owners and the amount of all additional costs incurred by TOLL or any Carrier's Agent in this connection (including any livery or agistment charges or other costs which TOLL or any Carrier's Agent may elect to pay on behalf of the Owners) shall be a charge payable under the Contract.
22. Any act or omission or other conduct on the part of TOLL or any Carrier's Agent which is in compliance with or otherwise due to any applicable statute, regulations or other laws, or any orders or requirements imposed by any Governmental Authority, or directions given by any person or persons having under the terms of war risks insurance on any vessel the right to give those directions shall form part of the Carriage and shall be deemed not to be a deviation or breach of the Contract. All duties, imposts, wharfage dues and other charges and expenses payable in respect of the Cargo or the Carriage may be paid by TOLL or any Carrier's Agent and the amount so paid together with any other costs and expenses of whatsoever nature arising out of or incurred by TOLL or any Carrier's Agent in complying with the applicable provisions, orders, requirements and directions as aforesaid shall be a charge payable to TOLL under the Contract.
23. At all times before, during and after the Carriage and under all circumstances Cargo shall be and remain for all purposes and in all respects the sole property of the Owners. Neither TOLL nor any Carrier's Agent shall be under any duty or liability whatsoever, and the Owner undertakes that no claim shall be made or brought by any Owner or other person against TOLL or any Carrier's Agent for or in respect of any loss or damage to or deterioration, contamination, evaporation, wrongful delivery, mis-delivery, delay in delivery (however extended) or non-delivery of Cargo whenever, wherever and however occurring or any damage, injury or loss of any nature whatsoever sustained or arising in consequence thereof, or otherwise howsoever for or in respect of anything done, purported to be done or omitted to be done by TOLL or any Carrier's Agent, or any other matter or thing (including inter alia any failure by TOLL or any Carrier's Agent to effect the Carriage or any part thereof with reasonable despatch or at all) occurring or arising during or in connection with the Carriage or otherwise in relation to Cargo. If any such claim should nevertheless be made the Owner shall indemnify TOLL against the consequences thereof. This clause shall apply notwithstanding that such loss, damage, deterioration, contamination, evaporation, mis-delivery, delay in delivery, non-delivery, thing done, purported to be done, or omitted to be done, or other matter or thing may constitute, involve or be solely or partly caused by or otherwise due to default or misconduct (including inter alia willful default or misconduct), negligence, breach of the Contract, or other wrongful act, omission, or conduct on the part of TOLL or any Carrier's Agent or arises however otherwise in a way which but for this clause, would result in TOLL and/or any Carrier's Agent being liable therefor. The exclusions, releases and indemnities in this clause extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if TOLL knows they are possible or otherwise foreseeable.
24. Nothing whatsoever done or omitted to be done or other conduct by TOLL and/or any Carrier's Agent in breach of the Contract or otherwise howsoever lawfully or unlawfully, shall under any circumstances constitute a fundamental breach of the Contract, or a deviation or departure therefrom, or repudiation thereof, such as to have the effect of disentitling TOLL or any Carrier's Agent from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other protections of TOLL and Carrier's Agents contained in these Terms and Conditions and all such rights, defences, exceptions, immunities, limitations of duty and liability and other like protections shall continue to have full force and effect in any event whatsoever. Nothing in this clause shall be construed as in any way limiting or detracting from the generality of clause 23.
25. If in the course of or otherwise in connection with the Carriage, Cargo shall be loaded on board a vessel for transportation by sea, the Contract and in particular these Terms and Conditions shall continue to apply. NO BILL OF LADING WILL BE ISSUED. TOLL does not undertake the seaworthiness of any such vessel, either at or after the commencement of the voyage. Cargo may be carried on deck and whether carried on or under deck will contribute to general average losses and expenditure in relation to the vessel, if any, which will be adjusted in accordance with the York Antwerp Rules 1974. Salvage services rendered to the vessel or its cargo during the voyage by a vessel or vessels owned or operated by TOLL or any Carrier's Agent shall be paid for as fully as if such salvaging vessel or vessels belonged to and were operated by a stranger. Nothing in this clause shall oblige TOLL or any Carrier's Agent to contribute to general average losses and expenditure in relation to Cargo.
26. To the extent necessary to give full effect to all of the foregoing Terms and Conditions and to entitle every Carrier's Agent to obtain and have the benefit of (and rely upon in respect and in defence of any claim brought by any Owner or other person) the provisions of clauses 23 and 24 and each and every other provision of these Terms and Conditions which by its terms applies or extends to a Carrier's Agent, TOLL in making the Contract, in addition to acting for itself, is and shall be deemed to be acting as the agent and trustee for every Carrier's Agent who at any time directly or indirectly takes part in the Carriage or is in any other way howsoever involved in any matter included in the Carriage or responsible for anything which may occur to or in respect of Cargo between commencement and conclusion of the Carriage, and each such Carrier's Agent is and shall be deemed to be a party to the Contract for the purpose of entitling him as aforesaid, and so far as may be required to give full effect to this clause, TOLL shall hold the benefit of the Contract for all Carrier's Agents as well as for itself. It is agreed that the benefit of this clause and all other provisions contained herein apply and extend to a Carrier's Agent whether or not the carrier has any liability whatsoever under this Contract or in respect of the Cargo.
27. Each Owner accepts and agrees to be bound by every provision of these Terms and Conditions which by its terms applies or extends to him or purports to bind or affect him in any way, and all Owners are and shall be deemed to be parties to the Contract so far as they may be bound to give full effect to this clause and so as to enable TOLL and any Carrier's Agent to enforce all of these Terms and Conditions according to their terms.
28. The Consignor warrants that he makes the Contract for himself and also as agent for and on behalf of all Owners severally and that he is duly authorised by each Owner to make the contract on that Owner's behalf. The Consignor undertakes that if at any time hereafter any Owner asserts or pursues against TOLL or any Carrier's Agent, any claim to which TOLL or that Carrier's Agent has a good defence by reason of these Terms and Conditions, or would have had a good defence by reason of these Terms and Conditions if that Owner had agreed to and was bound by these Terms and Conditions as fully in all respects as the Consignor, then the Consignor shall indemnify and keep indemnified TOLL or that Carrier's Agent against that claim and against all legal costs and expenses whatsoever which TOLL or that Carrier's Agent may incur or become liable to pay in connection with any action or proceedings relating thereto.
29. If at any time any Owner or other person recovers any sum from TOLL or any Carrier's Agent pursuant to a claim brought against TOLL or that Carrier's Agent contrary to the terms of clause 23 a like sum shall thereupon become immediately due and payable to TOLL as a charge payable under the Contract.
30. If any provision of these Terms and Conditions is unlawful, then that provision shall, to the extent to which it is unlawful, but not further be deemed to be excised from and not to form part of these Terms and Conditions.
31. The parties acknowledge that under applicable State, Territory and Commonwealth law (including the Trade Practices Act), certain conditions and warranties may be implied in any contract based on these Terms and Conditions and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (the "Non-Excludable Rights"). Notwithstanding any clause of these Terms and Conditions, the Non-Excludable Rights are not excluded, restricted or modified by these Terms and Conditions except to the extent permitted by law.
32. Subject to clause 31, but notwithstanding any other clause in these Terms and Conditions, if any liability is found to attach to TOLL, to the Consignor or any Person acting for the Consignor, TOLL's liability is to be limited to:
 - (a) supplying the services again; or
 - (b) the cost of supplying the services again.
33. In addition to any other consideration, the recipient of a Taxable Supply made under or in connection with this Contract (the "Recipient") must pay to the party making the supply (the "Supplier") the amount of GST in respect of the supply. This clause does not apply if the consideration specified for the supply is expressly agreed to be GST inclusive.
 - 33.1 If the amount paid by the Recipient to the Supplier in respect of GST (whether because of an Adjustment or otherwise):
 - (a) is more than the GST on the Taxable Supply, then the Supplier shall refund the excess to the Recipient;
 - (b) is less than the GST on the Taxable Supply, then the Recipient shall pay the deficiency to the Supplier.
 - 33.2 The amount of a party's entitlement under this Contract to recovery or compensation for any of its costs, expenses or liabilities is reduced by the Input Tax Credits available in respect of such costs, expenses or liabilities.
 - 33.3 In this Contract, amounts which are calculated by reference to revenue or profits are calculated on the GST-exclusive component of that revenue or those profits unless expressly provided to the contrary.
 - 33.4 For the purposes of this clause 33:
 - "GST Law" has the same meaning as in a New Tax System (Goods and Services Tax) Act 1999;
 - "Adjustment", "Adjustment Note", "GST", "Input Tax Credits", and "Tax Invoice" have the meanings given to them in the GST Law; and
 - "Taxable Supply" has the meaning given to it in the GST Law, excluding section 84-5 of a New Tax System (Goods and Services Tax) Act 1999.
34. These Terms and Conditions are governed and must be construed under the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State.
35. The Owner shall inspect Container(s) which are lent, leased or howsoever otherwise supplied by or on behalf of TOLL before packing goods into or onto them and any such Container(s) packed by the Owner shall be deemed to have been accepted by the Owner as being in sound and suitable condition for the purpose of the Carriage and no Owner shall have any rights whatsoever against TOLL for or in respect of any loss of or damage to goods due to insufficient or unsound condition of Container(s) howsoever arising or for unsuitability of the goods for carriage in Container(s) or for the defective packing of the goods in the Container(s).
36. The Owner shall assume full responsibility and indemnify TOLL for any loss of or damage to any Container or other equipment furnished by or on behalf of TOLL which occurs while such Container or equipment is in the possession of the Owner or any Carrier's Agent.
37. TOLL shall be liable in any event be liable for and the Owner shall indemnify and hold TOLL harmless from and against any loss of or damage to property or of other persons or injuries to other persons caused by a Container furnished by or on behalf of TOLL or other contents thereof during handling by or while in the use or possession of the Owner or the Carrier's Agent.
38. Where goods are delivered in Container(s) which TOLL owns or to the possession of which TOLL is otherwise entitled the Owner taking delivery shall return such Container(s) promptly.