

REGISTER OF CONTRACT AGREEMENTS

CONTRACT AGREEMENT NO: CA05/2

TITLE: Readymix Holding Pty Ltd Sydney Concrete Carriers Agreement

I.R.C. NO: IRC4/1234
CA5/2

DATE APPROVED/COMMENCEMENT: 31 March 2004 / 1 January 1995

TERM: 60

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 3 June 2005

DATE TERMINATED:

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COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all contract carriers employed by Readymix Holdings Pty Ltd, located at 80, Phillip Street, Parramatta, NSW 2150 who fall within the coverage of the Transport Industry - Concrete Haulage Contract Determination.

PARTIES: Readymix Holdings Pty Limited -&- the Transport Workers' Union of New South Wales

READYMIX HOLDINGS PTY LTD SYDNEY CONCRETE CARRIERS DETERMINATION

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Schedule A - Calculation Of The Utilisation Rate

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This determination of the Industrial Relations Commission of New South Wales shall apply to Readymix Holdings Pty Limited and the Transport Workers Union of Australia New South Wales Branch.

1. Definitions

1.1. For the purpose of this determination the following terms shall bear the meaning:

The Act shall mean the Industrial Relations Act 1991.

Award shall mean the Transport Industry - Mixed Enterprises (State) Award as varied from time to time.

Continuous Pours shall mean:

- a) A slab and any walls, columns, stairs and the like, provided they are an integral part of the said slab and are poured at the same time;
- b) Road pavements; or
- c) Multiple strip footings within a radius of ½ kilometre.

All other work is excluded as a continuous pour.

Contract of Carriage shall mean as defined in the Act.

Contract Carrier or Carrier shall mean a single operator owner driver trading as an incorporated body who carries out a Contract of Carriage with the Principal Contractor.

Contractor shall mean Principal Contractor as defined in the Act. The Principal Contractor in this agreement is Readymix Holdings Pty Limited.

Cyclic roster shall mean:

- d) a roster made up of truck numbers which dictates the selection of a particular vehicle for a function and is addressed from the first truck number to the last;
- e) When the roster has been fully addressed the roster then changes so that the truck number that was first becomes last while the truck number that was previously second then becomes first and each truck number is moved up one position in turn, and so on; and
- f) Each Carrier shall start the day, when not rostered off, in order of a single cyclic roster and thereafter in order of his return to plant.

Mini truck shall mean a truck with an agitator that has a mixing capacity of 2.8m³ or less.

Mixer shall also mean Agitator and vice versa.

Sydney Metropolitan Area is, for the purpose of this determination, limited to the area in which concrete is produced within the following boundaries:

Stanwell Tops, Bulli, Mt Ousley, Appin, Razorback, Warragamba, Emu Plains, Sackville, Hawkesbury Bridge, Terry Hills, Palm Beach.

Union shall mean the Transport Workers' Union of Australia New South Wales Branch which term includes the Ready Mixed Concrete Executive Committee of the Union.

Written Authority shall mean any approved document that bears the signature of the Carrier of the Contractor as the case may be.

1.2. Interpretation

Words importing the singular number shall include the plural number and words importing the plural number shall include the singular number.

The masculine gender shall include the feminine and neuter genders.

2. Area Incidence and Duration

- 2.1. This determination sets out the rights and obligations of the Contractor and the Carrier. This agreement applies to all Carriers engaged by Readymix Holdings Pty Limited in the Sydney Metropolitan Area (as defined in Clause 1.1).

- 2.2. If a provision of this determination is inconsistent with a provision of the Transport Industry Concrete Haulage Contract Determination published 30th November 1990, NSW Industrial Gazette, Vol. 260 and all variations thereof ("the Contract Determination") then the provisions of this determination shall prevail and the provisions of the contract determination is to be considered to have been varied to the extent necessary to remove the inconsistency.
- 2.3. This determination shall take effect from 1 January 1995 and shall remain in force for a period of five (5) years (unless varied by written agreement prior to that time).

3. Term of Contracts of Carriage

- 3.1. Ready Mixed Concrete Contract Carriers in the Sydney Metropolitan Area ("Sydney Carriers"):
 - a) The term of the Contract of Carriage for a Sydney Carrier shall be five (5) years commencing on 1st January 1995.
 - i) If the Carrier, as at 2 years from commencement date, operates a vehicle capable of legally carrying 5.2m³ but less than 5.6m³, subject to the provisions of Clause 11.3, then the term shall be extended by three (3) years which total (i.e. eight years) shall become the term of the agreement.
 - ii) If the Carrier, as at 2 years from commencement date, operates a vehicle capable of legally carrying 5.6m³, subject to the provisions of Clause 11.3, then the term shall be extended by five (5) years which total (i.e. ten years) shall become the term of the agreement.
 - b) The Contractor shall have the sole option to renew the Contract of Carriage of a Sydney Carrier for a further term, subject to the following:
 - i) Carriers whose term has been extended by three (3) years under Clause 3.1 (a) may be extended a further four (4) years.
 - ii) Carriers whose term has been extended by five (5) years under Clause 3.1 (a) may be extended a further five (5) years.
 - c) The option to renew shall be exercised by the Contractor serving upon the Carrier a written notice thereof between the period commencing twelve (12) months and ending six (6) months before the date of the term of the Contract of Carriage;
 - d) The renewed Contract of Carriage shall be on the same terms and conditions as contained in this agreement applicable to Sydney Carriers subject to the following alterations:
 - i) Sub-clauses 3.1(a), (b), (c) shall be deemed to have been omitted; and
 - ii) The cartage rates payable by the Contractor to the Carrier at the commencement of the renewed Contract of Carriage shall be the same as the cartage payable pursuant to this agreement immediately prior to the expiration of the term of this agreement.

4. Cartage Rates

- 4.1. Cartage rates payable to Sydney Carriers:
 - a) The Contractor shall pay to a Sydney Carrier the Sydney Metropolitan Area utilisation cartage rates ("the utilisation rates") set out in Schedule A hereto. All transfers, waiting time and surcharges, as described in Schedule C, are included in the rate as shown in Schedule A, except for the following:
 - i) transfers outside the Sydney Metropolitan Area;

- ii) surcharges as provided under Clause 4.12;
 - iii) waiting time if a truck is bogged under Clause 10.2.
- b) Between 1st January 1995 and 31st March 1995 the 4,500m3 per annum utilisation rate specified in Schedule A shall be payable by the Contractor to the Carrier.
 - c) On and from 1st April 1995 and on and from the 1st day of every subsequent quarter during the term of the Contract of Carriage, the Sydney Carrier fleet average utilisation rates as adjusted for the previous quarter (calculated on a moving annual total basis in the applicable band as shown in Schedule A) shall be payable by the Contractor to the Carrier.
 - d) The utilisation rates paid shall be based on the Sydney Carrier average paid m3 carted, calculated over the Sydney Carrier fleet but excluding those Carriers who have an availability less than ninety five percent (95%) of required working days in the relevant quarter.
 - e) The cartage rates shall be reviewed on 1st May 1995 and thereafter half-yearly based on increases or decreases in the cost formula set out in Schedule A hereto.

In the event that agreement cannot be reached as a result of the review referred to in this clause then the question of an increase or decrease in the cost formula set out in Schedule A shall be referred to the Arbitrator appointed pursuant to Clause 24 of this agreement.

4.2. Benefits included in the cartage rates:

- a) The following are provided for in the rates payable to Carriers under this agreement:
 - i) All benefits and entitlements under the Award; and
 - ii) Leave entitlements as follows:
 - a) 20 days annual leave and, in addition, the annual leave loading as prescribed in the Award;
 - b) 10 public holidays - New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, Union Picnic Day;
 - c) 34.8 hours of long service leave per annum;
 - d) 64 hours sick leave per annum;
 - e) 16 hours bereavement leave;
 - f) RDO - 12 per annum leave.
 - g) Superannuation at the rate prescribed by law.
- b) The leave entitlements under Clause 4.2 (a) are provided for in the rate as described in Schedule A. Each Carrier must take the leave entitlements in accordance with the Award. Should there be any variations to the entitlements under the Award, the cartage rates shall be adjusted accordingly at the review date.

4.3. Manning When On Leave

The Contractor may require the Carrier to man his vehicle when on leave entitlements. The Contractor shall pay to the Carrier the difference between the labour cost component of the utilisation rate paid for cartage in the relevant period and the labour cost of the Casual driver pursuant to the Award for a Casual driver.

(Example: At the commencement of this agreement the Labour cost at the 4,500m³ utilisation rate is \$34,398 (Schedule A) or \$7.64/m³ and the Casual labour cost is \$540.00 per week (Schedule A). Say a Casual driver is engaged for five days Monday through Friday inclusive, in normal time hours, then the cost to the Carrier of the Casual driver is \$540.00. If, say, in that period the Carrier's vehicle carts 50m³ cartage, then the labour cost component of the cartage paid is \$382.00 (i.e. 50m³ x \$7.64/m³). The Contractor then shall pay to the Carrier the difference in labour cost and the labour cost component, in this example: \$540.00 - \$382.00 = \$158.00.)

4.4. Haulage Area

The Carrier shall haul concrete as required, from the Contractor's plants. The Carrier shall normally work for a period of time from a nominated plant, or other plants in accordance with the requirements of the Contractor.

4.5. Cartage Zones

Cartage Zones shall be based on a map displayed at each plant to provide ready and reasonable access to the Carrier. The zones shall be used as a general guide only.

Any dispute arising in relation to the actual zones to be paid to the Carrier shall be resolved within twenty four (24) hours between the Contractor's representative and the Carrier or his representative by jointly measuring the actual distance travelled, in a mutually agreed vehicle, by the Carrier from the loading point to the discharge point via the shortest practicable route.

(Comment: for the purposes of this agreement "practicable" shall mean open to heavy traffic.)

4.6. Minimum Load

A Carrier shall be guaranteed a minimum load of 3m³ or a minimum payment on the basis of 3m³ for the first 3km, or part thereof, that the load is carried from the plant.

4.7. Mixing in the Yard

A fee of "C" (Schedule B) per load shall be paid to mix and discharge concrete into a customer's vehicle for transport from the plant and subsequent placement outside the boundaries of the plant. Ex-plant mixes shall be limited to completed orders not exceeding 3m³.

4.8. Long Distance Rates

Where the load is required to be carried in excess of twenty five (25) km then each additional km shall be paid on the basis of a 4m³ minimum load.

4.9. Normal Delivery Hours

Normal hours shall be 6:00am to 6:00pm Monday to Friday and 6:00am to 1:00pm Saturday. For the determination made under Clauses 4.10, 4.11, 4.12, and 4.13 time shall be determined from the time of batching as recorded.

4.10. Standby Time

Where a Carrier is required by a Contractor to remain at the plant to take a delivery to a job commencing outside Normal Delivery Hours, for more than one hour, standby time shall be paid at a rate of "E" (Schedule B) for each complete half hour following the expiration of the initial hour.

Standby time is only applicable outside Normal Delivery Hours before receiving a load and also between loads. After the expiration of one hour but only payable after each additional complete half, a Carrier must be on standby for a minimum of eighty nine (89) minutes before being entitled to a payment of "E" (Schedule B).

4.11. Call-out Fee

- a) A Carrier called back outside Normal Delivery Hours shall be paid a Call-out Fee equal to the difference between the total income earned, including surcharges, pursuant to the call-out and an amount equal to 8 x "E" (Schedule B).
- b) A Carrier called back outside Normal Delivery Hours shall not be entitled to a Call-out Fee where the total income, including surcharges, earned pursuant to the call-out sums to an amount equal to or greater than 8 x "E" (Schedule B).

4.12. Surcharge Rates

- a) A Carrier shall not be entitled to the surcharge rate for a load to a continuous pour where the continuous pour commenced within Normal Deliver Hours.
- b) A Carrier shall be paid the surcharge rate for a load to a continuous pour where the continuous pour commenced outside Normal Delivery Hours provided that such load is not delivered within Normal Delivery Hours.
- c) The surcharge rate deemed payable pursuant to Clause 4.12 (b) shall be paid at rate of "F" (Schedule B) per m3 based on a minimum of 3m3.

4.13. Concrete Produced on Sunday

Where a Carrier is required to cart concrete in the hours 6:00am to 6:00pm Sunday, then the loads so carted shall not be included in the determination of the annualised utilisation rate.

4.14. Concrete Produced for Contractor's Own Use

Where a Carrier is required to load concrete for the Contractor's own use within the confines of the Contractor's concrete plant where loaded, the Carrier shall be paid at the current utilisation rate load fee per m3 with a minimum of 3m3.

4.15. Multiple Discharge Points

- a) Same Customer

Payment for haulage covers the total distance travelled to final discharge point. Unloading time shall commence from the start of unloading at the first point and shall continue until the final completion of unloading when drops are within one (1) km. Over one km, the total of the additional km travelled to final discharge point shall be added to the ticket and paid as if the original load was carried for the entire distance.

- b) Multiple Customers

Each delivery shall be treated for the purpose of payment of cartage as if a separate delivery had been made from the plant to each delivery point.

4.16. Diverted Loads

- a) Direct Diversion

Where a load is diverted enroute a Carrier shall be paid normal cartage rates covering the total distance travelled from initial departure from the plant to the ultimate delivery point of the load.

- b) Return to Plant and Divert

It is thereafter treated as a new load

- c) Return to Plant and Dumped

It shall be paid for as in clause 4.16 (a)

- d) Return to Plant and Subsequently Dumped Outside Plant

Where the Contractor directs ANY quantity of left-over concrete that has been agitated in the yard to be taken to another site and dumped, payment shall be made at the utilisation rate for the Sydney Metropolitan Area.

4.17. Left Over Concrete

- a) All concrete remains the property of the Contractor and accordingly the Contractor reserves the right to direct where concrete is to be taken or if and where it is to be dumped. The Carrier shall contact the plant for instructions as soon as possible.
- b) When 3m³ or more of concrete is left over from a job, return cartage shall be paid at the rate of "B" (Schedule B) with a 3km minimum.

4.18. Road and Bridge Tolls

Prior to the departure of a load, the Contractor shall issue the Carrier with a mutually agreed number of prepaid toll tickets or equivalent for that load, free of charge.

5. Safety Net

- 5.1. An earnings safety net and guaranteed minimum earnings as described in Schedule A: "Quarterly Safety Net", shall apply to the Carrier per quarter year during the term of the Contract of Carriage. The Safety Net will be administered on an annual basis, i.e. there will be adjustments up or down from quarter to quarter, as appropriate.
- 5.2. The "Quarterly Safety Net" (Schedule A) shall be subject to rise and fall under the terms of this Contract.
- 5.3. The Contractor shall pay to the Carrier an amount not exceeding the "Quarterly Safety Net" (Schedule A) per quarter if the Carrier has earned less than the "Quarterly Safety Net" (Schedule A) in the relevant quarter. The amount payable shall be calculated in accordance with the following formula:

Net Quarterly Payment = QSN - A where:

QSN = "Quarterly Safety Net" (Schedule A)

A = the actual earnings of the Carrier during the relevant period

The Net Quarterly Payment shall be made in the pay period following the end of the relevant quarter.

- 5.4. The Carrier is deemed available pursuant to Clause 5.6. The Carrier's Quarterly Safety Net shall be reduced by 4/253rds per day for each day the Carrier is deemed unavailable.
- 5.5. The Contractor and the Union shall mutually agree on a mechanism so that the Contractor is not disadvantaged by causes beyond its control and the Carrier is not disadvantaged by actions of the Contractor.
- 5.6. The normal work week is six (6) consecutive days, Monday through Saturday inclusive to a total of 253 days per annum as described in Schedule A. The Carrier shall report as directed by the Contractor on each normal work week day and compliance with such direction shall deem the Carrier available. Non-compliance with the Contractor's direction shall deem the Carrier unavailable subject to the following exceptions:
 - a) The nominated plant is closed or unable to produce;

- b) The agitator is unserviceable, except by accidental damage by the Carrier;
- c) The Carrier is on approved annual leave (two (2) weeks per annum);
- d) The Carrier takes approved sick leave under the Award (eight (8) days per annum);
- e) The Carrier has a rostered day off (three days per annum);
- f) The Carrier is notified the prior day that he is not required or is rostered off at the direction of the Contractor.

6. Cartage Accounts

6.1.

- a) The Contractor shall prepare cartage accounts in accordance with dockets issued by the Contractor to the Carrier during the course of the accounting period.
- b) The Carrier's accounts, as prepared by the Contractor, shall be itemised on a daily basis which shall include data, docket numbers, quantity of loads, kilometres, extra payments, amount per load and job address.
- c) All the above items shall be totalled individually at the conclusion of the accounting period. The gross cartage figure should be shown, and any agreed deductions, e.g. income adjustments, fully itemised and a net figure then shown.
- d) The accounting period shall be two equal periods during each calendar month.
- e) Cartage accounts shall be paid by electronic transfer between the Carrier and the Contractor within 10 working days following the end of each accounting period.
- f) Should the Carrier not receive the due electronic transfer in his account for any reason attributable to the Contractor or the Contractor's Bank, then the Contractor shall pay to the Carrier an additional amount being the prevailing bank overdraft interest rate calculated on a daily basis for each day the electronic transfer is overdue.

6.2.

- a) Account discrepancies relating to the immediately preceding pay period shall be settled promptly and in no case later than fourteen (14) days from the date of submission by the Carrier.
- b) Account discrepancies relating to other than the immediately preceding pay period shall be settled within thirty (30) days from the date of submission of the discrepancy.
- c) Where, following settlement of an account discrepancy, an adjustment to payments is required, such adjustment shall be made in the pay period following settlement.

6.3.

- a) Where a Carrier purchases any item other than fuel from time to time from the Contractor, or where goods are purchased on the Carrier's behalf by the Contractor, the Contractor may deduct from the Carrier's cartage payments an amount equal to the value of the purchase provided the Contractor has written authorisation to make such deduction.
- b) The Contractor may deduct from the Carrier's cartage payment an amount equal to the value of any fuel purchased. The cost of the fuel shall not be adjusted retrospectively.

- c) When a Carrier is overpaid, the Contractor shall submit an adjustment account to the Carrier which shall be determined within 14 days from the date of submission for the immediately preceding pay period or thirty (30) days for all other claims.
- d) Following determination the Carrier shall promptly provide written authorisation for the adjustment to be deducted from his account and such deduction shall be from the next cartage payment due.

7. Living Away from Home Allowance

- 7.1. A Carrier engaged in work which precludes him from reaching his usual place of residence at night shall receive the benefits and conditions as detailed in the Award. This sub-clause shall not apply to movements within the metropolitan areas of Sydney.
- 7.2. Where a Carrier is required to transfer to a working area which precludes him from returning to his normal place of residence each night, the Contractor wherever possible shall provide the Carrier with at least twenty four (24) hours prior notice of the request.
- 7.3. Where a Carrier is transferred outside his normal working area, such transfer shall be for a period not exceeding seven (7) days duration or longer by mutual agreement and shall be done from a cyclic transfer roster.
- 7.4.
 - a) Transfer payments in addition shall be paid at the rate of ("H") per km or part thereof that the Carrier is required to travel to and from the directed transfer location.
 - b) A transfer docket must be issued by the Contractor to the Carrier prior to departure, wherever possible, otherwise on arrival at the destination.
 - c) Should a transfer be cancelled or redirected the relevant transfer docket shall be adjusted by the Contractor immediately on the Carrier's return to the plant from which he was originally transferred.

8. Statutory Requirements and Insurance

- 8.1.
 - a) A Carrier shall comply with the provisions of all current relevant statutes and regulations made thereunder in relation to the use or operation of his motor lorry and the Carrier shall ensure payment of all lawful fees, licences and taxes in relation thereto.
 - b) Any variation in statutory requirements shall be considered in the regular review of cartage rates.
- 8.2. A Carrier shall arrange insurance cover and keep current whilst working under this agreement in respect of:
 - a) Motor vehicle comprehensive or third party property.
 - b) Motor vehicle compulsory third party.
 - c) Workers' Compensation for all employees, including casuals of the Carrier's Company.
 - d) Public liability cover to the value of \$5 million.
 - e)
 - i) Public liability for agitator damage (extension).

- ii) Insurance cover for damage to the agitator.
- f) Public liability for wrong delivery (extension).

8.3.

- a) All relevant insurance policies, registration certificates and driver licences are to be submitted to the Contractor for perusal and verification and return prior to the commencement of the contract, thereafter upon demand within fourteen (14) days of request.
- b) The Carrier shall not provide photocopies of any documentation but shall produce original documents for sighting and verification only.

9. Loading

9.1. Size of Load

- a) The Contractor has the right to nominate the size of load provided the Carrier has the right to refuse a load that is beyond the legal capacity of the vehicle or the rated capacity of the mixer.
- b) Each Carrier shall be loaded to his maximum legal capacity wherever possible except in the case of a single load or message, or where a subsequent load would result in less than 3m³ being carried.

9.2. Loading Order

- a) The initial daily starting order shall be in accordance with a cyclic roster.
- b) Thereafter all trucks shall be loaded in order of their return to the plant with the exception of:
 - i) Mini mix loads (less than 3m³).
 - ii) Single load or message greater than the mixer capacity or legal carrying capacity of the truck next in line.
 - iii) Trucks with returned concrete where it is impractical due to facility or time constraint to transfer the returned concrete to the next truck in line.
- c) The Contractor may operate a fleet of vehicles driven either by its employees or by contract labour.
- d) The Contractor's vehicles shall not be preferentially loaded. The Carriers acknowledge and agree that the nomination of plants from which the Contractor's vehicles operate is entirely at the discretion of the Contractor and does not constitute preferential loading subject to there being consultation regarding the increase or decrease in the base number of Carrier's vehicles in a plant.
- e) The Contractor's vehicles shall participate in the cyclic roster as defined by clause 1.1(d), (e) and (f).
- f) The initial loading time and the initial plant from which such loading shall take place shall be notified by the Contractor to each Carrier before the close of business on the previous day.

10. Hazardous Approach to Job Site

10.1. Hazardous Approach

- a) A Carrier shall have the right to refuse to enter upon ground which he considers unsafe or extraordinarily hazardous. If a Carrier does refuse entry and the delivery is completed on that

day by other vehicles without the use of additional equipment then the Carrier that has refused entry shall not be paid for the delivery or return cartage unless the load has been diverted to another job in which case his delivery to the alternate location shall be paid as if it were a new delivery from the plant where batched to the alternate location.

- b) If the Carrier has notified the plant of the unsafe or hazardous job site and/or approach but attempts unsuccessfully to enter, the Carrier shall be paid the utilisation rate as if the delivery had been successfully even if the delivery is ultimately completed, as Clause 10.1 (a).
- c) In all cases if the Carrier refuses to enter and the delivery is not completed on that day without the use of additional equipment the Carrier shall be paid the utilisation rate as if the delivery had been successful. If the Contractor diverts the load to an alternate location the Carrier shall be paid pursuant to Clause 4.14 Diverted Loads.

10.2. Bogged Vehicles

- a) Where a Carrier goes beyond the kerb to complete a delivery and his vehicle becomes bogged or is otherwise rendered inoperative as a consequence of such attempted delivery, the Contractor shall arrange the services of an experienced salvage contractor to extricate the vehicle as soon as possible and shall bear all costs for those arrangements.
- b) The Contractor shall ensure that the salvage contractor selected is covered by the appropriate insurance policy to rectify any damage that the salvage contractor may cause to the Carrier's vehicle during the extrication process.
- c) Waiting time at a rate of "D" (Schedule B) per minute shall be paid to the Carrier from the time the Carrier notifies the plant until the time of completion of extrication.
- d) Provided further that the provisions of Clause 10.2 (a), (b) and (c) shall not apply where the vehicle becomes inoperative as direct result of the Carrier's negligence or deliberate actions.

10.3. The Carrier shall not be responsible for damage to property or vehicle arising from off-kerb delivery unless negligence by the Carrier be determined. Damage claims are to be settled quickly.

11. Availability of a Suitable Vehicle

11.1. It is the obligation of the Carrier on each working day to personally supply, man, operate and keep serviceable the vehicle. Any variation to this obligation shall require agreement by both parties.

11.2.

- a) No vehicle shall be brought into service without prior consent of the Contractor.
- b) The Contractor shall have the discretion to refuse to load a vehicle that is unregistered or obviously defective.
- c) Where the vehicle is subsequently shown by the Roads & Traffic Authority not to be defective the Carrier shall be paid by the Contractor a rate equivalent to the daily average earnings at the applicable utilisation rate for each day so detained, or part thereof, from the time the load was refused until the Contractor agrees to load the vehicle, together with any additional statutory charges.

11.3. The legal carrying capacity of a suitable vehicle for the determinations made under Clause 3.1 (a) shall be based on;

- a) The provision by the Contractor of an agitator not weighing in excess of 2700kgs plus and allowance of 200kgs for water and oil; and
- b) The nominal mass of normal class 25MPa (N25 under AS1379) being 2340kgs; and

c) The RTA registered mass of the vehicle.

11.4. An unserviceable vehicle shall be repaired as soon as practicable.

11.5. Where a Carrier is unable to report for work with his vehicle he shall arrange for the Contractor to be informed at the earliest possible moment of the reason and the anticipated period of absence.

11.6. When a Carrier is required to submit his vehicle to the Roads & Traffic Authority for annual inspection, he shall inform the Contractor 4 weeks prior to his registration renewal date or on receipt of his inspection notification whichever is the earlier.

If a re-inspection is required due solely to a defective agitator, then a transfer fee of "G" (Schedule B) per km or part thereof shall be paid by the Contractor to the Carrier for the distance travelled to the nominated inspection station from the base plant plus any inspection fees payable.

11.7.

a) All current vehicles in the fleet are deemed to be approved vehicles for two (2) years in the Sydney metropolitan area.

b) Any current approved vehicle being replaced shall have a power take-off unit so that the Contractor can attach all equipment necessary to operate its hydraulic agitator. The boundary of the Carrier's responsibility in this matter shall end at the provision of a bare power take-off drive shaft.

12. Responsibility for Load

12.1. A Contractor shall ensure that the load is batched, with the intent that the quantity of water required to adjust the slump does not exceed 10% of the total water required to bring that load up to specification.

12.2.

a) The Contractor shall provide the Carrier wherever possible with notice, posted on the appropriate notice board, of any intended major changes to the source of concrete mix ingredients which may change the characteristics of the concrete.

b) Should the Contractor change the concrete ingredients without said notification to the Carrier prior to batching, the Contractor shall automatically assume the slump responsibility of the concrete and the Carrier shall be paid for all cartage at the full rate without penalty.

12.3.

a) A Carrier shall ensure that the load is properly mixed as required by the Contractor's written instructions and that the slump of the concrete shall be in accordance with the following limits immediately prior to discharge:

i) Slump above 110 millimetre - a tolerance of plus or minus 30 millimetres.

ii) Slump greater than 80 and less than 110 millimetres - a tolerance of plus or minus 20 millimetres.

iii) Slump greater than or equal to 60 millimetres and less than or equal to 80 millimetres, a tolerance of plus or minus 15 millimetres.

b) The slump requirements are based on the premise that the Carrier has at all times from the time of batching to the point of discharge, the ability to add water to adjust the slump of the load to the specification under Clause 12.3 (a).

- c) If the Carrier is requested by the Contractor to adjust and/or maintain the slump of a load at a tolerance closer than that described under Clause 12.3 (a), and the load is rejected on the basis of non-compliance with the nominated slump tolerance, then Contractor shall pay the Carrier the utilisation rate for the load as if the load had not been rejected.
- d) If the Contractor has removed the Carrier's right to adjust the slump of a load on the job site, and the Carrier is requested by a third party to adjust the slump of the load, and the Contractor approves such adjustment, and the load is rejected on the basis of water addition and/or non-compliance with the nominated slump tolerance, then Contractor shall pay the Carrier the utilisation rate for the load as if the load had not been rejected.
- e) The agitator drum must be kept turning at all times when it contains concrete.

12.4.

- a) A Carrier shall visually inspect each load prior to leaving the plant and shall advise the Contractor of any apparent unusual features of the load which may have occurred due to batching error, plant failure, contamination or Carrier error.
- b) Any failure to report any obvious unusual feature arising from a visual inspection shall be dealt with in accordance with Clause 24 Disputes Procedure hereof.
- c) Subject to Clause 12.5, the Carrier shall not be responsible or have his cartage payment rejected or withheld due to undetected irregularities of the load save for slump.

12.5. When a load is rejected at a job site because the slump is outside the nominated tolerance contained herein, or the Carrier has not visually inspected the load prior to leaving the plant the Carrier shall not be paid for the cartage.

12.6.

- a) At the job site a Carrier shall make reasonable endeavour to obtain a signature for delivery and it shall be the Carrier's responsibility to contact the plant immediately by two-way radio when a problem arises to obtain a signature from the customer as required by the Contractor.
- b) If a nominated signature is required by the Contractor it is the Contractor's responsibility to ensure that the nominated person is available at the point of discharge at the completion of the discharge of the load.

12.7. A Carrier shall endeavour to collect money from COD customers for all concrete charges, including waiting time. All monies collected shall be submitted in full to the plant manager of allocator as soon as possible on return to the plant, who shall issue the Carrier with a receipt.

12.8.

- a) The Carrier shall immediately advise the Contractor where practicable by two-way radio, or telephone if immediately available where a two-way radio is not provided, when a COD payment is not collected or a dispute arises between the Carrier and the customer.
- b) Public Telephone costs are to be reimbursed by the Contractor to the Carrier.
- c) Carriers are not required to carry a float for the purposes of providing a change facility.
- d) The Carrier shall take all due care for any money collected.

12.9. Where a load is dumped the Carrier shall not be liable to compensate the Contractor unless the loss occurred as a direct result of the Carrier's negligence or misconduct.

- 12.10. In the case of a delivery of concrete to a kerb making machine, the Carrier assumes no responsibility for the slump of the load as it is delivered in an "as batched" condition.
- 12.11. Where an additive is added after batching, the Carrier is automatically absolved of any responsibility for the slump.
- 12.12. The concrete specification as shown on the cartage docket cannot be changed by any party after batching.
- 12.13.
- a) Where returned concrete is re-used and is more than 1½ hours old, and the return cartage is greater than 0.8m³ and topped up, the Contractor shall assume full responsibility for the slump of the load.
 - b) The Carrier shall assume responsibility for any breaches in vehicle legal load limits in relation to this matter as the Contractor has given the Carrier the discretion to dump any concrete from that topped-up load that the Carrier may deem to place him in breach of his vehicle's legal load limit.

12.14. Limit of Carrier's Liability

- a) Subject to Clause 12.14 (b) and Clause 12.14 (c) the maximum limit for a Carrier's liability under the Contract Determination and this agreement shall not exceed the total invoiced value of the material for the respective individual load.
- b) Subject to Clause 12.14 (c) and subject to Clause 12.9 the maximum limit for a Carrier's liability under the Contract Determination and this agreement, where an individual load is rejected pursuant to Clause 12.5, shall not exceed the value of the cartage payment.
- c) The aforesaid limitation of liability of a Carrier does not apply in respect of a Carrier whose cover for any of the insurances referred to in Clause 7 hereof is voided.

13. Breakdowns

- 13.1. Neither the Contractor or Carrier shall be responsible to each other for any loss resulting from plant mixer and/or vehicle breakdowns.
- 13.2. Should a mixer breakdown occur, the Carrier shall not be responsible for the removal of the concrete. The Carrier is not obliged to participate in the removal of concrete from the agitator save for the operation and positioning of the agitator to assist in concrete removal. Waiting time at a rate "D" (Schedule B) per minute shall be paid to the Carrier from the time the Carrier notifies the plant until the time of positioning of the agitator as directed.

14. Two-Way Radio and Ultra Log Equipment

- 14.1. The Carrier shall agree to the installation of two-way radio and ultra log equipment on his vehicle. All equipment shall be installed by the Contractor's approved technician and such installation shall be of a professional standard. The installation shall include all necessary equipment and the complete installation shall be undertaken at no cost to the Carrier.
- 14.2. When such equipment is removed the Contractor shall make good the bodywork.
- 14.3. The Carrier shall take due care to ensure adequate protection of the equipment.
- 14.4. The equipment is to be operated and appropriate procedures are to be followed as laid down by the Contractor.
- 14.5. The Contractor shall be responsible for the maintenance of the two-way radio and ultra-log equipment.

- 14.6. The Contractor shall provide to the Carrier at no cost to the Carrier, all stationery required to properly operate the ultra-log equipment and any other monitoring equipment installed in the vehicle as required by the Contractor.

15. Provision of Mixer

15.1.

- a) The Contractor shall be responsible for the provision of a mixer with a mixing capacity of not less than 5m³ and its safe and proper initial fitting to the Carrier's vehicle in accordance with the specifications of the respective manufacturers including the supply of "U" bolts, clearance lights, mud flaps and a protective chassis/agitator cover plate mutually acceptable to the Contractor and the Carrier.
- b) If an agitator is required by the Contractor to be removed at any time for any reason, the total cost of agitator removal and replacement shall be borne by the Contractor.
- c) If an agitator is required by the Carrier to be removed to effect repairs that cannot be otherwise effected without the removal of the agitator, then the total cost of the agitator removal and replacement shall be borne by the Contractor provided that such repairs are not for the purpose of inspection, sandblasting or modifying the truck chassis.

- 15.2. After the initial fitting referred to in 15.1 (a) hereof the Carrier shall be responsible for the mixer being properly secured to the vehicle. The Carrier shall be responsible for all maintenance and replacement of clearance lights, globes and mud flaps. Mudflaps shall be supplied to the Carrier by the Contractor free of charge.

- 15.3. The Carrier by mutual agreement may have the U bolts adjusted by a qualified mechanic and the costs incurred shall be paid by the Contractor provided that the Contractor's workshop shall have the opportunity of undertaking the adjustments.

15.4.

- a) The mixer shall remain the property of the Contractor and on completion of its use at the termination of this contract shall be removed by the Contractor at a location nominated by the Contractor at a time mutually agreed between the Carrier and the Contractor but in any event, within forty eight (48) hours.
- b) The Contractor shall pay to the Carrier a transfer at the rate of "G" (Schedule B) per km or part thereof to and from the nominated location.
- c) The Carrier shall be paid at the rate of 3 x "K" (Schedule B) per hour by the Contractor for such time involved in the removal of the agitator from the Carrier's vehicle where such time involved is for a period greater than four (4) hours at the nominated location.

15.5. Hydraulic Mixers

- a) The Contractor shall be responsible for the provision of a crank shaft protection mechanism located between the hydraulic drive and the power take-off unit.
- b) All modification and fitting work is to be done expeditiously and in any case not longer than five (5) working days. The Contractor shall pay the Carrier a rate equivalent to the daily average earnings at the applicable utilisation rate for each day so detained in excess of the five (5) working days limit.
- c) The Contractor shall provide regular maintenance in accordance with the mixer manufacturer's recommendations at no cost to the Carrier.

16. Mixer Care and Maintenance

- 16.1. A Contractor's mixer is in the care of the Carrier who shall keep the unit clean and tidy to the satisfaction of the Contractor and the Union.
- 16.2.
- a) A Carrier undertakes to exercise all reasonable care of the mixer. The mixer shall be thoroughly washed out and cleaned down as required and surfaces treated in preparation for the next day's work.
 - b) All cleaning materials and equipment necessary for cleaning the agitator shall be supplied by the Contractor and shall comply with any and all statutory requirements and regulations.
- 16.3. The Carrier shall report any and all apparent maintenance requirements to the Contractor.
- 16.4.
- a) The Carrier shall convey the mixer to the workshop for repairs or maintenance as requested by the Contractor. All work shall be completed as soon as possible and without delay.
 - b) The Carrier shall be paid for transfers to and from the workshop at the rate of "G" per km or part thereof and the forward and return journey shall be treated separately. A means shall be provided by the Contractor at the Contractor's cost to convey the Carrier to his place of residence or plant whichever is the lesser distance and return him to the workshop as and when required.
- 16.5.
- a) The Carrier shall be responsible for minor maintenance as described below:
 - Greasing
 - Cleaning
 - Replacement of spark plugs
 - Changing oil, air and fuel filters
 - b) Subject to the provisions of Clause 15 hereof, all parts, tools, materials and equipment shall be provided by the Contractor.
- 16.6.
- a) The Carrier shall be responsible for the removal of hardened concrete build-up from the inside of the agitator, a process commonly known as de-dagging.
 - b) All de-dagging shall be carried out strictly in accordance with the agreed procedure and in compliance with relevant Occupational Health and Safety regulations.
 - c) The limit of the Carrier's responsibility in order that the de-dagging may take place shall be limited to the provision of his labour only. All other personnel and/or equipment is to be provided by the Contractor at the cost of the Contractor.
- 16.7. The Contractor shall be responsible for all major maintenance.
- 16.8. The Carrier is responsible for the provision of the fuel to run the truck and mixer.
- 16.9. The Contractor is responsible for the provision of oil and grease for the mixer.
- 16.10. The Contractor's agitator is to be parked only in places approved by the Contractor. The Carrier is not responsible for any loss or damage to the Contractor's equipment when so parked. Where approval is

not given for the agitator to be parked at a location requested by the Carrier, then the Carrier assumes responsibility for all loss and damage to the Contractor's equipment when so parked.

- 16.11. A Carrier shall not be responsible for any damage to the mixer whatsoever except in the case of a Carrier's gross negligence or deliberate action.

17. Painting and/or Signwriting of the Mobile Unit

- 17.1. The Contractor shall arrange for periodical painting and/or signwriting of the mobile unit.
- 17.2. All painting is to be done expeditiously, weather permitting, in not more than 5 working days using a quality of paint that is acid resistant and capable of withstanding the arduous conditions of the industry for a period of not less than 4 years. The painting shall be undertaken by a recognised truck painting contractor and the standard of finish shall be not less than that provided by tradesmen specialising in this field.
- 17.3. All necessary surface preparations and procedures recommended by the paint manufacturers shall be strictly adhered to. The Carrier shall be responsible for the provision of a sound painting surface of the truck, including but not limited to the rectification of corrosion, prior to presentation for painting.
- 17.4. The mobile units shall be painted every 4 years or a longer or shorter period by mutual agreement.
- 17.5. For the purposes of this clause "mobile unit" shall mean the complete truck and agitator including all their components and external surfaces without exception.
- 17.6. In the event that the paint finish of the mobile unit is of a standard unacceptable to the Carrier, the Carrier shall advise the Contractor prior to the vehicle being removed from the workshop.
- 17.7. For all time in excess of five (5) days or where a vehicle has to be returned for repainting or painting repairs, the Carrier shall be paid by the Contractor a rate equivalent to the daily average earnings at the applicable utilisation rate for each day so detained.

18. Union Membership and Delegates

- 18.1. A Carrier appointed as Yard Delegate shall upon notification thereof to the Contractor by the Branch of Sub-Branch Secretary of the Union, be recognised as the accredited representative of the Union.
- 18.2. The appointed Union Delegate or executive committee member shall be provided with reasonable access to and use of a telephone free of charge for Union matters, provided the site staff are consulted.

19. Manning

- 19.1. A person shall only become a Carrier after being given final written approval by the Contractor. Such approval shall be dependent upon the person's suitability and his standard of efficiency after the required training period to the satisfaction of the Contractor. Suitability extends to pre-engagement medicals for prospective Carriers.
- 19.2. A Carrier when employing an alternate driver shall engage the driver under terms and conditions of the Award and shall require the driver to observe the terms of this agreement in the operation of the vehicle.
- 19.3. A Carrier shall not permit any person to operate his vehicle without the prior written approval of the Contractor.
- 19.4. A Carrier shall be the permanent operator of the vehicle except on a period of absence approved by the Contractor.
- 19.5. A Carrier and/or driver shall act in the best interests of the Contractor at all times. In the event of a dispute arising in respect of this clause, the procedures in Clause 24 Disputes Procedures shall be observed.

19.6.

- a) A Carrier shall ensure that the driver of the vehicle holds the appropriate class of driver's licence as required by the Roads & Traffic Authority.
- b) In the event that the Carrier or his driver has his licence suspended or cancelled, the Carrier must immediately inform the Contractor in writing of that fact.

20. Uniforms

- 20.1. A Carrier and/or his driver shall maintain an acceptable standard of neatness of dress and appearance.
- 20.2. Where a uniform is required to be worn by the Carrier then such uniform shall be supplied free of charge to the Carrier by the Contractor.
- 20.3. A satisfactory quantity of clothing is to be supplied with a minimum of 4 days fresh apparel.
- 20.4. Clothing issues to Carriers shall be on a points system per item. From the date of this agreement each Carrier shall be entitled to receive uniforms totalling eight (8) points per year for a maximum of two (2) years at which time future issues shall be limited to replacement on a return of any previously issued item to a maximum of six (6) points per annum.

Uniform item points are as follows:

Two shirts (short or long)	2 points
Two trousers (short or long)	2 points
Two pairs of overalls	4 points
Four T-shirts	4 points
One winter jacket	4 points

- 20.5. New entrants into the industry shall receive an initial double issue.
- 20.6. Wet weather and safety gear is to be supplied as per Clause 29 of the Award.
- 20.7. Replacement of previously issued uniforms and items of safety gear shall be on the basis of replacement on return of used items.

21. Amenities

All amenities are to comply with the Shops and Factories Act and to be not less than those enjoyed by an employee under the Award. The appropriate facilities should be maintained and kept thoroughly clean and hygienic at all times by the Contractor. Carriers shall conduct themselves in a tidy and appropriate manner.

22. Fleet Size

- 22.1. The Contractor shall have the absolute discretion to vary its fleet size in any manner and for any reason subject to the terms of this agreement.

(22.2 varied June 1999)

- 22.2. Trucks owned by the Contractor may be driven by either employees of the Contractor or by contract labour, at the absolute discretion of the Contractor.

23. Commitment to Training

- 23.1. The parties to this agreement recognise the mutual benefits to be gained through a greater commitment to training and, accordingly, each party commits itself to attending appropriate training programmes in order to increase the competitive performance of the Contractor and its Carriers.

- 23.2. When training is undertaken at the request of the Contractor it shall be undertaken at no cost to the Carrier and shall be limited to twenty four (24) hours per annum for each Carrier.
- 23.3. Where a Carrier is required to attend such training in excess of twenty four (24) hours per annum then the Carrier shall be paid at the rate of "K" (Schedule B) per hour or part thereof for each additional hour plus the Award penalty rate travelling time to a maximum of ½ hour each way plus "L" (Schedule B) per km or part thereof that he is required to travel from his base plant or place of residence whichever is the lesser to and from the respective location requiring his presence.
- 23.4. A prospective Carrier shall spend a minimum of 2 weeks training to operate the mixer, slump etc., including a training period of one day in the Contractor's Quality Control Laboratory under the Contractor's supervision of the Contractor's testers. This training is at no cost to the Contractor except for the provision of the appropriate personnel and equipment.

24. Disputes Procedure

- 24.1. It is understood and accepted by all parties to this agreement that work shall continue normally during all negotiations and any necessary proceedings.
- 24.2. When there is a disagreement, the Carrier shall attempt to resolve the matter by negotiating with the Contractor or his representative on site.
- 24.3. Where the matter is not resolved, the Yard Carrier Delegate shall attempt to resolve the matter by negotiation with the Contractor or his representative on site. Where applicable the Carrier's executive delegate or his representative may be party to further negotiations with the Contractor.
- 24.4. If the matter remains unresolved officials and/or representatives of the Union may at the option of the Carrier be party to continued discussions/negotiations with the relevant representatives of the Contractor.
- 24.5. In circumstances where the matter remains unresolved the matter shall be referred to the Arbitrator for determination, which determination shall be binding upon the Contractor, the Carrier and the Union.

For the purpose of this clause the Contractor and the Union shall agree upon a person to be appointed from time to time as Arbitrator. In the event that agreement cannot be reached as to the person to be appointed as Arbitrator then the person to act as Arbitrator for the purpose of this clause shall be a person nominated by the President of the Institute of Arbitrators. The Arbitrator shall nominate the procedure to be adopted in respect of any matter referred to him and may, if he desires, include in that procedure processes of conciliation, mediation and/or arbitration.

25. Local Rules and Conditions

- 25.1. Local rules and condition shall continue in force in so far as they do not conflict with the provisions of this agreement and shall be limited to those contained on a list mutually agreed by the Contractor and the Carrier.
- 25.2. The list of Local Rules and Conditions shall have a fixed term.

26. Occupational Health and Safety

- 26.1. The Contractor shall establish Safety Improvement Teams consistent with its Building In Safety program. Each Safety Improvement team so established may have one (1) Carrier as a member of that team.
- 26.2. The Contractor shall pay each Carrier member of the Safety Improvement Teams for any and all time such Carrier spends in relation to their membership at the rate of "K" (Schedule B) per hour.
- 26.3. Such Carrier shall be paid promptly through their individual Cartage Account in the payment period covering the time expended.

26.4. The Contractor shall pay each Carrier member of the Safety Improvement Teams at the rate of "K" (Schedule B) per hour or part thereof plus the Award penalty rate travelling time to a maximum of ½ hour each way plus "L" (Schedule B) per km or part thereof that he is required to travel from his base plant or place of residence whichever is the lesser to and from the respective location requiring his presence.

27. Rostering

(27.1 varied June 1999)

27.1. The Contractor shall operate rosters and allocate plant locations in such a way as to ensure that:

- a) all Carriers have the opportunity to cart metres as close as possible to the average fleet utilisation metreage for the whole Sydney cartage fleet (which includes vehicles owned and operated by the Contractor pursuant to clause 9.2(c)) during the relevant period; and
- b) the level of customer service set by the Contractor is achieved.

1.2. The Contractor shall not roster-off a Carrier simply because he is earning in excess of the average fleet utilisation metreage applicable during the relevant period.

(27.3 e) varied June 1999)

1.3. Those rosters shall include:

- a) Daily start cyclic roster
- b) Daily transfer cyclic roster
- c) Period (not exceeding one month) transfer cyclic roster
- d) Roster-off roster (where there are vehicles surplus to customer requirements, as determined by the Contractor
- e) Night shift rosters.

(27.4 varied June 1999)

1.4. The rosters set out in clause 27.3 shall include trucks owned by Carriers and trucks owned by the Contractor.

28. Concrete Cartage in Alternative Vehicles

Where concrete is transported other than in an agitator then the cartage rates shall be negotiated between the Contractor and the Union at the relevant time provided that the rate so negotiated is competitive with the prevailing market rate for such cartage.

29. Plant Stored Carrier's Equipment

The Contractor shall provide sufficient space where possible for the safe storage of equipment that is reasonably necessary to assist in the efficient and effective running of the Carrier's cartage business. The Contractor is not liable for loss or damage to Carrier's equipment so stored.

30. Termination of Engagement

30.1. The Contractor may terminate a Carrier's Contract of Carriage without compensation only in the event of theft or serious and wilful misconduct by the respective Carrier proven in a court of law or acknowledged and accepted by the Carrier.

30.2. If the Contractor wishes to terminate a Carrier's Contract of Carriage other than pursuant to the provisions of Clause 30.1 hereof, the Contractor shall:

- a) Provide the Carrier with a minimum of thirteen (13) weeks written notice of termination of the Carrier's Contract of Carriage and if the Contractor provides shorter notice than the said thirteen (13) weeks, then in addition to the compensation payable pursuant to Clause 31 the Contractor shall pay to such Carrier an amount equal to $20 \times "J"$ (Schedule B) per week for the period less than such thirteen (13) weeks of notice calculated on a reducing daily basis; and
- b) Pay to the Carrier compensation equal to and calculated in accordance with the provisions of Clause 31 hereof.

31. Compensation Upon Termination of Contracts of Carriage

31.1. Compensation Payable to Sydney Carriers

The amount of compensation payable by the Contractor to a Carrier upon termination of the Carriers Contract of Carriage shall in addition to any amount payable under clause 30.2 (a) be:

- a) If the Contract of Carriage is terminated within the first two (2) years of the commencement of this agreement, an amount calculated in accordance with the formula:

$80,000 \times M/N$, where:

M = the Consumer Price Index (Sydney All Group Index) published by the Bureau of Statistics applicable to the Quarter ending immediately prior to the expiration of the notice of termination; and

N = the Consumer Price Index (Sydney All Group Index) published by the Bureau of Statistics applicable to the Quarter ending 30 September 1994.

- b) If the Contract of Carriage is terminated on a date two (2) years after the commencement of this agreement, an amount calculated in accordance with the formula:

$64,000 \times P/(Q - 24) \times M/N$, where:

M & N are as defined under Clause 31.1 (a); and

P = number of whole months remaining between the date of termination and the expiry date of the Contract of Carriage allowing for any extensions of provided for under clause 3.1(a) had notice of termination not been given; and

Q = total number of months of the term plus any extensions of the Contract of Carriage provided for under clause 3.1(a).

(Example: A Contract of Carriage for 5 years plus a 3 year extension commenced on 1st September 1994 and notice is later given of termination to take place on 17th November 1998, and say the relevant CPI "M" value is 121.0 and the CPI "N" value is 111.0 then the amount of compensation payable would be:

$$\$64,000 \times 45 / (96 - 24) \times 121.0/111.0 = \$43,603.00)$$

32. Assignment of Contract of Carriage

32.1. If at any time or times during the term of the Contract of Carriage, the Carrier wishes to sell and assign the balance of the term of the contract, the Contractor shall have the right to purchase the same upon the following conditions:

- a) The Carrier shall first give notice in writing to the Contractor of the Carrier's desire to sell the balance of the term of the Contract of Carriage for a price calculated in accordance with the applicable formula set out in Clause 31 of this agreement.
- b) The Contractor, if it desires to purchase the balance of the term of the contract, shall within thirty (30) days after receipt of such notice, cause to be delivered to the Carrier a written notice of acceptance of the offer. A cheque made payable to the Carrier in an amount calculated as set out in Clause 31 shall be delivered to the Carrier on the day of termination;
- c) If the Contractor does not, within the said period of thirty (30) days, accept the Carrier's offer in the aforesaid manner, then the Carrier shall be at liberty to sell and assign the balance of the term of the contract to any other person approved by the Contractor and who is capable of carrying on the business of the Carrier pursuant to this agreement, such approval not to be unreasonably withheld.

32.2. The Contractor covenants with the Carrier not to serve a notice of termination of the Carrier's Contract of Carriage (except in the circumstances of Clause 30.1 - theft or serious and wilful misconduct) following service upon the Contractor of the notice of the Carrier's desire to sell the balance of the term of the Contract pursuant to Clause 32.1 (a) for a period of at least six (6) months following the date of service upon it of the said notice of desire to sell.

32.3. For the purpose of this clause, an assignment shall include an assignment or transfer of a controlling interest in a company.

33. Environment Protection and Pollution Control

33.1. Operational Procedures

The Contractor shall provide the Carrier with a written procedure relating to the delivery of concrete. It is the Contractor's responsibility to ensure that this procedure complies with all requirements of the relevant Act with respect to environment protection and pollution control. It is the Carrier's responsibility to comply with the Contractor's reasonable written procedures.

33.2. Contractor's/Carrier's Liability

The Contractor shall indemnify the Carrier against all claims for cost, damages and/or legal expenses and any further liabilities that may arise whilst performing his duties as the Contractor's Carrier in accordance with the Contractor's operational procedures, provided that such claims for cost, damages and/or legal expenses and any further liabilities that may arise are not as a direct result of the Carrier's negligence or misconduct.

SCHEDULE A

Note: See tables in PDF version

SCHEDULE B

Extra Charges Unit Rates

Effective:16/11/2003

SYMBOL	TITLE	RATE
"A"		no rate
"B"	kilometre rate =total running cost (@4500m3) / total km plus 10%	\$1.01

"C"	mixing in yard = 2m ³ x 3km @ 4500m ³ p.a. utilisation rate	\$36.12
"D"	waiting time = "J" / 60	\$1.60
"E"	standby time per half hour = "K" x 2 (for double time)/ 2 (for half time)	\$16.94
"F"	penalty rate = "K" x 1.25hrs / average load	\$4.23
"G"	transfer to workshop = "B"	\$1.01
"H"	transfer fee general = "B"	\$1.01
"I"		no rate
"J"	hourly truck hire and driver = (average load @ average lead @ 4500m ³ p.a.) less 10%	\$96.00
"K"	hourly hire Carrier's labour = Award rate for casual driver	\$16.94
"L"	travel cost = the travelling rate under the Cement Mixers and Concrete Workers Central Batch Plant Award	\$0.58

SCHEDULE C

Items Included in the Utilisation Rate:

1. TRANSFER FEES as described in the Transport Industry - Concrete Haulage Contract Determination Clause 6.2.

WAITING TIME as described in the Transport Industry - Concrete Haulage Contract Determination Clause 3.5.

LEFTOVER CONCRETE as described in the Transport Industry - Concrete Haulage Contract Determination Clause 3.10 for returns less than 3.0m³.