

(300)

SERIAL A7353

## TRANSPORT INDUSTRY - CONCRETE HAULAGE CONTRACT DETERMINATION

Schedule of Award Published on 30.11.1990 and Subsequent Variations Incorporated

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Annexure A.	B2733	20.5.94	On and from 1.11.93	279	1257
Arrangement; 30.	B3403	31.3.95	First pay period on or after 3.1.95	284	1225
Arrangement; Annexure A	B5379	27.3.97	On and from 31.5.96	297	509
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3(3.2)(b)(c)(d)(e) (f) - Annexure A	B6504	18.12.98	First pay period from 12.1.98	307	627
Schedule A,B,E & Appendix X of Annexure A	B9212	8.9.2000	On and from 11.4.2000	318	614
Appendix X	B9471	24.11.2000	On and from 6.9.2000	320	782
29	C1052	19.4.2002	From 27.8.2001	332	1247
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## CONTRACT DETERMINATION

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## 2. Definitions

For the purposes of this determination the following terms shall bear the meanings:

2.1 "The Act" shall mean the Industrial Arbitration Act 1940.

2.2 "Carrier" shall mean Contract Carrier as defined in the Act.

2.3 "Contract of Carriage" shall mean as defined in the Act.

2.4 "Contractor" shall mean Principal Contractor as defined in the Act.

The principal contractors body registered under the Act shall be referred to as the "NRMCA" in this document.

2.5 "Award" shall mean the Transport Industry (State) Award as varied from time to time.

2.6 "Union" shall mean the Transport Workers' Union of Australia, New South Wales Branch (registered under the Act as an Association of Contract Carriers).

2.7 "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;
- (c) multiple strip footings within a radius of 1/2 kilometre;
- (d) all other work is excluded as a continuous pour.

### 3. Cartage Rates

- 3.1 Basis of Rates - Rates for carriers are based on a fee of (A) per cubic metre for the first 5 kilometres or part thereof that the load is carried from the plant, and a rate (B) per cubic metre for each additional kilometre or part thereof that the load is carried.

The bracketed capital letters refer to the rates as per Appendix "X". These are to be updated as per formula in Appendix "Y".

- 3.2 Minimum Load - A carrier shall be guaranteed a minimum load of 3 cubic metres or a minimum payment on the basis of 3 cubic metres.
- 3.3 Mixing in the Yard - A fee of (C) 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 3 cubic metres.
- 3.4 Long Distance Rates - Where the load is required to be carried in excess of 25 kilometres then each additional kilometre will be paid on the basis of a 4.0 cubic metre minimum load.
- 3.5 Waiting Time - All time after 21 minutes or 7 minutes per cubic metre, whichever is the greater, during which it is necessary for a carrier to wait at the point of delivery in order to discharge his load, shall be paid at the rate of (D) per minute.

- 3.6 Standby Time -

3.6.1 Payment for standby time shall only apply to work scheduled to start outside the following hours:

Monday to Friday	6.00 am to 4.00 pm
Saturday	6.00 am to 12 noon

3.6.2 Payment for standby time shall be at the rate of (E) for each complete half hour outside the hours referred to in

3.6.1. that the carrier waits before receiving a load after his nominated start time for the scheduled work.

- 3.7 Penalty Rates - Surcharge rates per cubic metre based on a minimum of three cubic metres payable in respect of concrete loaded which is completed during the following hours, shall be:

Monday to Friday	4.00 pm to 6.00 pm	(F)
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(Except where the load forms part of a continuous pour of concrete, as defined in 2.7, for which the first load was loaded before 1.00 pm.)

Monday to Friday	6.00 pm to 6.00 am	(2.5F)
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Weekend	12 noon to 4.00 pm Saturday	(2.5F)
	4.00 pm Saturday to 6.00 am Monday	(3F)

Public Holidays		(3F)
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### 3.8 Multiple Discharge Points-

3.8.1 Same Customer - Payment for haulage covers the total distance travelled. Unloading time will commence from the start of unloading at the first point and will continue until the final completion of unloading when drops are within one kilometre. Over one kilometre, the total of the additional kilometres travelled will be added to the ticket and paid as if the original load was carried for the entire distance plus waiting time, if applicable, commencing from the arrival at the first delivery point.

3.8.2 Multiple Customers - Each delivery will be treated for the purpose of payment of cartage as if a separate delivery had been made from the plant to each delivery point.

### 3.9 Diverted Loads -

3.9.1 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, plus waiting time payment whilst awaiting diversion advice.

3.9.2 Return to Plant and Divert - It is thereafter treated as a new load.

3.9.3 Return to Plant and Dumped - It shall be paid for as in 3.9.1.

3.9.4 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 rate of (B) per kilometre with a minimum of 3 cubic metres and a 5 kilometre minimum.

### 3.10 Left Over Concrete -

3.10.1 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.

3.10.2 No payment shall be made when concrete is dumped in the vicinity of the job site.

3.10.3 When 3 cubic metres or more of concrete are left over from a job, return cartage shall be paid at the rate of (B) per kilometre with a 5 kilometre minimum, with the following exceptions:

- (a) Where the load is rejected because of product fault.
- (b) Where the load taken out is not required.
- (c) When a truck is used to dispose of left over concrete, such as a result of a pump line blow-back.
- (d) When the concrete is not returned to the "source" plant.

In all cases of (a), (b), (c) and (d) return cartage shall be paid with a 0.8 cubic metre and 5 kilometre minimum.

3.10.4 When a carrier is required to agitate any quantity of concrete within the plant, a fee of (I) per complete 1/2 hour shall be paid after the first completed 1/2 hour whilst awaiting diversion advice.

#### **4. Hourly Rate for On-site Work**

The minimum hourly rate shall be as expressed in the DMR standard Truck Hire Rates (as adjusted from time to time,) for the classification of a vehicle of 15 tonne capacity with a 10 kilometre minimum.

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## 5. Payments Provided for in the Rates

5.1 All benefits and entitlements of the Transport Industry (State) Award are provided for in this determination.

5.2 The following leave entitlements are provided for in the rate schedule. (Appendix "X".)

(a) 20 days annual leave and, in addition, the annual leave loading as prescribed in the Transport Industry (State) Award.

(b) 10 Public Holidays - New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Eight Hour Day, Christmas Day, Boxing Day, Union Picnic Day.

(c) 34.8 hours of long service leave per annum.

(d) 64 hours of sick leave per annum.

(e) 16 hours bereavement leave.

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## 6. Haulage Area, Cartage Zones and Transfer Fees

6.1 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 pursuant to 6.2 hereof.

6.2 (a) Where a vehicle is transferred with a load, that distance which is in excess of the round trip distance to the plant in which the load was received shall be paid at the rate of (H) per kilometre.

(b) Where a vehicle is transferred without a load, a transfer fee of (H) per kilometre will be paid.

(c) The return journey is to be treated separately and paid as per either 6.2(a) or 6.2(b).

(d) Transfer to and from the workshop is to be paid at the rate of (G) per kilometre.

(e) When a carrier is required to submit his vehicle to the Department of Motor Transport for annual inspection, he shall inform the contractor either six 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) per kilometre will be paid by the contractor for the distance travelled to the nominated inspection station, plus any inspection fee payable.

6.3 Country Transfer - Where possible, notification of such a transfer shall be given 24 hours prior to the required departure time.

6.4 Cartage Zones shall be based on a map with zones agreed between the union and the contractor, displayed at each plant.

6.5 Road and Bridge Tolls - Where a carrier is required to pay a road and/or bridge toll whilst performing work under this determination for which a cartage or transfer fee is payable, then such road and/or bridge toll shall be reimbursed by the principal contractor. Both the outward and return journey are to be travelled by the shortest practicable route.

## **7. Living Away From Home Allowance**

7.1 A carrier engaged on work which precludes him from reaching his usual place of residence at night shall receive the benefits and conditions as detailed in the Transport Industry (State) Award, clause 9, Travelling and Living Away Allowances, subclauses (iv) and (v).

7.2 This clause shall not apply to movements within the metropolitan areas of Sydney or Newcastle or Wollongong.

## 8. Mini Trucks

Leave is reserved to incorporate rates and conditions in this determination for mini trucks.

## 9. Haulage Accounts

- 9.1 A carrier shall prepare his account according to the requirements of the contractor.
- 9.2 Haulage accounts shall be paid twice monthly within 10 working days after the end of each accounting period.
- 9.3 Account discrepancies relating to the immediately preceding pay period shall be settled promptly and in no case later than 14 days from the date of submission by the carrier.

Account discrepancies relating to other than the immediately preceding pay period shall be settled as soon as practicable.

Where following settlement of an account discrepancy an adjustment to payments is required, such adjustment shall be made in the pay period following settlement.

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## 10. Responsibility for the Load

10.1 A carrier shall ensure that the load is properly mixed according to the contractor's practice and that the slump of the concrete on arrival at the discharge point is in accordance with limits of the appropriate Australian Standard Specification, i.e., tolerance of 15 mm plus or minus for slump up to 80 mm, and 30 mm plus or minus when a higher slump is ordered.

The agitator drum must be kept turning at all times when it contains concrete.

10.2 A carrier shall visually inspect each load prior to leaving the yard and shall advise the contractor of any apparent unusual features of the load which may have occurred due to batching error, plant failure or contamination.

10.3 When a load is rejected at a job site because of failure to slump correctly and/or failure to visually inspect the load prior to leaving the yard, the carrier will not be paid the cartage.

10.4 At the job site a carrier shall make every reasonable endeavour to obtain signatures from the customer as required by the contractor.

10.5 A carrier shall make every endeavour to collect money from COD customers for all concrete charges, including waiting time. All monies collected shall be submitted in full (as soon as possible) to the Plant Manager or Allocator, who shall issue the carrier with a receipt.

10.6 A contractor shall not pay for waiting time where a carrier failed to collect from a COD customer unless the carrier can show that he made every endeavour to collect the money.

10.7 The carrier shall immediately advise the contractor where practicable by the two-way radio or telephone, where a two-way radio is not provided, when a COD payment is not collected or dispute arises between the carrier and the customer.

10.8 Where a load is dumped, the carrier shall not be liable to compensate the contractor unless the loss occurred as a direct result of his negligence or misconduct. Where such a liability does exist, the contractor shall charge the carrier for the concrete at material cost and cartage shall not be paid.

## 11. Breakdowns

- 11.1 A contractor shall not be responsible for any loss resulting from breakdowns of plant, mixers or vehicles.
- 11.2 A carrier shall initially assist in every possible way to remove the concrete from the mixer when a breakdown of the mixer or carrier's vehicle occurs under load.

## 12. Size of Load

12.1 The contractor has the right to nominate the load size provided that the carrier has the right to refuse a load that is beyond the legal capacity of his vehicle or the rated capacity of the mixer.

### **13. Hazardous Approach to Job Site**

13.1 A carrier shall have the right to refuse to enter upon ground which he considers unsafe. The contractor shall have the right to refuse payment for cartage where the option is used without reasonable justification.

13.2 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 he shall be given every reasonable assistance by the contractor, who shall compensate the carrier for any costs the carrier has reasonably incurred in engaging outside equipment to extricate the vehicle.

Provided further that the reimbursement provision shall not apply where the vehicle become inoperative as a direct result of the carrier's misconduct and/or negligence.

#### **14. Availability of a Suitable Vehicle**

14.1 The carrier shall on each working day (unless the contractor advises that work is not available) supply, man, operate and keep serviceable a vehicle that is suitable to the contractor and Union.

14.2 No vehicle shall be brought into service without the prior consent of the contractor.

14.3 A defective vehicle shall be repaired as soon as practicable.

14.4 Where a carrier is unable to report for work with his vehicle he shall arrange for the contractor to be immediately informed of the reason and the anticipated period of absence.

### **15. Two-way Radio Equipment**

15.1 The carrier shall agree to the installation of two-way radio equipment on his vehicle. All equipment shall be installed by a 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.

When such equipment is removed, the contractor shall make good the bodywork.

15.2 The carrier shall take due care to ensure adequate protection of the equipment.

15.3 The equipment is to be operated and appropriate procedures are to be followed as laid down by the contractor.

15.4 The contractor shall be responsible for the maintenance of the two-way radio equipment.

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## 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 absolute satisfaction of the contractor and the Union.

16.2 A carrier undertakes to exercise all possible care for the mixer. The mixer shall be thoroughly washed out and cleaned down during and after each day's work and surfaces treated as required in preparation for the next day's work.

All cleaning materials shall be supplied by the contractor.

16.3 The carrier shall report all repair or maintenance requirements following the procedures laid down by the contractor.

16.4 The carrier shall convey the mixer to the workshop for repair or maintenance as requested by the contractor.

16.5 The carrier shall be responsible for all minor maintenance to the satisfaction of the contractor, such as changing oil, greasing, cleaning and replacement of spark plugs, attending to oil filters, air cleaners, battery, keeping screws and bolts tight, clearing obstructions in fuel lines and fitting minor new parts. All spare parts shall be supplied by the contractor.

16.6 The contractor shall be responsible for major maintenance.

16.7 The carrier is responsible for the provision of fuel.

16.8 The contractor is responsible for the provision of oil and grease for the mixer.

16.9 A contractor's equipment 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.

16.10 A carrier shall be aware that he bears a duty to take all reasonable care towards the mixer and, further, that he may be liable for damage caused to the mixer by his failure to take such reasonable care or by his misconduct.

### **17. Provision of a Mixer**

17.1 The contractor shall be responsible for the provision of a mixer and its safe and proper initial fitting to a carrier's vehicle in accordance with the specifications of the respective manufacturers, including the supply of U bolts, clearance lights and mud flaps.

17.2 After the initial fitting referred to in 17.1 above, the carrier shall be responsible for the mixer being properly secured to his vehicle and for the maintenance and replacement of clearance lights and mud flaps.

17.3 The carrier, in his discretion, may have the U bolts adjusted by a qualified mechanic and the reasonable costs incurred shall be met by the contractor.

17.4 The mixer shall remain the property of the contractor and shall be returned to the contractor's nearest appropriate workshop facilities on completion of use.

### **18. Painting and/or Signwriting of Mobile Unit**

18.1 The contractor shall arrange for periodical painting and/or signwriting of the mobile unit, unless it is mutually agreed that the carrier shall paint the mobile unit with paint provided by the contractor.

18.2 All painting is to be done expeditiously, weather permitting, in not more than five working days, using good quality paint to an industrial standard finish.

18.3 It is the intention that mobile units should be painted every four years in the mutual interest of company contractors and carriers.

18.4 For the purpose of this clause, "Mobile Unit" shall mean the complete truck and agitator including all their components without exception.

### **19. Union Membership and Delegates**

19.1 Carriers and drivers shall have preference of engagement with contractors in accordance with clause 35, Preference of Employment, of the Transport Industry (State) Award.

19.2 A carrier appointed as yard delegate shall, upon notification thereof to the contractor by the Branch or Sub-Branch Secretary of the Union, be recognised as the accredited representative of the Union.

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## 20. Manning

20.1 A person shall only become a carrier after being given final approval in writing 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.

20.2 A prospective carrier shall spend a minimum of one week training to operate the mixer slump, etc., followed by a further minimum training period of two days in the Quality Control Laboratory under the contractor's supervision.

20.3 A carrier, when employing an alternate driver, shall engage the driver under the terms and conditions of the Transport Industry (State) Award and shall require the driver to observe the terms of this determination in the operation of the vehicle.

20.4 A carrier shall not allow any person to operate the vehicle without prior approval being obtained from the contractor.

20.5 A carrier shall be the permanent operator of the vehicle except when on a period of absence approved by the contractor.

20.6 A carrier and/or driver shall act in the best interests of the contractor at all times.

20.7 In the event of a dispute arising in respect of this clause, the procedures in clause 25, Dispute Procedure, shall be followed.

## 21. Uniforms

- 21.1 A carrier and/or his driver shall maintain an acceptable neatness of dress and appearance.
- 21.2 Where a contractor requires that a specific uniform be worn by the carrier the provisions detailed in clause 26, Uniforms and Protective Clothing, of the Transport Industry (State) Award shall be observed.
- 21.3 Where a specific type of uniform is required to be worn by the carrier then such uniform shall be supplied free by the contractor.

## 22. Purchase of Goods

22.1 Carriers shall not use the contractors' accounts for the purchase of goods.

22.2 Where a contractor agrees to purchase goods at the request of a carrier, the cost of such purchases may be deducted from the carrier's haulage payments.

22.3 Where a carrier purchases fuel and other goods from a contractor the cost of such purchases may be deducted from the carrier's haulage payments.

22.4 Authorisation for Deduction - With the exception of 22.2 and 22.3, no other deductions may be made from a carrier's haulage payment without the written permission of the carrier.

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### 23. Statutory Requirements and Insurance

23.1 A carrier shall comply with the provisions of all 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.

23.2 A carrier shall arrange insurance cover to the satisfaction of the contractor whilst working under this determination in respect to:

- (a) Motor Vehicle Comprehensive or Third Party Property.
- (b) Motor Vehicle Third Party - Person.
- (c) Workers' Compensation.

All carriers must carry a workers' compensation policy at all times to cover any persons who may from time to time be employed by them (whether or not they do at any specific time employ any person).

- (d) Personal Sickness and Accident - Carrying this policy is optional - but recommended.
- (e) Public Risk - Carrying this policy is optional - but strongly recommended.

23.3 All insurance policies are to be submitted to the contractor for perusal and returned prior to commencement of operation. Thereafter such policies and proof of currency shall be produced upon request.

#### **24. Amenities**

All amenities to comply with the Shops and Factories Act and to be not less than those enjoyed by an employee under the Transport Industry (State) Award.

## 25. Dispute Procedure

25.1 It is understood and accepted by all parties to this determination that work shall continue normally during all negotiations and any necessary proceedings.

25.1.2 When there is a disagreement the carrier shall attempt to resolve the matter by negotiating with the contractor or his representative on site.

25.1.3 Where the matter is not resolved the yard carrier delegate shall attempt to resolve the matter by negotiating with the contractor or his representative on site. Where applicable, the carrier's executive delegate may be party to further negotiations with the contractor.

25.1.4 If the matter remains unresolved an official of the Union shall be party to continued negotiations with the contractor. The contractor shall advise the Chairman of the NRMCA Industrial Committee.

25.1.5 If the matter remains unresolved, notification may be made to the Industrial Commission by either party under the terms of the Industrial Arbitration Act 1940.

25.2 Disciplinary Action - A contractor may cancel a contract of carriage in the event of dishonesty, theft, serious misconduct or where a carrier uses a contractor's mixer for transporting materials other than the contractor's products without prior approval from the contractor.

## 26. Fleet Size

26.1 A contractor shall have the discretion to vary the number of vehicles required throughout his operations. In the event of a dispute arising in respect of this matter, the parties to this determination agree to follow the procedures of clause 25, Dispute Procedure.

## **27. Local Rules and Conditions**

27.1 Local rules and conditions shall continue in force in so far as they do not conflict with the provisions of this determination.

## 28. Leave Reserved

28.1 Leave is reserved to the Union with regard to its claim that "All future units must be Owner-Driver or Company owned".

28.2 Leave is reserved to the NRMCA with regard to the claim of a new rise and fall formula and bench marks for prices.

### **29. Area, Incidence and Duration**

This determination rescinds and replaces the Transport Industry - Concrete Haulage Contract Determination published 7 September 1983, and all variations thereof. It shall apply to all contractors of haulage of ready-mixed concrete and all other work prescribed herein. It shall apply to all principal contractors and contract carriers engaged or in connection with such work within the State of New South Wales (except Boral Resources (Country) Pty Limited and contract carriers engaged by them who to avoid any doubt are regulated by the Boral Country - Concrete and Quarries Contract Determination).

FOR EFFECTIVE DATE PLEASE REFER TO SCHEDULE OF AWARD AND VARIATIONS TABLE.

### **30. Exemption**

The principal contractor, Boral Resources (NSW) Pty Limited, (Boral), and carriers engaged by Boral, are exempted from any and all provisions of this Contract Determination, as varied from time to time, for a period of three years from 8 April 2005. Boral and carriers engaged by Boral are covered by the Boral Resources (NSW) Pty Limited Sydney Metropolitan Concrete Contract Determination.

**Appendix X**

Item	Symbol	Clause	Title	Old Rate (as at 4/10/95)	New (Interim) Rate \$	Unit
1	A	3.1	Flagfall	17.18	17.32	Cubic Metre
2	B	3.1	Kilometre Rate	1.21	1.22	Cubic Metre
3	C	3.3	Mixing in the Yard	31.50	31.76	Load
4	D	3.5	Waiting Time	1.25	1.26	Minute
5	E	3.6	Standby Time	13.47	13.58	Half Hour Complete
6	F	3.7	Penalty Rates	4.33	4.37	Cubic Metre
7	G	6.2	Transfer Fee to Workshop	1.51	1.52	Kilometre
8	H	6.2	General Transfer Fee	1.03	1.04	Kilometre
9	I	3.10.4	Agitating Fee	4.97	5.01	Half Hour Complete

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**Appendix Y**

**Cartage Rate Formula**

Item	Formulapercentage
Administration and Miscellaneous	10.30
Registration	4.84
Tyres	2.85
Fuel	14.16
Maintenance - Labour	5.81
Maintenance - Parts	6.82
Depreciation	14.85
Insurance	1.66
Wages	38.71
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	100.00

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## Appendix Z

- (1) The parties to this determination recognise that, due to the changed nature of the pricing of fuel, including recent significant fluctuations in the price of fuel, it is necessary that variations to rates of remuneration to take into account changes in the price of fuel occur in a timely and efficient manner.
- (2) Notwithstanding any other provisions of this determination, the parties to this determination agree that any party to this determination may make an application to the Industrial Relations Commission of New South Wales to vary rates of remuneration to account for changes in the price of fuel only, on the following basis:
- (a) an application to vary rates of remuneration for changes in the price of fuel only may be made at any time, provided that the date upon which any rate adjustment is sought to occur is at least one calendar month after the last occasion upon which a rate adjustment became operative.
  - (b) subject to paragraphs (c) and (d) below, the rates of remuneration shall vary using the existing rise and fall formula for the price of fuel in this determination;
  - (c) it is not a requirement of any such application that the rate adjustment sought for fuel only be one which is either above or below any minimum threshold amount; and
  - (d) the agreed benchmark for the price of fuel shall be the Australian Institute of Petroleum NSW weekly average for the retail price of diesel for the week ending immediately prior to the date of filing the application, excluding GST. Should the agreed benchmark become unavailable the parties shall determine an alternative appropriate benchmark.
- (3) The parties to this determination shall take all necessary steps to enable an application made pursuant to subclause (2) hereof to be heard and determined at the earliest possible time, including but not limited to, consenting to have the Industrial Relations Commission of NSW hear and determine any such application within 48 hours from the initial listing of the application.

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## ANNEXURE A

### PIONEER CONCRETE (NSW) PTY LIMITED ENTERPRISE ARRANGEMENT

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Appendix "X"

## 1. Definitions

1.1 For the purpose of this Enterprise Arrangement the following terms shall bear the meanings:

"The Act" shall mean the *Industrial Relations Act 1991*.

"Award" shall mean the Transport Industry - Mixed Enterprises Interim (State) Award published 17 July 1992 (270 I.G. 550), as varied.

"Concrete" shall mean a product, whether mixed, blended or batched, that contains but is not limited to as a minimum: cement, aggregate, sand and water; mortar containing cement, sand and water; grout containing cement, sand and water; slurry containing cement and water; or binders containing cement and sand. This definition is not contingent on the method of production, laying or description of the finished product.

"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 half a 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 Enterprise Arrangement is Pioneer Concrete (NSW) Pty Limited and Pioneer Concrete (Vic.) Pty Limited.

"Cyclic roster" shall mean:

- (a) 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;
- (b) when the roster has been fully addressed the roster then changes so that the truck number that was last becomes first, while the truck number that was previously first then becomes second and each truck number is moved down one position in turn, and so on; and
- (c) each carrier will 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 2.8m cubed or less.

"Mixer" shall also mean agitator and vice versa.

"Sydney metropolitan area" is, for the purpose of this Enterprise Arrangement, limited to the area in which concrete is produced and delivered within the following boundaries: Stanwell Tops, Bulli, Mt. Ousley, Appin, Razorback, Warragamba, Emu Plains, Sackville, Hawkesbury Bridge, Terrey Hills, Palm Beach (see map of Sydney metropolitan area).

"Union" shall mean the Transport Workers' Union of Australia, New South Wales Branch, which term includes the

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Readymixed Concrete Executive Committee of the union.

"Written authority" shall mean any approved document that bears the signature of the carrier or 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

(a) This Enterprise Arrangement varies the rights and obligations of the contractor and carrier contained in the Transport Industry Concrete Haulage Contract Determination published 30 November 1990 (260 I.G. 608), as varied (the contract determination).

(b) If a provision of this Enterprise Arrangement is inconsistent with a provision of the Contract Determination, the provision of the Enterprise Arrangement shall prevail and the contract of carriage is to be considered to have been varied to the extent necessary to remove the inconsistency.

(c) This Enterprise Arrangement shall take effect on and from 1 November 1993 and shall remain in force for a period of three years (unless varied by written agreement prior to that time) and thereafter shall continue until varied or rescinded by the contractor and the Union or by the Industrial Relations Commission of New South Wales.

## 3. Term of Contracts of Carriage

3.1 Full-time Readymixed concrete carriers in the Sydney metropolitan area ("full-time Sydney carriers"):

(a) The initial term of the contract of carriage for a full-time Sydney carrier shall be ten years commencing on 1 November 1993 if the carrier, as at 1 November 1993, operates a vehicle capable of legally carrying 5.6 m cubed or more.

(b) The initial term of the contract of carriage for a full-time Sydney carrier shall be eight years commencing on 1 November 1993 if the carrier, as at 1 November 1993, operates a vehicle not capable of legally carrying at least 5.6 m cubed; provided that if such carrier, on or before 1 November 1997, acquires a vehicle capable of legally carrying 5.6m cubed or more, the contractor shall extend the initial term of the contract of carriage of such carrier by two years from the date of acquisition of such vehicle.

(c) The contractor shall have an option to renew the contract of carriage of a full-time Sydney carrier:

(i) for a further term of ten years commencing on 1 November 2003 in respect of a carrier (and his successors and assignees) granted a contract of carriage for an initial term of ten years; and

(ii) for a further term of eight years commencing on 1 November 2001 in respect of a carrier (and his successors and assignees) granted a contract of carriage for an initial term of eight years without extension.

(d) The option to renew shall be exercised by the contractor serving upon the carrier a written notice thereof between the period commencing twelve months and ending six months before the date of expiry of the initial term of the contract of carriage.

(e) The renewed contract of carriage shall be basically on the same terms and conditions as contained in this Enterprise Arrangement applicable to full-time Sydney carriers, subject to the following alterations:

(i) paragraphs (c), (d), (e), (f) and (g) of this subclause 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 term shall be the same

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as the cartage rates payable pursuant to this Enterprise Arrangement immediately prior to the expiration of the initial term of the contract of carriage.

(f) (i) In the event that the contractor does not propose to exercise the option of renewal, it shall serve written notice thereof to the carrier no later than twelve months prior to the expiration of the initial term of the contract of carriage.

(ii) The notice must set out in detail the reasons for the proposed non-exercise of the option of renewal and give the union and the carrier an opportunity to discuss those reasons with the contractor and attempt to negotiate a further term of the contract of carriage.

(g) (i) Where the contractor fails to serve the notice referred to in paragraph (f) of this subclause, the carrier may serve upon the contractor a written demand seeking service of such notice within fourteen days of service of that demand; and

(ii) if the contractor still fails to serve the notice referred to in paragraph (f) of this subclause, within fourteen days of service upon it of that demand, the carrier will be deemed to have been granted by the contractor a further term of twelve months of the contract of carriage from the date of expiry of the initial term and such contract of carriage shall, for the purpose of this Enterprise Arrangement, be deemed to have a value calculated in accordance with the following formula:

$\$20,000 \times B/A$

Where:

B = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the expiration of the initial term of the contract of carriage.

A = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the commencement of the initial term of the contract of carriage.

### 3.2 Part-time Readymixed Concrete Carriers in the Sydney metropolitan area ("part-time Sydney carriers"):

(a) The initial term of the contract of carriage for a part-time Sydney carrier shall be five years commencing on 1 November 1993.

(b) Upon the expiry of the initial term of the Contract of Carriage for part-time Sydney carriers, new contracts will commence from 1 November 1998 on the following terms:

(i) 18 part-time contracts with a term of five years.

(ii) 7 part-time contracts with a term of two years.

(iii) In the case of the five-year contracts, the contractor shall have an option to renew the Contract of Carriage for a further term of five years commencing on 1 November 2003, provided that, in order to exercise the option, the contractor must serve written notice of its intention to do so upon the carrier no less than 12 months prior to the date of expiry of the contract.

(iv) In the case of two-year contracts, the contractor shall have an option to renew the Contract of Carriage for a term to be agreed by the parties, which term would commence on 1 November 2000, provided that, in order to exercise the option, the contractor must serve written notice of its intention to do so upon the carrier no less than three months prior to the date of expiry of the contract.

(v) All part-time carriers in the Sydney metropolitan area engaged by the contractor under this enterprise agreement shall meet to determine which carriers will accept the five-year contracts and which carriers will accept the two-year contracts. If the carriers are unable to agree, then the contractor shall have the absolute discretion to determine which carriers are offered the five-year contracts and which carriers are offered the two-year contracts. It is agreed that the decision of the contractor in

this regard shall be final and binding on all parties.

(c) Contracts of Carriage renewed pursuant to the option contained in paragraph (b) of this subclause shall be on essentially the same terms and conditions as the existing contracts, provided that:

(i) The option provisions contained in paragraph (b) of this subclause will be deleted.

(ii) The cartage rates payable by the contractor to the carrier at the commencement of the renewed term shall be the same as the rates payable immediately prior to the renewal date (i.e., 1 November 2000 or 1 November 2003, as the case may be).

(d) If the contractor decides not to exercise the option of renewal in the case of either the five-year or the two-year contracts, then the contractor must provide its reasons in writing to the carriers within the option renewal period (i.e., 12 months or three months prior to the contract expiry date, as the case may be) in order to allow discussion to take place.

3.3 All other Readymixed Concrete Contract Carriers of the Contractor in New South Wales ("Non-Sydney Carriers"):

(a) The initial term of the contract of carriage of a country carrier located at Blayney, Boorowa, Cowra, Cootamundra, Gunnedah, Moree and such other plants as the Contractor may decide, shall be five years commencing on 1 May 1994. Hereinafter the carrier shall be referred to as "Country Carrier - 5-year contract".

(b) The initial term of the contract of carriage of a country carrier located at Adamstown, Albury, Bass Point, Bathurst, Bennetts Green, Byron Bay, Central Coast, Cessnock, Goulburn, Lismore, Lithgow, Morisset, Nowra, Orange, Port Macquarie, Singleton, Tamworth, Temora, Ulladulla, Wallerawang, Wagga Wagga, Wollongong, Young and such other plants as the Contractor may decide shall be eight years commencing on 1 May 1994. Hereinafter, the carrier shall be referred to as "Country Carrier - 8-year contract".

(c) The contractor shall have an option to renew the contract of carriage of a country carrier:

(i) for a further term of five years commencing on 1 May 1999 in respect of a carrier (and his/her successors and assignees) granted a contract of carriage for an initial term of five years; and

(ii) for a further term of eight years commencing on 1 May 2002 in respect of a carrier (and his/her successors and assignees) granted a contract of carriage for an initial term of eight years, without extension.

(d) The option to renew shall be exercised by the contractor serving upon the carrier a written notice thereof between the period commencing twelve months and ending six months before the date of expiry of the initial term of the contract of carriage.

(e) The renewed contract of carriage shall be basically on the same terms and conditions as contained in this Enterprise Arrangement, subject to the following alterations;

(i) paragraphs (c), (d), (e), (f), and (g) of this subclause 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 term shall be the same as the cartage rates payable pursuant to this Enterprise Arrangement immediately prior to the expiration of the initial term of the contract of carriage.

(f) (i) In the event that the contractor does not propose to exercise the option of renewal, it shall serve written notice thereof to the carrier no later than twelve months prior to the expiration of the initial term of the contract of carriage.

(ii) The notice must set out in detail the reasons for the proposed non-exercise of the option of renewal and give the union and the carrier an opportunity to discuss those reasons with the contractor and attempt to negotiate a further term of the contract of carriage.

(g) (i) Where the contractor fails to serve the notice referred to in paragraph (d) of this subclause the carrier may serve upon the contractor a written demand seeking service of such notice within fourteen days of service of that demand; and

(ii) if the contractor still fails to serve the notice referred to in paragraph (d) of this subclause within fourteen days of service upon it of that demand, the carrier will be deemed to have been granted by the contractor a further term of twelve

months of the contract of carriage from the date of expiry of the initial term and such contract of carriage shall, for the purpose of this Enterprise Arrangement, be deemed to have a value calculated in accordance with the following formula:

$\$X \times B/A$

Where:

X = \$10,000 where the initial term of the contract of carriage is five years.

X = \$20,000 where the initial term of the contract of carriage is eight years.

B = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the expiration of the initial term of the contract of carriage.

A = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the commencement of the initial term of the contract of carriage.

#### 4. Cartage Rates

##### 4.1 Cartage rates payable to Full-time Sydney Carriers -

(a) The contractor shall pay to a full-time Sydney carrier the Sydney metropolitan area utilisation cartage rates (the "utilisation rates") as set out in Schedule A - Utilisation Cartage Rates for Full-time Sydney and Non-Sydney Carriers. All transfers, waiting time and surcharges are included in the rates as shown in the said Schedule A, with the exception of subparagraphs (i), (ii) and (iii) of this paragraph:

- (i) transfers - outside the Sydney metropolitan area;
- (ii) surcharges - Sundays, public holidays (or as otherwise agreed);
- (iii) waiting time if a truck is bogged.

(b) Between 1 November 1993 and 31 January 1994 the 4,500 m cubed per annum utilisation rate specified in the said Schedule A shall be payable by the contractor to the carrier.

(c) On and from 1 February 1994 and on and from the first day of every subsequent quarter during the term of the Contract of Carriage, the utilisation rate payable to the full-time Sydney carrier fleet by the contractor will be adjusted according to the moving annual total, which is the average fleet utilisation for the previous four quarters. Each quarter's figures will be calculated on a month-by-month basis.

(d) Where the average utilisation volume falls between the listed figures set out in Schedule A, a rate between the rates provided for the listed volume figures calculated on a pro rata basis to the nearest 100 cubic metres will be payable to the full-time Sydney carrier fleet.

(e) The average fleet utilisation of the full-time Sydney carrier fleet for any quarter will be calculated in accordance with the following formula:

$$U = A/(C-D)$$

Where:

U = Utilisation

A = The total volume of paid concrete carted by the full-time Sydney carrier fleet.

C = The average total number of carriers in the full-time Sydney carrier fleet.

D = The total of individual "unavailable days" for each carrier divided by the number of working days in the month (including Saturdays, which are counted as half days).

For the purposes of this formula, "unavailable days" means whole days on which the carrier does not attend for work, except where such attendance is not required by the contractor, or by reason of mixer breakdown, but does not include any of the following:

- (i) annual leave of 20 days less those days, up to ten per annum, for which the contractor requires a relief driver;

- (ii) rostered days off of 12 days less those days, up to three per annum, for which the contractor requires a relief driver;
  - (iii) sick days of up to eight days per annum; and
  - (iv) bereavement leave of up to two days per annum.
- (f) The utilisation rates will be reviewed on 1 May 1994 and thereafter half-yearly, based on increases or decreases in the cost formula as set out in the said Schedule A, Schedule B - Review of Cartage Rates, and Schedule C - Safety Net Reference.

#### 4.2 Cartage rates payable to Part-time Sydney Carriers -

- (a) The contractor shall pay to such carriers the cartage rates as set out in Schedule E - Cartage Rates for Part-time Sydney Carriers.
- (b) The cartage rates for part-time Sydney carriers will be reviewed on 1 May 1994 and thereafter half-yearly, based on increases or decreases in the cost formula set out in the said Schedules B, C, and E.

#### 4.3 Cartage rates payable to Non-Sydney Carriers -

- (a) The contractor shall pay to non-Sydney carriers the country utilisation cartage rates (the "utilisation rates") set out in the said Schedule A. All transfers, waiting time and surcharges are included in rates as shown in Schedule A, with the exception of subparagraphs (i), (ii) and (iii) of this paragraph:

(i) Transfers - Transfer distances in excess of 30 km which will be paid in accordance with paragraph (b) of subclause 4.5, Haulage Area, Cartage Zones and Transfer Fees, of this clause. Where a carrier is transferred for a distance in excess of 30 kilometres (one way) and earns (through cartage rates) less than he/she would have earned had the contractor paid the carrier in accordance with the said paragraph (b), then the contractor shall pay the carrier in accordance with paragraph (b). However, if the carrier earns (through cartage rates) more than he/she would have earned had he/she been paid in accordance with paragraph (b), then he/she shall be paid on the basis of the cartage rates only and a paragraph (b) payment will not be made.

(ii) Surcharges - Sundays, public holidays (or as otherwise agreed).

(iii) Waiting time if a truck is bogged.

(b) Between 1 November 1994 and 31 December 1994 the average m  for the part  
1993 to 31 September 1994 utilisation rate specified in Schedule A shall be payable by the contractor to the carrier.

(c) On and from 1 February 1995, and on and from the first day of every subsequent quarter during the term of the contract of carriage, the non-Sydney carrier fleet (located at each plant) average utilisation rates as adjusted for the previous quarter (calculated on a moving annual total basis) will be payable by the contractor to the carrier.

(d) Where the full-time non-Sydney fleet (located at each plant) average utilisation rate falls between the listed volume figures set out in Schedule A, the pro rata rates between the listed volume rounded to the nearest 100 figures will apply and be payable by the contractor to the carrier.

(e) The utilisation rates paid will be based on the full-time non-Sydney average, calculated over the non-Sydney fleet located at each plant as explained in Schedules F - (Deleted), and G - Utilisation Rate Calculation Example.

(f) The utilisation rates will be reviewed on 1 March 1995 and thereafter half-yearly, based on increases or decreases in the cost formula set out in the said Schedules A, B and C.

The surcharge portion of the utilisation rate is subject to adjustment due to variations in CPI only.

4.4 Benefits included in the Cartage Rates -

(a) The following payments are provided for in the rates payable to carriers under this Enterprise Arrangement:

(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 in accordance with the award;

(e) 16 hours bereavement leave;

(f) RDO - 12 per annum leave;

(g) superannuation at the rate of 5 per cent.

(b) The above leave entitlements are provided for in the rate schedule. Each carrier must take the leave entitlements in accordance with the award. Should there be any variation to the entitlements under the award, the cartage rate will be adjusted accordingly at the review date.

(c) Should the contractor require the carrier to man his/her vehicle when on leave entitlements, then, in addition to the appropriate cartage rate, the contractor will pay to the carrier the difference between the labour portion of the cartage rate paid for cartage in the relevant period and the actual amount paid to the relief driver as per the award for a casual driver.

4.5 Haulage Area, Cartage Zones and Transfer Fees -

(a) 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 pursuant to paragraph (b) of this subclause.

(b) (i) Where a vehicle is transferred with a load, that distance which is in excess of the round trip distance to the plant in which the load was received may be paid at the rate of "H" per km, if applicable.

(ii) Where a vehicle is transferred without a load, a transfer fee of "H" per km may be paid, if applicable.

(iii) The return journey is to be treated separately and paid as per either subparagraph (i) or (ii) of this paragraph.

(iv) Transfer to and from the workshop may be paid at the rate of "G" per km, if applicable.

4.6 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 will be resolved within twenty-four hours between the contractor's representative and the carrier or his/her 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 available at the time of delivery.

4.7 Minimum Load - A carrier shall be guaranteed a minimum load of 3 m cubed or a minimum payment on the basis of 3 m<sup>3</sup>.

4.8 Mixing in the Yard - A fee of "C" 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 3 m cubed.

4.9 Long Distance Rates - Where the load is required to be carried in excess of 25 kilometres then each additional kilometre will be paid on the basis of a 4 m cubed minimum load.

4.10 Waiting Time - All time in excess of seven minutes per m cubed or twenty-one minutes, whichever is the greater, that the carrier takes to complete the discharge of the load from the time of arrival on site will be paid at the rate of "D" per minute.

4.11 Standby Time - Where a carrier is required by a contractor to remain at the plant for more than one hour to take a delivery to a job commencing after normal delivery hours, standby time will be paid at a rate of "E" for each complete half hour following the expiration of the initial hour.

Standby time is only applicable outside normal working hours before receiving a load and also between loads. After the expiration of one hour but only payable after each additional complete half hour, a carrier must be on standby for a minimum of eighty- nine minutes before being entitled to a payment of "E".

Normal hours are 6.00 a.m. to 4.00 p.m., Monday to Friday, and 6.00 a.m. to 12.00 noon Saturday.

Example - A carrier is required to remain at the plant until 6.00 p.m. on Monday evening. He/she receives his/her first load at 6.00 p.m. and returns to the plant at 7.00 p.m. and is loaded again at 8.25 p.m. His/her entitlement in the above example is:

4.00 p.m. to 5.00 p.m. - no payment (initial hour).  
5.00 p.m. to 6.00 p.m. - Standby time of 2 x "E".  
Between 7.00 p.m. and 8.25 p.m. - no standby time.

However, should this second load have been batched at 8.30 p.m., his/her entitlement would be:

7.00 p.m. to 8.00 p.m. - no payment (initial hour).  
From 8.00 p.m. to 8.30 p.m. - 1 x "E".

4.12 Call-out Fee - A carrier called back after normal delivery hours shall receive a minimum of 8 x "E". When total income (including surcharges) amounts to 8 x "E", then the call-out fee is no longer applicable.

Until surcharges equal 8 x "E", the difference between the surcharges paid and 8 x "E" will be paid to the driver as a call-out fee.

Where a carrier is called back and does not receive a load after normal delivery hours, he/she shall be paid a call-out fee of 8 x "E".

4.13 Standby Function - Where the contractor knowingly requires a carrier to provide his/her vehicle at a plant which has a substantially reduced production capability for a period of not less than one hour, then the carrier will be entitled to a standby function payment by the contractor of "N" per hour or part thereof.

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, he/she will be paid at the rate of "O" per m cubed with a minimum of 3 m cubed, plus waiting time, if applicable.

4.15 Penalty Rates - Surcharge rates per m cubed based on a minimum of 3 m cubed payable in respect of concrete loaded which is completed during the following hours shall be:

Monday to Friday:	4.00 p.m. to 6.00 p.m. - "F". (Except where the load forms part of a continuous pour of concrete, as defined in subclause 1.1 of clause 1, Definitions, for which the first load was loaded before 1.00 p.m.)
Monday to Friday:	6.00 p.m. to 6.00 a.m. - 2.5 x "F"
Weekend:	
Saturday:	12 noon to 4.00 p.m. - 2.5 x "F"
Saturday:	4.00 p.m. to 6.00 a.m. - 3 x "F"
Monday:	4.00 p.m. to 6.00 a.m. - 3 x "F"
Public Holidays:	3 x "F"

4.16 Multiple Discharge Points -

(a) Same Customer - Payment for haulage covers the total distance travelled. Unloading time will commence from the start of unloading at the first point and will continue until the final completion of unloading when drops are within one kilometre. Over one kilometre, the total of the additional kilometres travelled will be added to the ticket and paid as if the original load was carried for the entire distance plus waiting time, if applicable, commencing from the arrival at the first delivery point.

(b) Multiple Customers - Each delivery will, for the purpose of payment of cartage, be treated as if a separate delivery had been made from the plant to each delivery point.

4.17 Diverted Loads -

(a) Direct Diversion - Where a load is diverted en route, 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, plus waiting time payment whilst awaiting diversion advice.

(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 paragraph (a) of this subclause.

(d) Return to Plant and subsequently Dumped Outside Plant - Where the contractor directs any quantity of leftover concrete that has been agitated in the yard to be taken to another site and dumped, payment shall be made in accordance with the utilisation rate for the respective area (with the respective minimum kilometres).

4.18 Leftover 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) If returned concrete is resold the carrier will be paid for the returned load on the basis of a 3 m cubed minimum for all quantities 3 m cubed or below to a limit of 0.8m cubed and at the appropriate rate for quantities above 3 m cubed.

(c) When 3 m cubed or more of concrete is left over from a job, return cartage shall be paid at the rate of "B" per km with the following exceptions:

(i) Where the load is rejected because of product fault.

(ii) Where the load taken out is not required.

- (iii) When a truck is used to dispose of leftover concrete, such as a result of a pump line blow-back.
- (iv) When the concrete is not returned to the "source" plant.

In all cases of subparagraphs (i), (ii), (iii) and (iv) of this paragraph, return cartage shall be paid at the rate of "B" with a 3 m cubed minimum, provided that an amount equal to or in excess of 0.8 m cubed is actually carried.

- (d) When a carrier is required to agitate any quantity of concrete within the plant he/she will be paid at the rate of "I" per minute after completion of the first 15 minutes whilst awaiting diversion advice.

#### 4.19 Dumped Concrete -

- (a) Whenever the carrier is requested by the contractor to dump concrete, a dumping fee of "M" will be paid upon the carrier dumping the concrete as directed by the contractor or if a carrier is requested to "wash out" when carrying a quantity of 0.8 m cubed or greater.
- (b) The distance from the originally designated discharge point a carrier is required to travel to dump concrete will be paid at the utilisation rate of "B" for each additional km or part thereof with a minimum of 3 m cubed.
- (c) If a carrier is required to wait at any time after he/she has been directed or is waiting for directions to dump concrete from the contractor, the carrier will be paid by the contractor at the rate of "D" per minute for the total time the carrier must wait.

#### 4.20 Road and Bridge Tolls -

- (a) Prior to the commencement of duties, the contractor will issue each carrier with a mutually agreed number of prepaid toll tickets or equivalent, free of charge. The number of toll tickets issued to the carrier will be maintained by the contractor free of charge to the carrier.
- (b) The carrier will be responsible to the contractor for the proper use of the issued toll tickets and their authorised use is limited to the payment of road and/or bridge tolls which may be encountered whilst the carrier fulfils his/her duties pursuant to this Contract Determination and/or Enterprise Arrangement, and must be agreed to by the Contractor.

### 5. Safety Net

#### 5.1 Safety Net for Full-time Sydney Carriers and Non-Sydney Carriers - 8 Years -

- (a) (i) An earnings safety net and guaranteed minimum earnings of \$14,500 per quarter during the term of the contract of carriage will apply to each full-time Sydney carrier.

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. This will operate from 1 January 1994 to 31 December 1994 and annually thereafter with a pro rata adjustment to be made for the period 1 November 1993 to 31 December 1993.

Example:

Quarter	Actual Earnings	Safety Net Payment
1st	\$16,000	\$ NIL
2nd	\$12,500	\$ 500
3rd	\$16,000	\$ (500)
4th	\$12,000	\$ 1,500
Totals	\$56,500 +	\$ 1,500

= \$58,000, i.e., the annual safety net total.

(This example presumes that the carrier was not unavailable on any day.)

(ii) The contractor will pay to a full-time Sydney carrier an amount not exceeding \$14,500 per quarter to any carrier who has earned less than \$14,500 in the relevant quarter. The amount payable is calculated in accordance with the following formula:

\$14,500 (as varied by the rise and fall formula) - A.

Where:

A = the actual earnings of the carrier during the relevant quarter.

(iii) The make-up payment will be made in the pay period following the end of the relevant quarter.

(b) When a carrier is "unavailable" (as explained in paragraph (d) of this subclause) his/her safety net will be reduced by \$250 per day for each day he/she is unavailable in that quarter to a maximum of \$14,500 per quarter (as adjusted as aforesaid in accordance with movements in the rise and fall formula).

(c) The contractor and the TWU will 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.

(d) The normal work week covers six days, Monday to Saturday, inclusive, but totals an amount of 248 days per annum as listed in Schedule C - Safety Net Reference. A carrier will not be deemed to be unavailable for the purposes of the safety net guaranteed adjustment if:

- (i) the nominated plant is closed or unable to produce;
- (ii) the agitator is unserviceable, except by accidental damage by the carrier;
- (iii) the carrier is on approved annual leave (two weeks per annum);
- (iv) the carrier takes sick leave (eight days per annum);
- (v) the carrier has a rostered day off (three days per annum); or
- (vi) the carrier is notified the prior day that he/she is not required or is rostered off at the direction of the contractor.

Example: A carrier actually earns \$12,100 in the quarter ending 31 January 1994 and was unavailable on 4 days during that quarter.

The contractor will pay to the carrier in the next pay period a safety net amount of \$1,400 calculated as follows:

\$14,500 minus \$12,100 minus \$1,000 = \$1,400

## 5.2 Safety Net for Part-time Sydney Carriers and Non-Sydney Carriers - 5 Years -

(a) (i) An earnings safety net and guaranteed minimum earnings of \$7,250 per quarter during the term of the contract of carriage will apply to each part-time Sydney carrier.

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. This will operate from 1 January 1994 to 31 December 1994 and annually thereafter with a pro rata adjustment to be made for the period 1 November 1993 to 31 December 1993.

Example:

	Actual	Safety Net
Quarter	Earnings	Payment
1st	\$ 5,000	\$2,250
2nd	\$ 8,000	\$ (750)
3rd	\$ 7,250	\$ NIL
4th	\$ 6,000	\$1,250
Totals	\$26,250 +	\$2,750

= \$29,000, i.e., the annual safety net total.

(ii) The contractor will pay to a part-time Sydney carrier an amount not exceeding \$7,250 per quarter for any carrier who has earned less than \$7,250 in the relevant quarter. The amount payable is calculated in accordance with the following formula:

\$7,250 (as varied by the rise and fall formula) - A.

Where:

A = the actual earnings of the carrier during the relevant quarter.

(iii) The make-up payment will be made in the pay period following the end of the relevant quarter.

(b) When a carrier is "unavailable" (as explained in paragraph (d) of this subclause) his/her safety net will be reduced by \$125 per day for each day he/she is unavailable in that quarter to a maximum of \$7,250 per quarter (as adjusted as aforesaid in accordance with movements in the rise and fall formula).

(c) The contractor and the TWU will 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.

(d) A carrier will not be deemed to be unavailable for the purposes of the safety net guaranteed adjustment if:

- (i) the nominated plant is closed or unable to produce;
- (ii) the agitator is unserviceable, except by accidental damage by the carrier;
- (iii) the carrier is on approved annual leave (two weeks per annum);
- (iv) the carrier takes sick leave (eight days per annum);
- (v) the carrier has a rostered day off (three days per annum); or
- (vi) the carrier is notified the prior day that he/she is not required or is rostered off by direction of the Contractor;
- (vii) the carrier is given less than twelve hours notice by the contractor that he/she is required, as a part-time Sydney carrier is not expected by the contractor to provide a standby service.

Example: A carrier actually earns \$6,100 in the quarter ending 31 January 1994 and was unavailable on four days during that quarter.

The contractor will pay to the carrier in the next pay period a safety net amount of \$650 calculated as follows:

\$7,250 minus \$6,100 minus \$500 = \$650.

## 6. Cartage Accounts

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- (a) (i) The contractor shall prepare cartage accounts in accordance with dockets issued by the contractor to the carrier during the course of the accounting period.
- (ii) The carrier's accounts, as prepared by the contractor, shall be itemised on a daily basis which will include data, docket numbers, quantity of loads, kilometres, extra payments, amount per load and job address.
- (iii) All the above items will 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.
- (iv) The accounting period will be two equal periods during each calendar month.
- (v) Cartage accounts will be paid by cheque or electronic transfer by mutual agreement between the carrier and the contractor within 10 working days following the end of each accounting period.
- (vi) Should the carrier not receive the due cheque or electronic transfer in his/her account for any reason beyond his/her control, 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 cheque or electronic transfer is overdue.
- (b) (i) Account discrepancies relating to the immediately preceding pay period shall be settled promptly and in no case later than fourteen days from the date of submission by the carrier.
- (ii) Account discrepancies relating to other than the immediately preceding pay period shall be settled within thirty days from the date of submission of the discrepancy.
- (iii) Where, following settlement of an account discrepancy, an adjustment to payments is required, such adjustment shall be made in the pay period following settlement.
- (c) (i) Where a carrier purchases fuel from time to time from the contractor, the contractor may deduct from the carrier's cartage payments an amount equal to the value of the fuel purchased as authorised by the carrier in writing for each deduction.
- (ii) The cost of the fuel will not be adjusted retrospectively.
- (iii) No other deduction can be made from the carrier's account without his/her prior written authority.
- (iv) When a carrier is overpaid, the contractor shall submit an adjustment account to the carrier which shall be settled within 14 days from the date of submission for the immediately preceding pay period or thirty days for all other claims.
- (v) Following settlement the carrier will promptly provide written authorisation for the adjustment to be deducted from his/her account and such deduction will be for the account following settlement.

#### 7. Living Away from Home Allowance

- (a) A carrier engaged in work which precludes him/her from reaching his/her usual place of residence at night shall receive the benefits and conditions as detailed in the award.

This subclause shall not apply to movements within the metropolitan areas of Sydney, Newcastle and Wollongong.

- (b) Where a carrier is required to transfer to a working area which precludes him/her from returning to his/her normal place of residence each night, the contractor wherever possible will provide the carrier with at least twenty-four hours prior notice of the request.
- (c) Where a carrier is transferred outside his/her normal working area, such transfer will be for a period not exceeding

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seven days duration or longer by mutual agreement and will be done from a cyclic transfer roster.

- (d) (i) Transfer payments in addition will 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.
- (ii) A transfer docket must be issued by the contractor to the carrier prior to departure, wherever possible, or otherwise on arrival at the destination.
- (iii) Should a transfer be cancelled or redirected, the relevant transfer docket will be adjusted by the contractor immediately on the carrier's return to the plant from which he/she was originally transferred.

#### 8. Statutory Requirements and Insurance

- (a) (i) 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/her motor lorry and the carrier shall ensure payment of all lawful fees, licences and taxes in relation thereto.
- (ii) Any variation in statute requirements will vary the cartage rate accordingly.
- (b) A carrier shall arrange insurance cover which shall be kept current whilst working under this Enterprise Arrangement in respect of:
  - (i) motor vehicle comprehensive or third party property;
  - (ii) motor vehicle third party/person;
  - (iii) workers' compensation for the permanent driver as well as a casual driver;
  - (iv) public liability cover to the value of \$5 million;
  - (v) public liability for agitator damage (extension);
  - (vi) public liability for wrong delivery (extension).
- (c) (i) All relevant insurance policies are to be submitted to the contractor for perusal and verification and return prior to the commencement of the operation.
- (ii) Thereafter such policies will be produced on request.
- (iii) The carrier will not provide photocopies of any documentation but will produce original documents for sighting and verification only.

#### 9. Loading

##### (a) Size of Load -

- (i) 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.
- (ii) Each carrier shall be loaded to his/her maximum legal capacity or 5.0m  where 5.0m required minimum legal carrying capacity in paragraph (ii) of subclause (c) of clause 11, Availability of a Suitable Vehicle, wherever possible except in the case of a single load or message.

##### (b) Loading Order -

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- (i) The initial daily starting order will be in accordance with a cyclic roster.
  - (ii) Thereafter all trucks will be loaded in order of their return to the plant with the exception of:
    - (a) Mini mix loads (less than 3 m cubed).
    - (b) Single load or message greater than the mixer capacity or legal carrying capacity of the truck next in line.
    - (c) Trucks with returned concrete.
  - (iii) The contractor will operate a fleet of vehicles driven by its employees. The contractor will exclude such vehicles from duty from time to time so as to achieve an optimum utilisation of the concrete contract carrier fleet.
  - (iv) The contractor's employee driven vehicles will not be preferentially loaded.
  - (v) The initial loading time and the initial plant from which such loading shall take place will be notified by the contractor to each carrier before the close of business on the previous day.

#### 10. Hazardous Approach to Job Site

- (a) (i) A carrier shall have the right to refuse to enter upon ground which he/she 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 who has refused entry will not be paid for the delivery or return cartage unless the load has been diverted to another job, in which case his/her delivery to the alternative location will be paid as if it were a new delivery from the plant where batched to the alternative location.
  - (ii) If, however, the carrier has notified the plant of the unsafe or hazardous job site and/or approach but attempts unsuccessfully to enter, he/she will be paid 50 per cent of his/her cartage rate to and from the delivery site even if the delivery is ultimately completed, as above.
  - (iii) 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 will be paid the total cartage rate to the job site plus return cartage if the load is returned to the plant if instructed by the contractor, unless the load is diverted to an alternative location in which case the carrier will be paid in accordance with subclause 4.17, Diverted Loads, of clause 4, Cartage Rates.
  - (iv) If the carrier is required to wait for instructions from the plant he/she will be paid at the rate of "D" per minute for the total time he/she is required to wait after he/she has notified his/her plant.
- (b) Bogged Vehicles -
- (i) Where a carrier goes beyond the kerb to complete a delivery and his/her vehicle becomes bogged or is otherwise rendered inoperative as a consequence of such attempted delivery, the contractor will arrange the services of an experienced salvage contractor to extricate the vehicle as soon as possible and will bear all costs for those arrangements.
  - (ii) It will be the contractor's responsibility to 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.
  - (iii) Waiting time will be paid to the carrier from the time the carrier notifies the plant until the time of completion of extrication.
  - (iv) Provided further that the reimbursement provision shall not apply where the vehicle becomes inoperative as a direct

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result of the carrier's gross negligence or deliberate actions.

(c) The carrier shall be responsible for damage to property or vehicle arising from off-kerb delivery. Damage claims are to be settled quickly.

#### 11. Availability of a Suitable Vehicle

(a) 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 will require notification from either party.

(b) (i) No vehicle shall be brought into service without prior notification in writing to the contractor by the carrier.

(ii) The contractor shall have the discretion to refuse to load a vehicle that is unregistered or obviously defective.

If the vehicle is subsequently shown by the Roads and Traffic Authority not to be defective the carrier will be paid as compensation at the rate of "J" per hour or part thereof from the time the load was refused until the contractor agrees to load the vehicle, with a maximum of eight hours per day together with any additional statutory charges.

(c) (i) A full-time Sydney carrier is required to operate, within the first two years of the commencement of this Enterprise Arrangement, a vehicle that has a minimum legal carrying capacity of 5.2 m cubed, provided that the contractor supplies a mixer of weight not exceeding 2,700 kg plus an allowance of 200 kg for water and oil. The vehicle must be capable of and adequately powered to take a hydraulic mixer with rear or front power take-off. Where a carrier replaces his/her vehicle the vehicle must be provided with a rear power take-off.

(ii) A Country Carrier - 8-year Contract, is required to operate, within the first two years of the commencement of this Enterprise Arrangement, a vehicle that has a minimum legal carrying capacity of 5.0 m cubed, provided that the contractor supplies a mixer of weight not exceeding 3,100 kg plus an allowance of 200 kg for water and oil. The vehicle must be capable of and adequately powered to take a hydraulic mixer with rear or front power take-off. Where a carrier replaces his/her vehicle the vehicle must be provided with a rear power take-off.

(d) An unserviceable vehicle shall be repaired as soon as practicable.

(e) Where a carrier is unable to report for work with his/her vehicle he/she shall arrange for the contractor to be informed at the earliest possible moment of the reason and the anticipated period of absence.

(f) When a carrier is required to submit his/her vehicle to the Road and Traffic Authority for annual inspection, he/she shall inform the contractor four weeks prior to his/her registration renewal date or on receipt of his/her inspection notification, whichever is the earlier. If a reinspection is required due solely to a defective agitator, then a transfer fee of "G" per km or part thereof will 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. In addition, the contractor will pay the carrier at the rate of "N" per hour or part thereof for all time lost each day that he/she is prevented from performing his/her duties pursuant to this Enterprise Arrangement to a maximum of eight hours each day.

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

(ii) Any current approved vehicle being replaced will have a rear-mounted power takeoff so that the contractor can attach all equipment necessary to operate its hydraulic agitator. The boundary of the carrier's responsibility in this matter will end at the provision of a bare power take-off drive shaft.

#### 12. Responsibility for Load

(a) A contractor will ensure that the load is batched, with the intent that the quantity of water required to adjust the slump does not exceed 10 per cent of the total water required to bring that load up to specification.

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- (b) (i) The contractor will provide the carrier wherever possible with written notice twenty-four hours prior to any intended major changes in concrete mix ingredients which may change the characteristics of the concrete and will include any regular changes in the notification such as changes due to summer and winter.
- (ii) Should the contractor change the concrete ingredients without written notification to the carrier prior to batching, the contractor will automatically assume the slump responsibility of the concrete and the carrier will be paid for all cartage at the full rate without penalty.
- (c) (i) A carrier shall ensure that the load is properly mixed as required by the contractor's written instruction and that the slump of the concrete will be in accordance with the following limits immediately prior to discharge:
- (a) Slump above 110 millimetres - a tolerance of plus or minus 30 millimetres.
- (b) Slump greater than 80 and less than 110 millimetres - a tolerance of plus or minus 20 millimetres.
- (c) Slump less than or equal to 80 millimetres - a tolerance of plus or minus 15 millimetres.
- (ii) 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 above specification.
- (iii) Should the carrier be requested to attempt to adjust and/or maintain the slump of his/her load to a closer tolerance than that above or after the contractor has removed the carrier's ability to add water then he/she may do so but on the understanding that any rejected load on the basis of not being within the nominated slump tolerance will be paid by the contractor at the rate of 50 per cent of the applicable cartage rate to and from the job site when agreed by the contractor. Further, all loads that are accepted on site as within the nominated slump tolerance will be paid by the contractor at the rate of 115 per cent of the applicable cartage rate to the job site.
- (iv) The agitator drum must be kept turning at all times when it contains concrete.
- (d) (i) 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 or contamination.
- (ii) Any failure to report any obvious unusual feature arising from a visual inspection shall be dealt with in accordance with clause 24, Disputes Procedure.
- (iii) Subject to subclause (e) of this clause, the carrier will not be responsible or have his/her cartage payment rejected or withheld due to undetected irregularities of the load save for slump.
- (e) 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 will not be paid for the cartage with the exception of the circumstances described in paragraphs (ii) and (iii) of subclause (c) of this clause.
- (f) (i) At the job site a carrier shall make reasonable endeavour and it will be the carrier's responsibility to contact the plant immediately by two-way radio when a problem arises in obtaining a signature from the customer as required by the contractor.
- (ii) 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.
- (iii) Should a delay be incurred by the carrier in obtaining the nominated signature, then waiting time at the rate of "D" per minute will be paid to the carrier for all time that he/she is required to wait for the nominated person.
- (g) (i) A carrier shall endeavour to collect money from COD customers for all concrete charges, including waiting time. All moneys collected shall be submitted in full (as soon as possible) to the plant manager or allocator, who shall immediately issue the carrier with a receipt.

(ii) A contractor will not pay a carrier the waiting time encountered with a COD customer if the carrier has not requested payment for such waiting time from the customer.

(h) (i) 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.

(ii) Telephone costs are to be reimbursed by the contractor to the carrier.

(iii) Carriers are not required to carry a float for the purposes of providing a change facility.

(iv) The carrier will take all due care for any money collected.

(i) 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 gross negligence or deliberate action.

(j) 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.

(k) Where an additive is added after batching, the carrier is automatically absolved of any responsibility for the slump.

(l) The concrete specification as shown on the cartage docket cannot be changed by any party after batching.

(m) (i) Where returned concrete is re-used and is more than 1 <sup>hour</sup> old at the cartage is greater than 0.8 m cubed and topped up, the contractor will assume full responsibility for the load, thus excluding the carrier from his/her responsibility for the slump of the load.

(ii) The carrier will 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/her in breach of his/her vehicle's legal load limit.

(n) Limit of Carrier's Liability -

(i) Subject to paragraph (ii) of this subclause, the maximum limit for a carrier's liability under the Contract Determination and this Enterprise Arrangement shall not exceed the total documented costs of the load material for the respective individual load and in any case shall not exceed an amount of \$500 (plus CPI adjustment).

(ii) 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 8, Statutory Requirements and Insurance, is voided.

### 13. Breakdowns

(a) (i) Neither the contractor nor the carrier shall be responsible to each other for any loss resulting from plant mixer and/or vehicle breakdowns, except in the situation set out in subclause 4.13 of clause 4, Cartage Rates.

(ii) In the situation of a plant breakdown sufficient trucks should be transferred to the plant where the work is being diverted to, in order to provide sufficient customer service.

(b) (i) Should a mixer breakdown occur, the carrier will not be responsible for the removal of the concrete. The carrier is not required to participate in the removal of concrete from the agitator, save for the operation and positioning of the agitator to assist in concrete removal.

(ii) To provide this service the carrier will be paid at the rate of "K" per hour or part thereof.

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#### 14. Two-way Radio and Ultra Log Equipment

- (a) The carrier shall agree to the installation of two-way radio and ultra log equipment on his/her 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.
- (b) When such equipment is removed the contractor shall make good the bodywork.
- (c) The carrier shall take due care to ensure adequate protection of the equipment.
- (d) The equipment is to be operated and appropriate procedures are to be followed as laid down by the contractor.
- (e) The contractor shall be responsible for the maintenance of the two-way radio and ultra log equipment.
- (f) 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

- (a) (i) The contractor shall be responsible for the provision of a mixer with a mixing capacity of not less than 5 m cubed 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 new bolts, clearance lights, mud flaps and protective chasis/agitator cover plate acceptable to the carrier.
- (ii) If an agitator is reasonably required by the carrier or the contractor to be removed at any time for any reason, the total cost of agitator removal and replacement will be borne by the contractor.
- (b) After the initial fitting referred to in subclause (a) of this clause, the carrier shall be responsible for the mixer being properly secured to the vehicle. The carrier will be responsible for all maintenance and replacement of clearance lights, globes and mud flaps. Mudflaps will be supplied to the carrier by the contractor free of charge.
- (c) The carrier by mutual agreement may have the U bolts adjusted by a qualified mechanic and the costs incurred will be paid by the contractor, provided that the contractor's workshop shall have the opportunity of undertaking the adjustments. The appropriate transfer fees will be paid to the carrier by the contractor.
- (d) (i) The mixer shall remain the property of the contractor and on completion of its use will 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 hours.
- (ii) The contractor will pay to the carrier a transfer fee of "G" per km or part thereof to and from the nominated location.
- (iii) The carrier will be paid at the rate of "N" per hour by the contractor to allow for the contractor's removal of the mixer from the carrier's vehicle.
- (e) Hydraulic Mixers -
  - (i) The contractor will be responsible for the provision of a crank shaft protection mechanism located between the hydraulic drive and the power take-off unit.
  - (ii) All modification and fitting work is to be done expeditiously and in any case not longer than five working days. The carrier will be paid by the contractor at the rate of "N" per hour or part thereof for any and all time in excess, with a limit of eight hours per day.
  - (iii) The contractor will provide regular maintenance in accordance with the mixer manufacturer's recommendations at no cost to the carrier.

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16. Mixer Care and Maintenance

- (a) 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.
- (b) (i) 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.
- (ii) All cleaning materials and equipment necessary for cleaning the agitator will be supplied by the contractor and shall comply with any and all statutory requirements and regulations.
- (c) The carrier shall report any and all apparent maintenance requirements to the contractor.
- (d) (i) The carrier shall convey the mixer to the workshop for repairs or maintenance as requested by the contractor. Such repair or maintenance requirements will be carried out wherever possible outside normal carrier's operating hours and all work will be completed as soon as possible and without delay. If any delay is experienced by the carrier for reasons beyond his/her control, the carrier will be paid by the contractor at the rate of "N" per hour or part thereof to a maximum of eight hours per day.
- (ii) The carrier will be paid for transfers to and from the workshop at the rate of "G" per km or part thereof and the forward and return journeys will be treated separately. If the carrier is required to wait for his/her vehicle he/she will be paid at the rate of "K" per hour or part thereof. If he/she is not required to wait, a means will be provided by the contractor at the contractor's cost to convey the carrier to his/her place of residence and return him/her to the workshop as and when required.
- (e) (i) The carrier shall be responsible for minor maintenance as described below:
- greasing;  
cleaning;  
replacement of spark plugs;  
changing oil, air and fuel filters.
- (ii) Subject to the provisions of clause 15, Provision of Mixer, all parts, tools, materials and equipment will be provided by the contractor.
- (f) (i) 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.
- (ii) All de-dagging will be carried out strictly in accordance with the agreed procedure and in compliance with all statutory health and safety regulations.
- (iii) The carrier's responsibility in order that the de-dagging may take place will be limited to the provision of his/her labour only. All other personnel and/or equipment is to be provided by the contractor at the cost of the contractor. The carrier shall be paid at the rate of 2 x "K" per hour from the time the carrier is required to be available to perform the de-dagging process until its completion.
- (iv) All de-dagging work will be conducted outside normal working hours or otherwise by mutual agreement between the carrier and the contractor.
- (g) The contractor shall be responsible for all major maintenance.
- (h) The carrier is responsible for provision of the fuel to run the truck and mixer.
- (i) The contractor is responsible for the provision of oil and grease for the mixer.

(j) The contractor's agitator is to be parked only in places approved of by the contractor. The carrier is not responsible for any loss or damage to the contractor's equipment when so parked.

(k) A carrier will 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

(a) The contractor shall arrange for periodical painting and/or signwriting of the mobile unit.

(b) (i) All painting is to be done expeditiously, weather permitting, in not more than five 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 four years. The painting will be undertaken by a recognised truck painting contractor and the standard of finish will be not less than that provided by tradesmen specialising in this field.

(ii) All necessary surface preparations and procedures recommended by the paint manufacturers will be strictly adhered to in order to ensure a final product acceptable to the carrier.

(c) The mobile units will be painted every four years or a longer or shorter period by mutual agreement with the carrier.

(d) (i) For the purposes of this clause "mobile unit" shall mean the complete truck and agitator, including all their components and external surfaces without exception.

(ii) The agitator should be removed in order to paint the mobile unit.

(e) In the event that the paint finish of the mobile unit is of a standard unacceptable to the carrier, the carrier will advise the contractor prior to the vehicle being removed from the workshop.

(f) For all times in excess of five working days or where a vehicle has to be returned for repainting or painting repairs, the carrier will be paid by the contractor at the rate of "N" per hour or part thereof with a maximum per day of eight hours plus all relevant transfer fees, waiting time and the reimbursement of all travelling costs.

#### 18. Union Membership and Delegates

(a) Carriers and drivers who are financial members of the union shall have preference of engagement with the contractor.

(b) A Carrier appointed as Yard Delegate shall, upon notification thereof to the contractor by the branch or sub-branch Secretary of the union, be recognised as the accredited representative of the union.

(c) The appointed union delegate or executive committee member will be provided with reasonable access to and the use of a telephone free of charge for union matters, provided the site staff are consulted.

#### 19. Manning

(a) 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/her standard of efficiency after the required training period to the satisfaction of the contractor.

(b) A carrier when employing an alternative driver shall engage the driver under the terms and conditions of the award and shall require the driver to observe the terms of this Enterprise Arrangement in the operation of the vehicle.

(c) A carrier shall not permit any person to operate his/her vehicle without the prior written approval of the contractor.

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- (d) A carrier shall be the permanent operator of the vehicle, except on a period of absence approved by the contractor.
- (e) 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 Procedure, shall be observed.
- (f) (i) A carrier shall ensure that the driver of the vehicle holds the appropriate class of driver's licence as required by the Roads and Traffic Authority.
- (ii) In the event that the driver has his/her licence suspended or cancelled, the carrier must immediately inform the contractor in writing of that fact.

## 20. Uniforms

- (a) A carrier and/or his/her driver shall maintain an acceptable neatness of dress and appearance.
- (b) (i) 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.
- (ii) A satisfactory quantity of clothing is to be supplied with a minimum of four days' fresh apparel.
- (iii) Clothing issues to carriers will be on a points system per item. From the date of this Arrangement each carrier will be entitled to receive uniforms totalling eight points per year for a maximum of two years, at which time future issues will be limited to replacement on return of any previously issued item (to a maximum of six points per annum).

Uniform item points are as follows:

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

- (c) New entrants into the industry must receive an initial double uniform issue.
- (d) Wet weather and safety gear is to be supplied as per clause 29, Plant Stored Carrier's Equipment.
- (e) Replacement of previously issued uniforms will be on the basis of replacement on return of used items.

## 21. Amenities

All amenities are to comply with the *Factories, Shops and Industries Act 1962*, and are 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 will conduct themselves in a tidy and appropriate manner.

## 22. Fleet Size

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 Enterprise Arrangement.

## 23. Commitment to Training

- (a) The parties to this Enterprise Arrangement recognise the mutual benefits to be gained through a greater commitment to training and, accordingly, each party commits itself to attending appropriate training programs in order to increase the competitive performance of the contractor and its carriers. Carriers would be required only to attend training programs

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outside the contractor's concrete production hours where mutually agreed.

- (b) When training is undertaken at the request of the contractor it will be undertaken at no cost to the carrier.
- (c) If a carrier is required to attend such training the carrier shall be paid at the rate of "K" per hour or part thereof plus the appropriate penalty rates plus all allowances covered by the award plus travelling expenses to and from his/her residence at the rate of "L" per km or part thereof.
- (d) A prospective carrier shall spend a minimum of two 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, followed by one day field testing under the supervision of the contractor's testers.

#### 24. Disputes Procedure

- (a) It is understood and accepted by all parties to this Enterprise Arrangement that work shall continue normally during all negotiations and any necessary proceedings.
- (b) When there is a disagreement, the carrier shall attempt to resolve the matter by negotiating with the contractor or his/her representative on site.
- (c) Where the matter is not resolved, the yard carrier delegate shall attempt to resolve the matter by negotiation with the contractor or his/her representative on site. Where applicable, the carrier's executive delegate or his/her representative may be party to further negotiations with the contractor.
- (d) If the matter remains unresolved, the Chairman of the industry concrete section or his/her representative of the union, along with an official of the union and the company's executive delegate, shall be party to continued negotiations with the contractor.
- (e) If the matter remains unresolved, the Secretary, Assistant Secretary or the representative of the union may be party to continued discussions/negotiations with the relevant representative of the contractor.
- (f) If the matter remains unresolved it will be notified to the Industrial Relations Commission of New South Wales by the union or the contractor pursuant to section 698 of the *Industrial Relations Act 1991*.

#### 25. Local Rules and Conditions

Local rules and conditions shall continue in force insofar as they do not conflict with the provisions of this Enterprise Arrangement and shall be limited to those contained on a list mutually agreed to by the carrier and the contractor, which shall have a fixed term.

#### 26. Occupational Health and Safety

- (a) The contractor will establish a Safety Committee with a maximum of two carrier representatives elected to the committee.
- (b)
  - (i) The contractor will pay each elected carrier's safety officer for any and all time such carrier spends in relation to his/her duties as a safety officer as requested by the contractor.
  - (ii) Such carrier will be paid promptly, but in any case not later than fourteen working days from the date their time is expended.
  - (iii) In addition, the safety officer will be paid by the contractor at the rate of "K" per hour or part thereof plus the award penalty rate travelling time to a maximum of  hour each travel from his/her base plant or place of residence, whichever is the greater, to and from the respective location requiring his/her presence.

## 27. Rostering

- (a) The contractor undertakes that it will operate rosters and plant locations to ensure that all carriers will have the opportunity to cart metres which are as close as possible to the average fleet utilisation meterage applicable during the relevant period.
- (b) The contractor will not roster-off a carrier simply because he/she is earning in excess of the average fleet utilisation meterage applicable during the relevant period.
- (c) Those rosters will include:
  - (i) Daily start cyclic roster.
  - (ii) Daily transfer cyclic roster.
  - (iii) Period (not exceeding one month) transfer cyclic roster.
  - (iv) Roster-off roster (where there are vehicles surplus to customer requirements).

## 28. Concrete Cartage in Alternative Vehicles

Where concrete is transported other than in an agitator then the cartage rate will be negotiated between the contractor and the carriers at the relevant time.

## 29. Plant Stored Carrier's Equipment

The contractor will 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.

## 30. Termination of Engagement

- (a) The contractor may terminate a carrier's contract of carriage without compensation only in the event of major theft or serious and wilful misconduct by the respective carrier proven in a court of law or acknowledged and accepted by the carrier.
- (b) If the contractor wishes to terminate a carrier's contract of carriage other than pursuant to the provisions of subclause (a) of this clause, the contractor shall:
  - (i) provide the carrier with a minimum of thirteen weeks written notice of termination of the carrier's contract of carriage and if the contractor provides shorter notice than the said thirteen weeks, then in addition to the compensation payable pursuant to clause 31, Compensation Upon Termination of Contracts of Carriage, the contractor will pay to such carrier an amount equal to 20 x "J" per week for the period less than such thirteen weeks of notice calculated on a reducing daily basis; and
  - (ii) pay to the carrier compensation equal to and calculated in accordance with the provisions of the said clause 31.

## 31. Compensation upon Termination of Contracts of Carriage

31.1 Compensation payable to Full-time Sydney Carriers and Non-Sydney Carriers 8 Years - The amount of compensation payable by the contractor to a full-time Sydney carrier upon termination of his/her contract of carriage (in addition to any amount payable under paragraph (i) of subclause (b) of clause 30, Termination of Engagement) shall be:

- (i) If the contract of carriage is terminated within the first three years of the term, an amount calculated in accordance

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with the following formula:

$$\$80,000 \times D/E.$$

(ii) If the contract of carriage is terminated after the expiry of the first three years of the term, an amount calculated in accordance with the following formula:

$$\$80,000 \times B/C \times D/E$$

Where:

B = the number of months between the date of the notice of termination and the date of expiry of the term of the contract of carriage had the notice of termination not been given;

C = the total number of months remaining in the contract of carriage after the completion of the first three years of the term;

D = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the expiration of the notice of termination; and

E = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the commencement of the term of the contract of carriage.

(iii) First Example: If a 10-year contract of carriage is terminated on 30 October 1997; the CPI Index as at 30 October 1993 was 100 and the Index as at 30 October 1997 was 110, the amount of compensation payable would be:

$$\$80,000 \times 72/84 \times 110/100 = \$75,428.$$

Second Example: If a 10-year contract of carriage is terminated on 30 October 1998; the CPI Index as at 30 October 1993 was 100 and the Index as at 30 October 1998 was 110, the amount of compensation payable would be:

$$\$80,000 \times 60/84 \times 110/100 = \$62,857.$$

31.2 Compensation payable to Part-time Sydney Carriers and Non-Sydney Carriers 5 Years - The amount of compensation payable by the contractor to a part-time Sydney carrier upon termination of his contract of carriage shall be:

(i) If the contract of carriage is terminated within the first three years of the term, an amount calculated in accordance with the following formula:

$$\$40,000 \times D/E.$$

(ii) If the contract of carriage is terminated after the expiry of the first three years of the term, an amount calculated in accordance with the following formula:

$$\$40,000 \times B/C \times D/E.$$

Where:

B = the number of months between the date of the notice of termination and the date of expiry of the term of the contract of carriage had the notice of termination not been given;

C = the total number of months remaining in the contract of carriage after the completion of the first three years of the term;

D = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the expiration of the notice of termination; and

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E = the Consumer Price Index (All Groups) Index Number for Sydney published by the Australian Bureau of Statistics applicable to the quarter ending immediately prior to the commencement of the term of the contract of carriage.

(iii) First Example: If a 5-year contract of carriage is terminated on 30 October 1997; the CPI Index as at 30 October 1993 was 100 and the Index as at 30 October 1997 was 110, the amount of compensation payable would be:

$$\$40,000 \times 12/24 \times 110/100 = \$22,000$$

Second Example: If a 5-year contract of carriage is terminated on 30 October 1998; the CPI Index as at 30 October 1993 was 100 and the Index as at 30 October 1998 was 110, the amount of compensation payable would be:

$$\$40,000 \times 0/24 \times 110/100 = \$0.$$

### 31.3 Plant Reorganisation -

(i) Where the contractor reorganises a plant so that the available work falls below a level which is viable for the carrier or carriers at that plant, then the contractor may transfer the carrier or carriers to another plant.

(ii) If a carrier refuses to accept a transfer in the circumstances of paragraph (a) of this subclause, then the matter shall be dealt with through the Disputes Procedure. In all circumstances, the carrier shall remain free to resign from the fleet or sell his contract subject to the terms of this Enterprise Arrangement.

### 32. Assignment of Contract of Carriage

(a) 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:

(i) 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.

(ii) The contractor, if it desires to purchase the balance of the term of the contract, shall, within thirty days after receipt of such notice, cause to be delivered to the carrier a written notice of acceptance of the offer, together with a cheque made payable to the carrier in an amount calculated as set out in clause 31, Compensation Upon Termination of Contracts of Carriage, or some lesser amount as otherwise agreed between the contractor and the carrier.

(iii) If the contractor does not, within the said period of thirty 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 Enterprise Arrangement, such approval not to be unreasonably withheld.

(b) 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 major theft or serious and wilful misconduct as specified in subclause (a) of clause 30, Termination of Engagement), 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 paragraph (i) of subclause (a) of this clause, for a period of at least six months following the date of service upon it of the said notice of desire to sell.

(c) 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

(a) Operational Procedures - The contractor will 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.

(b) Contractor's/Carrier's Liability - The contractor will indemnify the carrier against all claims for cost, damages and/or legal expenses and any further liabilities that may arise whilst performing his/her duties as a contractor's carrier in accordance with the contractor's operational procedures or, if none are available, the usual custom and practice, save for liability arising as a direct consequence of the carrier's gross negligence or deliberate action.

#### 34. Contractor's Subsidiary Companies

The contractor undertakes that it will not use any of its subsidiaries or related corporations to restrict or reduce the optimum utilisation of its contract carrier fleet.

#### SCHEDULE A - UTILISATION CARTAGE RATES FOR FULL-TIME SYDNEY AND NON-SYDNEY CARRIERS

SEE AWARD HARD COPY FOR DETAILS.

The cartage rates are based on the following:

- (i) The contractor will not require carriers' trucks to start or remain at any plant whenever customer demands can be adequately met by a reduced fleet size.
- (ii) A utilisation factor of 75 per cent of 56.5 hours per week for 52 weeks per year as a result of rostering where customer demands have been met. Any increase to the utilisation factor will increase the rate accordingly.
- (iii) Carriers to provide a relief driver for two weeks of their entitled four-week annual leave, if required.
- (iv) Carriers to provide a relief driver for three days of their entitled twelve RDOs per annum, if required.
- (v) Carriers are not required to provide a relief driver for their entitlement of eight days per annum sick leave.
- (vi) A minimum lead of 5 km will be paid for any plant where the average cartage distance is less than 5 km. All other plants will have a minimum 3 km lead. This will apply to full-time and part-time carriers.
- (vii) Surcharges based on Schedule D are fixed at \$2.00 and are subject to adjustment at the rise and fall reviews only in accordance with variations in CPI.
- (viii) With rostering + \$10,000 profit/interest fixed costs + \$1,000 profit/interest running costs.
- (ix) Non-Sydney Utilisation Rate - The non-Sydney Utilisation Rate will be the same as that for full-time Sydney carriers but with the following exceptions:
  - (1) The fleet average will be the average of the contract carriers based in each particular plant for the respective quarter.
  - (2) Each plant will have its own particular Utilisation Rate in accordance with this schedule based on its own contract carrier fleet average (e.g., 3000m cubed, 3600m cubed, 4200m cubed etc.).
  - (3) Each plant will have its own particular quarterly Average Lead for the respective quarter, based on its own contract carrier fleet average.
  - (4) Between 1 November and 31 December 1994 each plant will start on the annualised Utilisation Rate as specified in Schedule D - Analysis of Extra Cartage Costs, equal to that for the period 1 November 1993 to 31 October 1994 for the operative plant. This rate will be adjusted on 1 January 1995 to the new annualised rate relating to the actual average m cubed paid for the first quarter, annualised.

This rate will then apply to the second quarter.

At the end of the second quarter the rate will be again adjusted to establish a rate for the third quarter, but this time taking into account the average m cubed paid for the first two quarters. This process will be adjusted in like manner until the end of the fifth quarter when a full year history has been established and the "moving annual total" process used.

(5) In addition, the average lead will be monitored for each fleet and at the end of each quarter will establish the average lead for the next quarter.

(6) Where the fleet average lead for a particular plant for the quarter exceeds 10km, the Loading Fee for the next quarter will be increased by \$0.50 per m cubed for each km in excess of the fleet average lead for the previous quarter for all loads carted in the next quarter in excess of 10km.

(7) The first 30km of each truck transfer is included in the "surcharge" portion of the Utilisation Rate. Transfers in excess of 30km will be paid at the following rates after the first 30km:

- (i) General Transfer - "H" (\$1.00/km)
- (ii) Workshop Transfer - "G" (\$1.48/km)

NB: The forward and return journeys will be treated separately.

#### SCHEDULE B - REVIEW OF CARTAGE RATES RISE AND FALL DATA BASE AS AT 23 JULY 1993

SEE AWARD HARD COPY FOR DETAILS.  
SCHEDULE C - SAFETY NET REFERENCE

Break up of 248 days per paragraph (d) of subclause 5.1 of clause 5, Safety Net:

50 weeks x 6 days = 300 days

Per annum

Less:	RDOs	9 days
	Saturdays	25 days
	Public Holidays	9 days
	Picnic Day	1 day
	Sick Leave	8 days
	Total	52 days
	BALANCE =	248 days

#### SCHEDULE D - ANALYSIS OF EXTRA CARTAGE COSTS

Plant Summary	Metres Sales Qty	Total Extras Unit Rate \$	Extra Cartage \$	Unit Rate \$	Waiting Time \$	Unit Rate \$	Surcharges \$	Unit Rate \$	Truck Transfers \$	Unit Rate \$
Jan. 93	25,357	2.67	29,579	1.17	25,025	0.99	6,743	0.27	6,309	0.25
Feb. 93	28,563	2.20	30,266	1.06	25,319	0.89	5,123	0.18	2,057	0.07
March 93	34,397	2.35	42,226	1.23	28,912	0.84	6,547	0.19	3,283	0.10
April 93	27,665	1.96	26,547	0.96	21,091	0.76	2,919	0.11	3,666	0.13
May 93	39,705	1.78	34,386	0.67	26,478	0.67	6,239	0.16	3,599	0.09

June 93	34,81 1	1.98	32,595	0.94	26,307	0.76	4,021	0.12	6,058	0.17
TOTAL	190,4 98	12.13	195,59 9	1.03	153,132	0.80	31,592	0.17	24,972	0.13
Average	31,75 0	2.13	32,600		25,522	0.80	5,265	0.17	4,162	0.13

#### SCHEDULE E - CARTAGE RATES FOR PART-TIME SYDNEY CARRIERS

LOADING FEE \$17.66  
SURCHARGES \$2.28

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SUB-TOTAL \$19.94

RATE/m cubed km @ 9 km  
LEAD = \$0.65 per km/m cubed \$25.79

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The cartage rates are based on the following:

- (i) The contractor will not require carriers' trucks to start or remain at any plant whenever customer demands can be adequately met by a reduced fleet size.
- (ii) Carriers to provide a relief driver for two weeks of their entitled four weeks annual leave, if required.
- (iii) Carriers to provide a relief driver for three days of their entitled twelve RDOs per annum, if required.
- (iv) Carriers are not required to provide a relief driver for their entitlement of eight days per annum sick leave.
- (v) A minimum lead of 5 km will be paid for any plant where the average cartage distance is less than 5 km. All other plants will have a minimum 3 km lead. This will apply to full-time and part-time carriers.
- (vi) Surcharge based on Schedule D - Analysis of Extra Cartage Costs, with variations to the consumer are fixed at \$2.00 and subject to rise and fall review in accordance with variations to the consumer price index for Sydney.
- (vii) With rostering + \$10,000 profit/interest fixed costs + \$2,000 profit/interest running costs.

#### SCHEDULE F - DELETED

#### SCHEDULE G - UTILISATION RATE CALCULATION EXAMPLE - TRUCK UTILISATION FOR THE MONTH OF MAY 1994

Total Loads Paid 400  
Total Truck No. 4  
Non-attendance Days -

Annual Leave 2  
Sick Leave -  
RDO -  
Vehicle Break Down 1  
Bereavement -  
Special Approved Leave -  
Unauthorised Leave -  
Loaded Late Arrival -

Failure to report for work 2

Total Days Unavailable 5

Total Available Days 24

Thus:  $5/24 =$  Trucks Unavailable for the Month of May

Thus:  $4-0.2 = 3.8$

Thus:  $\frac{400}{3.8} = 105$  Loads/ truck

= 1260 loads per annum annualised

N.B: (a) Saturdays are counted as

1 day, e.g., May '94 = 22 days +

(b) First 3 months based on 1200 loads then recalculated every 3 months, after using actual figures until apply May annual total.

#### SCHEDULE H - MAP OF SYDNEY METROPOLITAN AREA

(See UBD Metropolitan Map of Sydney and Surrounding Districts)

#### APPENDIX "X"

Note: Symbols 'C' through to 'O' inclusive, will be adjusted effective 1/7/97 and will be thereafter adjusted at the six monthly review of cartage rates.

#### ANNEXURE B

##### 1. New Agreement:

(a) Pioneer agrees that it will enter into a new cartage agreement with the TWU to cover its existing Sydney Metro and Country NSW concrete carriers which new agreement will come into effect on 1 November 2003. There will need to be a resolution of dome viability issues in county areas and performance issues in Sydney with respect to a small number of contract carriers.

(b) The terms of the new agreement are still to be negotiated in their entirety but the agreement will be no less than ten (10) years duration for carriers with trucks aged between 0 and 4 years (Metro) and 0 and 8 years (Country) as at 1 November 2003 and five years duration for Metro carriers with trucks aged between 4 and 8 years as at 1 November 2003.

(c) In recognition of lead times for the purchase of new trucks, Pioneer will accept a firm Proof of Order from a carrier for the purposes of compliance with the truck criteria detailed in clause (b) above. If the carrier does not complete the purchase of a new truck within a reasonable time then Pioneer will be entitled to terminate the contract of that carrier.

(d) The new agreement will be registered pursuant to the provisions of the *Industrial Relations Act, 1996* (NSW).

##### 2. Cartage Rates

(a) The parties will continue to negotiate a new cartage rate to operate under Annexure A of this Contract Determination. While those negotiations take place Pioneer will continue paying its carriers in accordance with the cartage rate structure applicable under the Agreement.

The parties agree that the current method of Rise and Fall calculations is working satisfactorily. The two disputes over Saturday work and the mapping tool are before the Industrial Relations Commission of NSW and those proceedings will continue to resolution.

(b) Pioneer will pay carriers under the cartage rate structure under Annexure A of this Contract Determination until either a new cartage rate is agreed between the parties or until 31 October 2005 whichever event occurs first.

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(c) If the parties reached 31 April 2005 without a new cartage rate being agreed then the matter will be referred to the Industrial Relations Commission of New South Wales for conciliation.

### 3. Security of Tenure

(a) Should a carrier with more than twelve (12) years service with Pioneer as at 31 October 2003 wish to sell or assign his contract of cartage after 1 November 2003 then Pioneer will not exercise its option to purchase that contract on the open market, provided that the purchaser has been approved by Pioneer, however that no more than twelve (12) such long term carriers will be permitted to sell or assign their contracts in any one (1) year. This clause will apply if the carrier achieves 12 years' of service between 31 October 2003 and 31 October 2005.

This clause will apply to both Metro and Country regions (i.e. 12 long term carriers per annum in Country will also be permitted to sell or assign).

(b) Where a carrier with less than 12 years' service with Pioneer (as at 31 October 2003) wishes to sell or assign his contract of carriage after 1 November 2003, then Pioneer will consider whether it will exercise its option to purchase to purchase the contract and advise the carrier accordingly.

(c) No assignment or sale of contracts of carriage will be approved by Pioneer prior to 1 November 2003, except in cases of genuine and extraordinary personal hardship.

(d) Where Pioneer decides to terminate a contract of carriage for any reason, other than serious misconduct and such termination occurs between 1 November 2003 and 1 November 2005 then Pioneer shall give the carrier 13 weeks' notice which will be worked out. At the end of the notice period Pioneer will pay the carrier \$ 33,000 as the agreed termination payment. Pioneer will also offer to buy the vehicle of the carrier for the relevant market value at the date of termination. The parties must negotiate a termination provision to take effect after 1 November 2005.

### 4. Other Contract Terms

(a) Except where they are inconsistent with the provisions of this Annexure B (in which case this Annexure B shall apply to the extent of the inconsistency) the provisions of the Annexure A of this Contract Determination, *mutatis mutandis*, shall continue to apply to the parties until the parties agree on new terms for which new cartage agreement or until 31 October 2005 whichever event occurs first.

(b) If the parties reach 31 April 2005 without having reached agreement on terms for the new cartage agreement then the matter will be referred to the Industrial Relations Commission of New South Wales for conciliation.

### 5. Part-Time Carriers

(a) The existing part time carriers will not be offered ongoing contracts with Pioneer after 31 October 2003.

(b) Pioneer will offer five (5) new full time contracts to members of the existing part-time fleet. Two of those contracts will go to Robert Briggs (Truck 562) and Adam Miller (Truck 566). The other three will go to members of the part time fleet nominated by that fleet. The five carriers must meet the full time contract criteria with respect to supplying new trucks. The full time contracts will have an embargo preventing sale of assignment for 5 years.

(c) Existing part time carriers who do not apply for or are unsuccessful in applying for a full time contract will be offered the choice of:

(i) Full time permanent employment with Pioneer as a concrete truck driver in the Sydney metro area together with financial compensation of ten (10) thousand dollars; or

(ii) Financial compensation of thirty (30) thousand dollars.

It will be a matter for the individual part-time carrier as to whether they choose option (a) or (b) above.

6. Ongoing Negotiations

(a) The parties recognise and agree that this Annexure B represents the first two (2) years of a new agreement which has yet to be settled. Therefore the parties accept that they must use their genuine best endeavours to keep negotiations going so that new provisions and a new cartage rate are in place by 1 November 2005.

(b) The parties will place appropriate emphasis on negotiating new terms for the payment of waiting time and surcharges. It is noted that Pioneer has expressed an intention to collect waiting time and surcharges from customers and make this the basis of payments to carriers. Likewise the carriers have expressed a preference for a flat guaranteed payment in return for accepting a contractual obligation to secure signed dockets from customers and also accepting a financial disincentive for carriers who fail to secure those dockets.

7. The provisions of this Annexure B override any other provision of Annexure A to the extent which those provisions are inconsistent with the provisions of this clause.

8. The document tendered as Exhibit 1 in the proceedings IRC 3469 of 2003 is incorporated as part of this Annexure B and must be compiled with by the parties.

9. The document tendered as Exhibit 2 in the proceedings IRC 3469 of 2003 is incorporated as part of this Annexure B and must be compiled with by the parties.

10. The document tendered as Exhibit 3 in the proceedings IRC 3469 of 2003 is incorporated as part of this Annexure B and must be compiled with by the parties.

**Exhibit 1**

**Memorandum**

To:	Country Concrete Carriers
From:	Rod Brown
Date:	31 March 2003
Subject:	Transfers

Gentlemen,

At the request of the delegates Pioneer has reviewed its position on transfers. Currently transfers are governed by Clause 4.3 of the contract and there has been some controversy about the interpretation of the 30 kilometre limit.

In view of the successful negotiations over a new ten year contract (successful to the point of agreeing on a number of things in principle and an effective status quo for the first two years of the new ten year contract) we have decided that for future transfers will be calculated as follows:

For all country transfers the total distance travelled to and from the delivery site will be calculated less the first 30 kilometres of the trip. I.e. if the total distance travelled there and back is less than 30 kilometres then no transfer will be paid. If the total distance travelled there and back is more than 30 kilometres then a transfer will be paid.

I believe that this now settles this controversial issue and I look forward to a continuation of what has been a quite harmonious relationship to date.

Rod Brown

**Exhibit 2**

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**Pioneer Internal Memorandum**

To:	Concrete Carriers
From:	Leigh Essing
Date:	9 April 2003
Subject:	Heads of Agreement

A number of questions have been asked by carriers as to what are Pioneer's intentions with regards to its New South Wales carrier fleet and its right of termination under clause 3(iv) of the proposed Heads of Agreement sent to the TWU on 28 March, 2003.

I am happy to confirm Pioneer's position for the period covered by the Heads of Agreement. Given the commercial considerations do not indicate any need to change it. I make the point that Victoria was a different situation.

I can also confirm that Pioneer has no intention of embarking on a campaign of terminating any individual carriers.

Therefore for the period covered by the Heads of Agreement pioneer will not exercise its right of termination under Clause 3(iv) of the proposed Heads of Agreement with respect to any carrier who carries out the normal work obligations and who does not commit serious misconduct.

Leigh Essing

**Exhibit 3**

**Internal Memorandum**

To:	Carrier Delegates
From:	Rod Brown
Date:	9 April 2003
Subject:	Country 5 Year Carriers

This memo confirms that we currently have some 5 year Carrier Contracts at the following locations:

PLC2253	Triple JJJ Transport - Gunnedah
PLC2265	ANA Moree - Moree
PLC2216	EDR Pty Ltd - Moree
PLC2295	C & R Southbourne - Gunnedah
PLC2232	Slump Pty Ltd - Blayney
PLC2223	A & E Cameron - Cowra

The agreement with these carriers is that they need to update their current vehicles with a live drive. There is no age criterion for "suitable vehicle", it simply needs to be in acceptable condition with a live drive. If they do this, they will get a new 5 year contract on current terms.

Would you please confirm that this has been accepted by the relevant members.