



(1040)

SERIAL B3550

**TRANSPORT INDUSTRY - GENERAL CARRIERS (THE SMITH FAMILY)  
CONTRACT DETERMINATION**

Schedule of Consolidated Award Published on 23.6.1995 and Subsequent Variations Incorporated

Clause	Award/ Variation Serial No.	Date of Publication	Date of Taking Effect	Industrial Gazette	
				Vol	Page
Award	B3550	23.6.95	First pay period on or after 16.3.95	286	400

## DETERMINATION

### Arrangement

Clause No.	Subject Matter
1.	Purpose and Interpretation
2.	Area, Incidence and Duration
3.	Duties, etc.
4.	Vehicle
5.	Assignment and Transfer of Rights and Indemnity and Release
6.	Redundancies, etc.
7.	Contractor's Insurance Obligation and Indemnity to The Smith Family
8.	Dress
9.	Contractor's Employees
10.	Contractor Not Employee or Agent of The Smith Family
11.	Termination
12.	Suspension
13.	Notice
14.	Basis of Remuneration for Contractors
	Schedule A
	Schedule B
	Schedule C

---

## 1. Purpose and Interpretation

- (a) This contract determination sets out the terms and conditions upon which contractors are engaged by The Smith Family.
- (b) The following words have these meanings in this contract determination unless the contrary intention appears:
- "Act" shall mean the *Industrial Relations Act 1991*.
- "Approved Vehicle" shall mean the vehicle approved by management under subclause (a) of clause 4, Vehicle.
- "Assistant" shall have the meaning expressed in subclause (a) of clause 9, Contractor's Employees.
- "Contract Determination" means the terms and conditions set out herein.
- "Contract of Carriage" shall be as defined in the Act.
- "Contractor" shall mean a contract carrier as defined in the Act engaged by The Smith Family.
- "Duties" shall have the meaning expressed in subclause (a) of clause 3, Duties, etc.
- "General Determination" shall mean the Transport Industry - General Carriers Contract Determination.
- "Management" shall mean the Villawood depot manager and any other duly appointed officer of The Smith Family.
- "Union" shall mean the Transport Workers' Union of Australia, New South Wales Branch, a registered association of contract carriers.
- (c) In this contract determination:
- (i) a reference to this contract determination includes any variations to it;
  - (ii) the singular includes the plural and vice versa;
  - (iii) headings are inserted for convenience and do not affect the interpretation of this contract determination.

## 2. Area, Incidence and Duration

- (a) This contract determination applies to all contracts of carriage made between The Smith Family and contractors for the cartage of clothing and other goods handled by The Smith Family within the Sydney metropolitan area.
- (b) FOR EFFECTIVE DATE PLEASE REFER TO SCHEDULE OF AWARD VARIATIONS TABLE.

---

### 3. Duties, etc.

- (a) The contractor shall collect and deliver clothing and other goods for The Smith Family and carry out any other duties as determined by management from time to time.
- (b) The contractor shall exclusively perform, during normal business hours where practicable, the duties.
- (c) During the continuance of the contractor's engagement, management shall allot duties to the contractor amounting up to 52 weeks work spread over a five-day week from Monday to Friday inclusive (excluding public holidays).
- (d) The contractor shall not make the first call at donors' private homes before 8.00 a.m. unless instructed to do so by management.
- (e) During the contractor's engagement, the contractor may take a total of four weeks unpaid leave every year by arrangement with, and at the convenience of, management. If during any period of unpaid leave the contractor, at the request of management, provides a relief driver who is acceptable to management, The Smith Family shall pay the contractor during this period in accordance with this contract determination.

#### 4. Vehicle

- (a) The contractor shall provide at his/her own expense a motor vehicle acceptable to management for the purpose of carrying out his/her duties and shall:
- (i) keep the vehicle clean and in a fit and proper condition according to the reasonable requirements of management;
  - (ii) ensure that the state of the vehicle, at all times, complies with any statute, regulation, ordinance or other requirements of law relating to road worthiness or public health;
  - (iii) at the discretion of management, carry signs supplied by The Smith Family to signify that the vehicle is collecting on behalf of The Smith Family;
  - (iv) pay to The Smith Family the replacement value of magnetic signs lost or misplaced by the contractor.

---

### 5. Assignment and Transfer of Rights and Indemnity and Release

- (a) All contractors bound by this contract determination shall execute a deed releasing and indemnifying The Smith Family in the form set out in Schedule A of this contract determination.
- (b) Any contractor may assign or transfer the rights and benefits of any individual contact entered into with The Smith Family, provided that the contractor has complied with this clause and provided that the proposed assignee or transferee:
  - (i) is acceptable to The Smith Family as acknowledged by The Smith Family in writing;
  - (ii) executes a deed releasing and indemnifying The Smith Family in the form as set out in Schedule B, if the proposed assignee or transferee is a member of the union, or in the form as set out in Schedule C if the proposed assignee or transferee is not a member of the union.

---

**6. Redundancies, etc.**

- (a) In the event of The Smith Family making any number of contractors redundant, no redundancy or severance-type payments shall be made by The Smith Family to any contractor.
- (b) The contractors shall be consulted once The Smith Family has made a tentative decision on any redundancies, or rearrangement of collection and delivery runs for whatever reason. The union may become involved in such consultations at the request of the contractors. Such consultations shall not fetter in any way the management rights of The Smith Family.
- (c) Any contractor to be made redundant shall be given at least one month's notice of the date of his/her termination.
- (d) In choosing contractors to be made redundant, The Smith Family shall be fully able to take into account truck size and suitability and the work performance of the contractor. However, if all else is equal, the appropriate criterion shall be "last on - first off".



---

### 7. Contractor's Insurance Obligation and Indemnity to The Smith Family

- (a) The contractor shall indemnify The Smith Family against all liability for the debts of the contractor and all actions, suits or claims for damages and cost or expenses arising therefrom or otherwise arising out of the acts, defaults or neglect of the contractor or of any person acting for or on behalf of the contractor in connection with carrying out work for The Smith Family.
- (b) The contractor shall insure and keep himself/herself insured with a reputable insurance company against any claims for compensation or damages for death or bodily injury to any person or damage to property caused by any motor vehicle used by the contractor in carrying out work for The Smith Family.
- (c) The contractor shall insure and keep himself/herself insured for an amount of \$2,000,000 with a reputable insurance company under a policy of Public Risk Insurance against any accidents which may be occasioned against any member of the public or any property belonging to any third party during the course of the contractor carrying out work for The Smith Family.
- (d) The contractor shall, on such date as The Smith Family shall nominate, produce to management all insurance policies required herein for The Smith Family's inspection.
- (e) The contractor shall have the policies for public risk and third party property damage section of motor vehicle insurance endorsed with The Smith Family as principal.

## 8. Dress

- (a) The contractor shall wear such uniforms as The Smith Family shall provide while engaged in work for The Smith Family.
- (b) In conjunction with the uniform provided by The Smith Family, the contractor may acquire at his/her own expense and wear certain other items such as socks and track suit trousers in colours specified by The Smith Family. This clause shall also apply to contractors' employees, if applicable, as provided for in clause 9, Contractor's Employees.
- (c) The contractor shall be issued with industrial gloves by The Smith Family and the contractor must wear such gloves during the entire process of emptying clothing collection bins and must notify management when such gloves require replacing.

---

### 9. Contractor's Employees

- (a) The contractor may, at the contractor's expense, employ an assistant acceptable to management to assist the contractor in carrying out his/her obligations to The Smith Family, provided that the contractor continues to work on the approved vehicle.
- (b) Where the contractor does so employ an assistant, the contractor shall:
  - (i) ensure that the assistant is acquainted with and complies with all of the obligations of the contractor under this contract determination;
  - (ii) ensure that workers' compensation insurance cover is taken out by the contractor;
  - (iii) ensure that such other insurance cover as The Smith Family may, from time to time, reasonably require is taken out by the contractor in respect of the assistant;
  - (iv) ensure that the assistant is a fit and proper person to be employed;
  - (v) notify The Smith Family of the name and address of the person proposed to be the assistant;
  - (vi) comply with all relevant statutory and award obligations relating to the assistant.
- (c) The assistant so engaged will be the employee or agent of the contractor, and nothing in such an engagement shall be construed so as to constitute that such assistant is an employee or agent of The Smith Family.

**10. Contractor Not Employee or Agent of The Smith Family**

- (a) Nothing in this engagement shall be construed so as to constitute the contractor as an employee or agent of The Smith Family, and this engagement is entered into on the basis that the contractor is a self-employed person.
- (b) The contractor shall not act in any way which indicates that he/she has any power or authority to act for or on behalf of The Smith Family or to make purchases on behalf of The Smith Family or in any way to pledge the credit of The Smith Family.

---

## 11. Termination

- (a) The contractor and The Smith Family each have the right to terminate the contractor's engagement on one month's notice in writing at any time.
- (b) The Smith Family will have the right to terminate the contractor's engagement summarily in any of the following events:
  - (i) if the contractor shall become bankrupt or insolvent;
  - (ii) if the contractor, his/her employee or agent shall fail to deliver to The Smith Family any of The Smith Family's goods which are at any time received by the contractor, his/her employee or agent on The Smith Family's behalf;
  - (iii) if there is any repeated failure by the contractor, his/her employee or agent to make pick-ups allocated to him/her;
  - (iv) if the contractor engages in any act or omission which constitutes misconduct; and
  - (v) if in circumstances other than the events referred to in paragraphs (i), (ii), (iii) and (iv) of this subclause, the contractor breaches any of the terms of this contract determination and fails to rectify any such breach within 14 days of having received notice by The Smith Family to rectify such breach.

## 12. Suspension

- (a) The Smith Family has the right to suspend the contractor to investigate any complaint of misconduct made against the contractor.
- (b) The suspension of the contractor shall not exceed a period of seven days.
- (c) During any period of suspension the contractor shall not be entitled to receive any remuneration.
- (d) The Smith Family's right to suspend the contractor shall not in any way derogate its right to terminate the contractor's engagement summarily under subclause (b) of clause 11, Termination.

### 13. Notice

- (a) Any notice to be given under this contract determination shall be in writing signed by or on behalf of the party giving notice.
- (b) Notice shall be sufficiently served in the case of the contractor if delivered personally or if left at his/her last known place of abode and, in the case of The Smith Family, if notice is given to management.

#### **14. Basis of Remuneration for Contractors**

- (a) The contractor shall be paid remuneration in accordance with the applicable rates set out in the general determination from time to time.





---

**SCHEDULE A**

This deed is made on .....

Between:           The Smith Family (A.C.N. 000 030 179) having its principal office at  
..... in the State of New South Wales.

and:                The person named in the schedule as the Contractor ("the Contractor").

Recitals:

- A.       The Contractor has previously performed work for The Smith Family under various agreements or arrangements ("Previous Agreements or Arrangements").
- B.       The Contractor has entered into an annual agreement with The Smith Family to carry out work on behalf of The Smith Family and may, if agreed upon by the Contractor and The Smith Family, enter into further annual agreements ("Individual Contract").
- C.       The parties have agreed to the following terms and conditions:

Operative Provisions:

- 1.       The Contractor acknowledges that the individual contract or any previous agreements or arrangements or any related condition or collateral arrangement under which the Contractor has performed or performs work for The Smith Family have not been and are not unfair, harsh or unconscionable.
- 2.       The Contractor indemnifies and releases The Smith Family, its officers, agents and employees with respect to any claim, demand or loss of any nature arising from, incidental to or by virtue of:
  - (a)       the termination, non-renewal or non-extension of the engagement of the Contractor by The Smith Family in circumstances where such termination, non-renewal or non-extension is not in breach of the terms and conditions of the contract determination or any individual contract;
  - (b)       the assignment or transfer of the Contractor's benefits or the inability or failure of the Contractor to assign or transfer the benefit of any individual contract for any reason whatsoever; or
  - (c)       any loss of value of the Contractor's benefits under any individual contract for any reason whatsoever.
- 3.       The Contractor acknowledges that this Deed shall continue in force and effect notwithstanding the variation, termination, non-renewal or non-extension of the contract determination or any individual contract.



**SCHEDULE**

(name of Contractor)

Executed as a Deed

Signed, sealed and delivered )  
by (name of Contractor) in the )  
presence of: )  
)

..... )  
Signature of witness )  
)

..... )  
Name of witness (block letters) )  
)

..... )  
Address of witness )  
)

..... )  
Occupation of witness )  
)

.....  
Signature of Contractor

Signed, sealed and delivered )  
by (insert name of relevant Smith )  
Family Officer) for and on behalf of )  
The Smith Family in the presence )  
of: )  
)

..... )  
Signature of witness )  
)

..... )  
Name of witness (block letters) )  
)

..... )  
Address of witness )  
)

..... )  
Occupation of witness )  
)

.....  
Signature of (insert name of  
relevant Smith Family Officer)



---

CERTIFICATE AS TO EXECUTION

I,.....

of.....

hereby certify as follows:

1. I am a Legal Officer employed by the Transport Workers' Union of Australia, New South Wales Branch.
2. Prior to the execution of the attached Deed of Release and Indemnity by the Contractor named therein, I explained its contents and effect to the Contractor. I specifically explained to the Contractor that in executing this Deed of Release and Indemnity, the Contractor would be giving up any rights he/she had or has under Section 275 of the *Industrial Relations Act 1991*. In my opinion, the Contractor appeared to be aware of and understood the contents and effect of this Deed.

Signed: .....

Date: .....



---

**SCHEDULE B**

This deed is made on:

Between:           The Smith Family (A.C.N. 000 030 179) having its principal office at  
..... in the State of New South Wales.

And:                The person named in the schedule as the Contractor ("the Contractor").

Recitals:

- A.       The Contractor is a member of the Transport Workers' Union of Australia, New South Wales Branch ("Union").
- B.       The Contractor has entered into an annual agreement with The Smith Family to carry out work on behalf of The Smith Family and may, if agreed upon by the Contractor and The Smith Family, enter into further annual agreements ("Individual Contract").
- C.       The parties have agreed to the following terms and conditions:

Operative Provisions:

- 1.       The Contractor acknowledges that the individual contract or any related condition or collateral arrangement under which the Contractor performs work for The Smith Family is not unfair, harsh or unconscionable.
- 2.       The Contractor indemnifies and releases The Smith Family, its officers, agents and employees with respect to any claim, demand or loss of any nature arising from, incidental to or by virtue of:
  - (a)      the termination, non-renewal or non-extension of the engagement of the Contractor by The Smith Family in circumstances where such termination, non-renewal or non-extension is not in breach of the contract determination or the individual contract;
  - (b)      the assignment or transfer of the Contractor's benefits or the inability or failure of the Contractor to assign or transfer the benefit of the individual contract for any reason whatsoever; or
  - (c)      any loss of value of the Contractor's benefits under the individual contract for any reason whatsoever.
- 3.       The Contractor acknowledges that this Deed shall continue in force and effect, notwithstanding the variation, termination, non-renewal or non-extension of the contract determination or the individual contract.



**SCHEDULE**

(name of Contractor)

Executed as a Deed

Signed, sealed and delivered )  
by (name of Contractor) in the )  
presence of: )  
)

..... )  
Signature of witness )  
)

..... )  
Name of witness (block letters) )  
)

..... )  
Address of witness )  
)

..... )  
Occupation of witness )  
)

.....  
Signature of Contractor

Signed, sealed and delivered )  
by (insert name of relevant Smith )  
Family Officer) for and on behalf of )  
The Smith Family in the presence )  
of: )  
)

..... )  
Signature of witness )  
)

..... )  
Name of witness (block letters) )  
)

..... )  
Address of witness )  
)

..... )  
Occupation of witness )  
)

.....  
Signature of (insert name of  
relevant Smith Family Officer)



---

CERTIFICATE AS TO EXECUTION

I, .....

of .....

hereby certify as follows:

1. I am a Legal Officer employed by the Transport Workers' Union of Australia, New South Wales Branch.
2. Prior to the execution of the attached Deed of Release and Indemnity by the Contractor named therein, I explained its contents and effect to the Contractor. I specifically explained to the Contractor that in executing this Deed of Release and Indemnity, the Contractor would be giving up any rights he/she had or has under Section 275 of the *Industrial Relations Act 1991*. In my opinion, the Contractor appeared to be aware of and understood the contents and effect of this Deed.

Signed: .....

Date: .....



---

**SCHEDULE C**

This Deed is made on .....

Between: The Smith Family (A.C.N. 000 030 179) having its principal office at  
..... in the State of New South Wales.

And: The person named in the schedule as the Contractor ("the Contractor").

Recitals:

- A. The Contractor has entered into an annual agreement with The Smith Family to carry out work on behalf of The Smith Family and may, if agreed upon by the Contractor and The Smith Family, enter into further annual agreements ("Individual Contract").
- B. The parties have agreed to the following terms and conditions.

Operative Provisions:

- 1. The Contractor acknowledges that the individual contract or any related condition or collateral arrangement under which the Contractor performs work for The Smith Family is not unfair, harsh or unconscionable.
- 2. The Contractor indemnifies and releases The Smith Family, its officers, agents and employees with respect to any claim, demand or loss of any nature arising from, incidental to or by virtue of:
  - (a) the termination, non-renewal or non-extension of the engagement of the Contractor by The Smith Family in circumstances where such termination, non-renewal or non-extension is not in breach of the terms and conditions of the contract determination or the individual contract;
  - (b) the assignment or transfer of the Contractor's benefits or the inability or failure of the Contractor to assign or transfer the benefit of any individual contract for any reason whatsoever; or
  - (c) any loss of value of the Contractor's benefits under any individual contract for any reason whatsoever.
- 3. The Contractor acknowledges that this Deed shall continue in force and effect, notwithstanding the variation, termination, non-renewal or non-extension of the contract determination or the individual contract.



**SCHEDULE**

(name of Contractor)

Executed as a Deed

Signed, sealed and delivered )  
by (name of Contractor) in the )  
presence of: )  
)  
..... )  
Signature of witness )  
)  
..... )  
Name of witness (block letters) )  
)  
..... )  
Address of witness )  
)  
..... )  
Occupation of witness )  
) .....  
Signature of Contractor

Signed, sealed and delivered )  
by (insert name of relevant Smith )  
Family Officer) for and on behalf of )  
The Smith Family in the presence )  
of: )  
)  
..... )  
Signature of witness )  
)  
..... )  
Name of witness (block letters) )  
)  
..... )  
Address of witness )  
)  
..... )  
Occupation of witness )  
) .....  
Signature of (insert name of )  
relevant Smith Family Officer)