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**SERIAL C6358**

**READYMIX HOLDINGS PTY LTD COUNTRY CONCRETE CARRIERS  
CONTRACT DETERMINATION**

Schedule of Contract Determination Published on 15.2.2008 and Subsequent Variations Incorporated

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## DETERMINATION

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

## 1. Definitions

### 1.1. For the Purpose of This Determination the Following Terms Shall Bear the Meaning:

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

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

Concrete shall mean a product whether mixed, blended or batched, that contains, but 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 in integral part of the said slab and are poured at the same time;
- b) Road pavements; or
- c) Multiple strip footings within a radius of ½ kilometre.

All other work is excluded as a continuous pour.

Contract of Carriage shall mean as defined in the Act.

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

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

Cyclic roster shall mean:

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

Mini truck shall mean a truck with an agitator that has a mixing capacity of 2.8m<sup>3</sup> or less.

Mixer shall also mean Agitator and vice versa.

Country Area, for the purpose of this agreement, includes concrete plants located at:

Billinudgel, Byron Bay, Salamander Bay, Teralba, Tighes Hill, Unanderra, Albion Park, Bowral, Bathurst and Orange and such other plants as the Contractor may from time to time decide.

Union shall mean the Transport Workers' Union of Australia New South Wales Branch and such delegate or delegates from within Readymix as are authorised by 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

- 2.1. This determination sets out the rights and obligations of the Contractor and the Carrier. This determination applies to all Carriers engaged by Readymix Holdings Pty Limited in the Country Area (as defined in Clause 1.1).
- 2.2. If a provision of this determination is inconsistent with a provision of the Transport Industry Concrete Haulage Contract Determination published 30 November 1990, NSW Industrial Gazette, Vol.260 and all variations thereof ("the Contract Determination) then the provisions of this determination shall prevail and the provisions of the contract determination is to be considered to have been varied to the extent necessary to remove the inconsistency.
- 2.3. This determination shall take effect from 31 March 2004 and shall remain in force until 1 January 2005 and shall have no effect thereafter.

### 3. Term of Contracts of Carriage

#### 3.1. Ready Mixed Concrete Contract Carriers in the Country Area ("Country Carriers"):

- a) The term of the Contract of Carriage for a Country Carrier shall be two (2) years commencing on 1st March 1996.
  - i) If the Carrier, as at 2 years from commencement date, operates a vehicle capable of legally carrying 5.0m<sup>3</sup>, subject to the provisions of Clause 11.3, then the term shall be extended by six (6) years which total (ie. eight years) shall become the term of the agreement.
  - ii) If the Carrier, as at 2 years from commencement date, operates a vehicle capable of legally carrying 5.4 m<sup>3</sup>, subject to the provisions of Clause 11.3, then the term shall be extended by eight (8) years which total (ie. ten years) shall become the term of the agreement.
- b) The Contractor shall have the sole option to renew the Contract of Carriage of a Country Carrier for a further term, subject to the following:
  - i) Carriers whose term has been extended by six (6) years under Clause 3.1 (a) may be extended a further four (4) years.
  - ii) Carriers whose term has been extended by eight (8) years under Clause 3.1 (a) may be extended a further five (5) years.
- c) The option to renew shall be exercised by the Contractor serving upon the Carrier a written notice thereof between the period commencing twelve (12) months and ending six (6) months before the date of the term of the Contract of Carriage;
- d) The renewed Contract of Carriage shall be on the same terms and conditions as contained in this agreement applicable to Country Carriers subject to the following alterations:
  - i) Sub-clauses 3.1(a), (b), (c) shall be deemed to have been omitted; and
  - ii) The cartage rates payable by the Contractor to the Carrier at the commencement of the renewed Contract of Carriage shall be the same as the cartage payable pursuant to this agreement immediately prior to the expiration of the term of this agreement.

#### 4. Cartage Rates

##### 4.1. Cartage rates payable to Country Carriers:

- a) The Contractor shall pay to a Country Carrier the Country Area utilisation cartage rates ("the utilisation rates") set out in Schedule A hereto. All surcharges, as described in schedule C, are included in the rate as shown in Schedule A, except for the following :
  - i) transfers in excess of 30km, as provided for under clause 7.4;
  - ii) waiting time if a truck is bogged under Clause 10.2.
  - iii) Out of Hours Penalty Rates for Sundays and Public Holidays.
- b) Between 1st March 1996 and 31st March 1996 the per annum utilisation rate specified in Schedule A for the average M3 for the particular plant for the period 1st January 1995 to 31st December 1995 shall be payable by the Contractor to the Carrier.
- c) On and from 1st April 1996 and on and from the 1st day of every subsequent quarter during the term of the Contract of Carriage, the Country Carrier fleet average utilisation rates (for each plant) as adjusted for the previous quarter (calculated on a moving annual total basis in the applicable band as shown in Schedule A) shall be payable by the Contractor to the Carrier, effective from the commencement of the second cartage period in the month of review.
- d) The utilisation rates paid shall be based on the plant Carrier fleet average paid m3 for the previous quarter at the plant carrier fleet availability determined in accordance with Clause 4.19.
- e) The cartage rates shall be reviewed on 1st May 1996 and thereafter half-yearly based on increases or decreases in the cost formula set out in Schedule A hereto.

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

##### 4.2. Benefits included in the cartage rates:

- a) The following are provided for in the rates payable to Carriers under this agreement:
  - i) All benefits and entitlements under the Award; and
  - ii) Leave entitlements as follows:
    - a) 20 days annual leave and, in addition, the annual leave loading as prescribed in the Award;
    - b) 10 public holidays - New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day; Union Picnic Day
    - c) 34.8 hours of long service leave per annum;
    - d) 64 hours sick leave per annum;
    - e) 16 hours bereavement leave;
    - f) RDO - 12 per annum leave.
    - g) Superannuation at the rate of 5%..
- b) The leave entitlements under Clause 4.2 (a) are provided for in the rate as described in Schedule A. Each Carrier must take the leave entitlements in accordance with the Award even though the services of the Carrier's truck are required by the Contractor. Should there be any variations to the entitlements under the Award, the cartage rate shall be adjusted accordingly at the review date.

#### 4.3. Manning When On Leave

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

[Example: At the commencement of this agreement the Labour cost at the 4,500m<sup>3</sup> utilisation rate is \$34,404 (Schedule A) or \$7.65/m<sup>3</sup> and the Casual labour cost is \$540.00 per week(Schedule A). Say a Casual driver is engaged for five days Monday through Friday inclusive, in normal time hours, then the cost to the Carrier of the Casual driver is \$540.00. If, say, in that period the Carrier's vehicle carts 50m<sup>3</sup> and the Carrier is therefore paid the equivalent of 50m<sup>3</sup> cartage, then the labour cost component of the cartage paid is \$382.50 (ie. 50m<sup>3</sup> x \$7.65/m<sup>3</sup>). The Contractor then shall pay to the Carrier the difference in labour cost and the labour cost component, in this example: \$540.00 - \$382.50 = \$157.50.]

#### 4.4. Haulage Area

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

#### 4.5. Cartage Zones

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

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

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

#### 4.6. Minimum Load

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

#### 4.7. Mixing in the Yard

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

#### 4.8. Long Distance Rates

Where the load is required to be carried in excess of twenty five (25) km then each additional km shall be paid on the basis of a 4 m<sup>3</sup> minimum load.

#### 4.9. Normal Delivery Hours

Normal hours shall be 6.00 am to 6.00 pm Monday to Friday and 6.00 am to 1.00 pm Saturday. For the determinations made under Clauses 4.10, 4.11, 4.12, and 4.13 time shall be determined from the time of batching as recorded.

#### 4.10. Standby Time

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

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

#### 4.11. Call-out Fee

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

#### 4.12. Out of Hours Penalty Rates

- a) Out of Hours Penalty Rates will be payable pursuant to Clause 4.1 (a) (iii) herein only. All other Out of Hours Penalty Rates which may be inferred are included in the Rates as shown in Schedule A herein.
- b) The Out of Hours Penalty Rate deemed payable pursuant to Clause 4.1(a) (iii) shall be paid at rate of "F" (Schedule B) per m<sup>3</sup> based on a minimum of 3m<sup>3</sup>

#### 4.13. Concrete produced on Sunday

Where a Carrier is required to cart concrete on a Sunday, then the loads so carted shall not be included in the determination of the annualised utilisation rate.

#### 4.14. Concrete Produced for Contractor's Own Use

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

#### 4.15. Multiple Discharge Points

- a) Same Customer

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

- b) Multiple Customers

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



#### 4.16. Diverted Loads

- a) Direct Diversion  
Where a load is diverted enroute a Carrier shall be paid normal cartage rates covering the total distance travelled from initial departure from the plant to the ultimate delivery point of the load.
- b) Return to Plant and Divert  
It is thereafter treated as a new load.
- c) Return to Plant and Dumped  
  
It shall be paid for as in clause 4.16 (a).
- d) Return to Plant and Subsequently Dumped Outside Plant

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

#### 4.17. Left over concrete

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

#### 4.18. Road and Bridge Tolls

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

#### 4.19. Utilisation Level and Availability

- a) Pursuant to Clause 4.1 (d) the determination of Carrier availability shall be subject to the provisions of Clause 5.6. For the determination made under 4.19 (d) the exceptions listed under Clause 5.6 (c), (d), and (e) shall not be applicable.
- b) For the determinations made under 4.19 (d) Saturdays shall be considered as 0.6 of a day.
- c) Company trucks will not be included in the calculation of the quarterly utilisation level.
- d) The quarterly utilisation level shall be calculated in accordance with the formula:  
$$U = V / ( T - R ), \text{ where}$$

R = S / W = calculated unavailable trucks	(number of trucks)
S = sum of the unavailable days	(number of days)
W = working days in the quarter	(number of days)
U = quarterly utilisation level	(metres per truck)
V = paid metres available for the period	(metres)
T = the base fleet number	(number of trucks)

(Example : see Schedule D)

## 5. Safety Net

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

Net Quarterly Payment = QSN - A                      where:

QSN =                      "Quarterly Safety Net" (Schedule A)

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

The Net Quarterly Payment shall be made in the pay period following the end of the relevant quarter. In any quarter when the quarterly earnings exceed the quarterly Safety Net, any previous amount paid by the Contractor to the Carrier as Safety Net shortfall will be recovered from the Carrier's quarterly earnings which exceed the quarterly Safety Net. (An example of the calculation method is attached as SCHEDULE E.)

- 5.4. The Carrier is deemed available pursuant to Clause 5.6. The Carrier's Quarterly Safety Net shall be reduced by 4/253 ths per day for each day the Carrier is deemed unavailable.
- 5.5. The Contractor and the Union shall mutually agree on a mechanism so that the Contractor is not disadvantaged by causes beyond its control and the Carrier is not disadvantaged by actions of the Contractor.
- 5.6. The normal work week is six (6) consecutive days , Monday through Saturday inclusive to a total of 253 days per annum as described in Schedule A. The Carrier shall report as directed by the Contractor on each normal work week day and compliance with such direction shall deem the Carrier available. Non-compliance with the Contractors direction shall deem the Carrier unavailable subject to the following exceptions :
- a) The nominated plant is closed or unable to produce;
  - b) The agitator is unserviceable, except by accidental damage by the Carrier;
  - c) The Carrier is on approved annual leave (two (2) weeks per annum);
  - d) The Carrier takes approved sick leave under the Award (eight (8) days per annum);
  - e) The Carrier has a roster day off (three days per annum);
  - f) The Carrier is notified the prior day that that he is not required or is rostered off at the direction of the Contractor.

## 6. Cartage Accounts

### 6.1.

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

### 6.2.

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

### 6.3.

- a) Where a Carrier purchases any item other than fuel from time to time from the Contractor, or where goods are purchased on the Carrier's behalf by the Contractor, the Contractor may deduct from the Carrier's cartage payments an amount equal to the value of the purchase provided the Contractor has written authorisation to make such deduction.
- b) The Contractor may deduct from the Carrier's cartage payments an amount equal to the value of any fuel purchased. The cost of the fuel shall not be adjusted retrospectively.
- c) When a Carrier is overpaid, the Contractor shall submit an adjustment account to the Carrier which shall be determined within 14 days from the date of submission for the immediately preceding pay period or thirty (30) days for all other claims.
- d) Following determination the Carrier shall promptly provide written authorisation for the adjustment to be deducted from his account and such deduction shall be from the next cartage payment due.

### 7. Living Away from Home Allowance

- 7.1. A Carrier engaged in work which precludes him from reaching his usual place of residence at night shall receive the benefits and conditions as detailed in the Award.
- 7.2. Where a Carrier is required to transfer to a working area which precludes him from returning to his normal place of residence each night, the Contractor wherever possible shall provide the Carrier with at least twenty four (24) hours prior notice of the request.
- 7.3. Where a Carrier is transferred outside his normal working area, such transfer shall be for a period not exceeding seven (7) days duration or longer by mutual agreement and shall be done from a cyclic transfer roster.
- 7.4.
  - a) Payments for transfers in excess of 30 km shall be paid at the rate of ("H") per km or part thereof that the Carrier is required to travel to and from the directed transfer location. The forward and return journeys are considered to be separate transfers.
  - b) A transfer docket must be issued by the Contractor to the Carrier prior to departure, wherever possible, otherwise on arrival at the destination.
  - c) Should a transfer be cancelled or redirected the relevant transfer docket shall be adjusted by the Contractor immediately on the Carrier's return to the plant from which he was originally transferred.

## 8. Statutory Requirements and Insurance

8.1.

- a) A Carrier shall comply with the provisions of all current relevant statutes and regulations made thereunder in relation to the use or operation of his motor lorry and the Carrier shall ensure payment of all lawful fees, licences and taxes in relation thereto.
- b) Any variation in statutory requirement shall be considered in the regular review of cartage rates.

8.2. A Carrier shall arrange insurance cover, as specified by the Contractor (Schedule F), and keep current whilst working under this agreement in respect of:

- a) Motor vehicle comprehensive or third party property.
- b) Motor vehicle compulsory third party.
- c) Worker's compensation for all employees, including casuals of the Carrier's Company.
- d) Public liability cover to the value of \$5 million, with extensions to cover the following:
  - i) Damage caused by the agitator.
  - ii) Damage due to incorrect product delivery.
- e) Comprehensive cover for damage to the agitator.

8.3.

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

## 9. Loading

### 9.1. Size of Load

- a) The Contractor has the right to nominate the size of load provided the Carrier has the right to refuse a load that is beyond the legal capacity of the vehicle or the rated capacity of the mixer. The Carrier shall carry any load so nominated provided it is within the legal carrying capacity of the truck and there are no other adverse impacts.
- b) Each Carrier shall be loaded to his maximum legal capacity wherever possible except in the case of a single load or message, where a subsequent load would result in less than 3m<sup>3</sup> being carried, or where the Contractor considers that 5m<sup>3</sup> is operationally appropriate in which case the Carrier shall be loaded to 5m<sup>3</sup>.

### 9.2. Loading Order

- a) The initial daily starting order shall be in accordance with a cyclic roster.
- b) Thereafter all trucks shall be loaded in order of their return to the plant with the exception of:
  - i) Mini mix loads (less than 3m<sup>3</sup>).
  - ii) Single load or message greater than the mixer capacity or legal carrying capacity of the truck next in line.
  - iii) Trucks with returned concrete where it is impractical due to facility or time constraint to transfer the returned concrete to the next truck in line.
- c) The Contractor may operate a fleet of vehicles driven by its employees.
- d) The Contractor's employee driven vehicles shall not be preferentially loaded.
- e) The Contractor's employee driven vehicles shall participate in the cyclic roster as defined under Clause 1.1 (d).
- f) The initial loading time and the initial plant from which such loading shall take place shall be notified by the Contractor to each Carrier before the close of business on the previous day.

## 10. Hazardous Approach to Job Site

### 10.1. Hazardous Approach

- a) A Carrier shall have the right to refuse to enter upon ground which he considers unsafe or extraordinarily hazardous. If a Carrier does refuse entry and the delivery is completed on that day by other vehicles without the use of additional equipment then the Carrier that has refused entry shall not be paid for the delivery or return cartage unless the load has been diverted to another job in which case his delivery to the alternate location shall be paid as if it were a new delivery from the plant where batched to the alternate location.
- b) If the Carrier has notified the plant of the unsafe or hazardous job site and/or approach but attempts unsuccessfully to enter, the Carrier shall be paid the utilisation rate as if the delivery had been successful even if the delivery is ultimately completed, as Clause 10.1 (a).
- c) In all cases if the Carrier refuses to enter and the delivery is not completed on that day without the use of additional equipment the Carrier shall be paid the utilisation rate as if the delivery had been successful. If the Contractor diverts the load to an alternate location the Carrier shall be paid pursuant to Clause 4.16 Diverted Loads.

### 10.2. Bogged Vehicles

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

10.3. 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

- 11.1. It is the obligation of the Carrier on each working day to personally supply, man, operate, and keep serviceable, the vehicle. Any variation to this obligation shall require agreement by both parties.
- 11.2.
- a) No vehicle shall be brought into service without prior consent of the Contractor.
  - b) The Contractor shall have the discretion to refuse to load a vehicle that is unregistered or obviously defective.
  - c) Where the vehicle is subsequently shown by the Roads & Traffic Authority not to be defective the Carrier shall be paid by the Contractor a rate equivalent to the daily average earnings at the applicable plant carrier fleet utilisation rate for each day so detained, or part thereof, from the time the load was refused until the contractor agrees to load the vehicle, together with any additional statutory charges.
- 11.3. The legal carrying capacity of a suitable vehicle for the determinations made under Clause 3.1 (a) shall be based on;
- a) The provision by the Contractor of an agitator not weighing in excess of 3100 kgs plus an allowance of 200 kgs for water and oil.; and
  - b) The nominal mass of normal class 25MPa (N25 under AS1379) being 2300 kgs.; and
  - c) The RTA registered mass of the vehicle.
- 11.4. An unserviceable vehicle shall be repaired as soon as practicable.
- 11.5. Where a Carrier is unable to report for work with his vehicle he shall arrange for the Contractor to be informed at the earliest possible moment of the reason and the anticipated period of absence.
- 11.6. When a Carrier is required to submit his vehicle to the Roads & Traffic Authority for annual inspection, he shall inform the Contractor 4 weeks prior to his registration renewal date or on receipt of his inspection notification whichever is the earlier.
- If a re-inspection is required due solely to a defective agitator, then a transfer fee of "G" (Schedule B) per km or part thereof shall be paid by the Contractor to the Carrier for the distance travelled to the nominated inspection station from the base plant plus any inspection fees payable.
- 11.7.
- a) All current vehicles in the fleet are deemed to be approved vehicles for two (2) years in the Country area.
  - b) When the Contractor provides a hydraulic mixer, the Carrier's vehicle must be capable of and adequately powered to take an hydraulic mixer. Power take-off at front or rear is at the option of the Carrier. The boundary of the Carrier's responsibility in this matter shall end at the provision of an accessible bare power take-off drive shaft. However, any modification to the vehicle to accommodate the hydraulic drive connection to the mixer shall be to the Carrier's cost. Where a front power take-off is fitted, the Carrier will release the Contractor from liability for any and all claims for damage which occur, either directly or indirectly, to the Carriers' vehicle as a result of the operation of the hydraulic mixer with a front power take-off. In the event that a front-power take off is fitted to the Carrier's vehicle, the Carrier will reimburse the Contractor for the total rectification of damage to the hydraulic pump and/or ancillary equipment resulting from a vehicle front-end collision.



## 12. Responsibility for Load

- 12.1. A Contractor shall ensure that the load is batched, with the intent that the quantity of water required to adjust the slump does not exceed 10% of the total water required to bring that load up to specification.
- 12.2.
- a) The Contractor shall provide the Carrier wherever possible with notice, posted on the appropriate notice board, of any intended major changes to the source of concrete mix ingredients which may change the characteristics of the concrete.
  - b) Should the Contractor change the concrete ingredients without said notification to the Carrier prior to batching, the Contractor shall automatically assume the slump responsibility of the concrete and the Carrier shall be paid for all cartage at the full rate without penalty.
- 12.3.
- a) A Carrier shall ensure that the load is properly mixed as required by the Contractor's written instructions and that the slump of the concrete shall be in accordance with the following limits immediately prior to discharge:
    - i) Slump above 110 millimetres - a tolerance of plus or minus 30 millimetres.
    - ii) Slump greater than 80 and less than 110 millimetres - a tolerance of plus or minus 20 millimetres.
    - iii) Slump greater or equal to 30 millimetres and less than or equal to 80 millimetres, a tolerance of plus or minus 15 millimetres.
  - b) The slump requirements are based on the premise that the carrier has at all times from the time of batching to the point of discharge, the ability to add water to adjust the slump of the load to the specification under Clause 12.3 (a).
  - c) If the Carrier is requested by the Contractor to adjust and/or maintain the slump of a load at a tolerance closer than that described under Clause 12.3 (a), and the load is rejected on the basis of non-compliance with the nominated slump tolerance, then Contractor shall pay the Carrier the utilisation rate for the load as if the load had not been rejected.
  - d) If the Contractor has removed the Carrier's right to adjust the slump of a load on the job site, and the Carrier is requested by a third party to adjust the slump of the load, and the Contractor approves such adjustment, and the load is rejected on the basis of water addition and/or non-compliance with the nominated slump tolerance, then Contractor shall pay the Carrier the utilisation rate for the load as if the load had not been rejected.
  - e) The agitator drum must be kept turning at all times when it contains concrete.
- 12.4.
- a) A Carrier shall visually inspect each load prior to leaving the plant and shall advise the Contractor of any apparent unusual features of the load which may have occurred due to batching error, plant failure, contamination or carrier error.
  - b) Any failure to report any obvious unusual feature arising from a visual inspection shall be dealt with in accordance with clause 24 Disputes Procedure hereof.
  - c) Subject to Clause 12.5, the Carrier shall not be responsible or have his cartage payment rejected or withheld due to undetected irregularities of the load save for slump.
- 12.5. When a load is rejected at a job site because the slump is outside the nominated tolerance contained herein, or the Carrier has not visually inspected the load prior to leaving the plant the Carrier shall not be paid for the cartage.
- 12.6.
- a) At the job site a Carrier shall make reasonable endeavour to obtain a signature for delivery and it shall be the Carrier's responsibility to contact the plant immediately by two-way radio when a problem arises to obtain a signature from the customer as required by the Contractor.

- b) If a nominated signature is required by the Contractor it is the Contractor's responsibility to ensure that the nominated person is available at the point of discharge at the completion of the discharge of the load.

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

12.8.

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

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

12.10. In the case of a delivery of concrete to a kerb making machine, the Carrier assumes no responsibility for the slump of the load as it is delivered in an "as batched" condition.

12.11. Where an additive is added after batching, the Carrier is automatically absolved of any responsibility for the slump.

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

12.13.

- a) Where returned concrete is re-used and is more than 1½ hours old, and the return cartage is greater than 0.8m<sup>3</sup> and topped up, the Contractor shall assume full responsibility for the load, thus excluding the Carrier from his responsibility for the slump of the load.
- b) The Carrier shall assume responsibility for any breaches in vehicle legal load limits in relation to this matter as the Contractor has given the Carrier the discretion to dump any concrete from that topped-up load that the Carrier may deem to place him in breach of his vehicle's legal load limit.

12.14. Limit of Carrier's Liability

- a) Subject to Clause 12.14 (b) and Clause 12.14 (c) the maximum limit for a Carrier's liability under the Contract Determination and this agreement shall not exceed the total invoiced value of the material for the respective individual load.
- b) Subject to Clause 12.14 (c), and subject to Clause 12.9 the maximum limit for a Carrier's liability under the Contract Determination and this agreement, where an individual load is rejected pursuant to Clause 12.5, shall not exceed the value of the cartage payment.
- c) The aforesaid limitation of liability of a Carrier does not apply in respect of a Carrier whose cover for any of the insurances referred to in Clause 8 hereof is voided.

12.15. The Carrier shall at all times comply with the reasonable work methods and procedures stipulated by the Contractor. If a problem arises the disputes procedure will be applied.

### 13. Breakdowns

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

#### **14. Two-Way Radio and Ultra Log Equipment**

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

## 15. Provision of Mixer

### 15.1.

- a) The contractor shall be responsible for the provision of a mixer with a mixing capacity of not less than 5m<sup>3</sup> and its safe and proper initial fitting to the Carrier's vehicle in accordance with the specifications of the respective manufacturer's including the supply of "U" bolts, clearance lights, mud flaps and a protective chassis/agitator cover plate mutually acceptable to the Contractor and the Carrier.
- b) If an agitator is required by the Contractor to be removed at any time for any reason, the total cost of agitator removal and replacement shall be borne by the Contractor.
- c) If an agitator is required by the Carrier to be removed to effect repairs than cannot be otherwise effected without the removal of the agitator, then the total cost of the agitator removal and replacement shall be borne by the Contractor provided that such repairs are not for the purpose of inspection, sandblasting, or modifying the truck chassis.

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

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

15.4. On the termination of the contract the following shall apply:

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

### 15.5. Hydraulic Mixers

- a) All modification and fitting work is to be done expeditiously and in any case not longer than five (5) working days. The Contractor shall pay the Carrier a rate equivalent to the daily average earnings at the applicable plant Carrier fleet utilisation rate for each day so detained in excess of the five (5) working days limit.
- b) The Contractor shall provide regular maintenance in accordance with the mixer manufacturer's recommendations at the Contractor's cost.

## 16. Mixer Care and Maintenance

- 16.1. A Contractor's mixer is in the care of the Carrier who shall keep the unit clean and tidy to the satisfaction of the Contractor and the Union.
- 16.2.
- a) A Carrier undertakes to exercise all reasonable care of the mixer. The mixer shall be thoroughly washed out and cleaned down as required and surfaces treated in preparation for the next day's work.
  - b) All cleaning materials and equipment necessary for cleaning the agitator shall be supplied by the Contractor and shall comply with any and all statutory requirements and regulations.
- 16.3. The Carrier shall report any and all apparent maintenance requirements to the Contractor.
- 16.4.
- a) The Carrier shall convey the mixer to the workshop for repairs or maintenance as requested by the Contractor. All work shall be completed as soon as possible and without delay.
  - b) The Carrier shall be paid for transfers to and from the workshop at the rate of "G" (Schedule B) per km or part thereof and the forward and return journey shall be treated separately. A means shall be provided by the Contractor at the Contractor's cost to convey the Carrier to his place of residence or plant whichever is the lesser distance and return him to the workshop as and when required.
- 16.5.
- a) The Carrier shall be responsible for minor maintenance as described below:  
Greasing  
Cleaning  
Replacement of spark plugs  
Changing oil, air and fuel filters  
All maintenance and servicing of hydraulic components on the mixers is the responsibility of the contractor as in Clause 15.5.b.
  - b) Subject to the provisions of clause 15 hereof, all parts, tools, materials and equipment shall be provided by the Contractor.
- 16.6.
- a) The Carrier shall be responsible for the removal of hardened concrete build-up from the inside of the agitator, a process commonly known as de-dagging.
  - b) All de-dagging shall be carried out strictly in accordance with the agreed procedure and in compliance with relevant Occupational Health and Safety regulations.
  - c) The limit of the Carrier's responsibility in order that the de-dagging may take place shall be limited to the provision of his labour only. All other personnel and/or equipment is to be provided by the Contractor at the cost of the Contractor.
- 16.7. The Contractor shall be responsible for all major maintenance.
- 16.8. The Carrier is responsible for the provision of the fuel to run the truck and mixer.
- 16.9. The Contractor is responsible for the provision of oil and grease for the mixer
- 16.10. The Contractor's agitator is to be parked only in places approved by the Contractor. The Carrier is responsible for any loss or damage to the Contractor's equipment. Where the agitator is parked in a place approved by the Contractor, the limit of the Carrier's liability will be that covered by the insurance described in Clause 8.2 herein. Should the Carrier park the Contractor's agitator other than described above, then the Carrier will be liable to pay the Contractor the first \$500 for each incidence of loss or damage.

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### **17. Painting and/or Sign writing of the Mobile Unit**

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

### **18. Union Membership and Delegates**

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



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### 19. Manning

- 19.1. A person shall only become a Carrier after being given final written approval by the Contractor. Such approval shall be dependent upon the person's suitability and his standard of efficiency after the required training period to the satisfaction of the Contractor. Suitability extends to pre-engagement medicals for prospective Carriers.
- 19.2. A Carrier when employing an alternate driver shall engage the driver under terms and conditions of the Award and shall require the driver to observe the terms of this agreement in the operation of the vehicle.
- 19.3. A Carrier shall not permit any person to operate his vehicle without the prior written approval of the Contractor.
- 19.4. A Carrier shall be the permanent operator of the vehicle except on a period of absence approved by the Contractor.
- 19.5. A Carrier and/or driver shall act in the best interests of the Contractor at all times. In the event of a dispute arising in respect of this clause, the procedures in Clause 24 Disputes Procedures shall be observed.
- 19.6.
- a) A Carrier shall ensure that the driver of the vehicle holds the appropriate class of driver's licence as required by the Roads & Traffic Authority.
  - b) In the event that the Carrier or his driver has his licence suspended or cancelled, the Carrier must immediately inform the Contractor in writing of that fact.

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## 20. Uniforms

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

Uniform item points are as follows:

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

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

## **21. Amenities**

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

## 22. Fleet Size

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

### **23. Commitment to Training**

- 23.1. The parties to this agreement recognise the mutual benefits to be gained through a greater commitment to training and, accordingly, each party commits itself to attending appropriate training programmes in order to increase the competitive performance of the contractor and its Carriers.
- 23.2. When training is undertaken at the request of the Contractor it shall be undertaken at no cost to the Carrier and shall be limited to twenty four (24) hours per annum for each Carrier.
- 23.3. Where a Carrier is required to attend such training in excess of (24) hours per annum then the Carrier shall be paid at the rate of "K" (Schedule B) per hour or part thereof for each additional hour plus the Award penalty rate travelling time, plus "L" (Schedule B) per km or part thereof that he is required to travel from his base plant or place of residence whichever is the lesser to and from the respective location requiring his presence.
- 23.4. A prospective Carrier shall spend a minimum of 2 weeks training to operate the mixer, slump, etc., including a training period of one day in the Contractor's Quality Control Laboratory under the Contractor's supervision of the Contractor's testers. This training is at no cost to the Contractor except for the provision of appropriate personnel and equipment.

#### 24. Disputes Procedure

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

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



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## 25. Local Rules and Conditions

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

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## 26. Occupational Health and Safety

- 26.1. The Contractor shall establish Safety Improvement Teams consistent with its Building In Safety program. Each Safety Improvement team so established may have one (1) Carrier as a member of that team.
- 26.2. The Contractor shall pay each Carrier member of the Safety Improvement Teams for any and all time such Carrier spends in relation to their membership at the rate of "K" (Schedule B) per hour.
- 26.3. Such Carrier shall be paid promptly through their individual Cartage Account in the payment period covering the time expended.
- 26.4. The Contractor shall pay each Carrier member of the Safety Improvement Teams at the rate of "K" (Schedule B) per hour or part thereof plus the Award penalty rate travelling time to a maximum of 1/2 hour each way plus "L" (Schedule B) per km or part thereof that he is required to travel from his base plant or place of residence whichever is the lesser to and from the respective location requiring his presence.



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## 27. Rostering

- 27.1. The Contractor undertakes that it shall operate a plant roster to ensure that all Carriers shall be exposed to the full plant market and shall have the opportunity to cart metres which are as close as commercially practicable to the average fleet utilisation metreage applicable during the relevant period to a particular plant, provided that the level of Customer Service set by the Contractor is achieved.
- 27.2. The Contractor shall not roster-off a Carrier simply because he is earning in excess of the average utilisation metreage applicable to a plant during the relevant period.
- 27.3. Those rosters shall include:
- a) Daily start cyclic roster.
  - b) Roster-off roster (where there are vehicles surplus to customer requirements, as determined by the Contractor).
  - c) Daily transfer roster.
  - d) Periodic transfer roster.



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### **28. Concrete Cartage in Alternative Vehicles**

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



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### **29. Plant Stored Carrier's Equipment**

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

### 30. Termination of Engagement

- 30.1. The Contractor may terminate a Carrier's Contract of Carriage without compensation only in the event of theft or serious and wilful misconduct by the respective Carrier proven in a court of law or acknowledged and accepted by the Carrier.
- 30.2. If the Contractor wishes to terminate a Carrier's Contract of Carriage other than pursuant to the provisions of Clause 30.1 hereof, the Contractor shall:
- a) Provide the Carrier with a minimum of thirteen (13) weeks written notice of termination of the Carrier's Contract of Carriage and if the Contractor provides shorter notice than the said thirteen (13) weeks, then in addition to the compensation payable pursuant to Clause 31 the Contractor shall pay to such Carrier an amount equal to 20 x "J"(Schedule B) per week for the period less than such thirteen (13) weeks of notice calculated on a reducing daily basis; and

Pay to the Carrier compensation equal to and calculated in accordance with the provisions of Clause 31 hereof.

### 31. Compensation Upon Termination of Contracts of Carriage

#### 31.1. Compensation Payable to Country Carriers

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

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

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

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

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

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

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

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

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

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

[Example: A Contract of Carriage for 2 years plus a 6 year extension commenced on the 1st January 1996 and notice is later given of termination to take place on 17th November 1999, and say the relevant CPI "M" value is 121.0 and the CPI "N" value is 109.0 then the amount of compensation payable would be:

\$64,000 x 49 / (96 - 24) x 121.0/109.0 = \$48,350 ]

### 32. Assignment of Contract of Carriage

- 32.1. If at any time or times during the term of the Contract of Carriage, the Carrier wishes to sell and assign the balance of the term of the contract, the Contractor shall have the right to purchase the same upon the following conditions:
- a) The Carrier shall first give notice in writing to the Contractor of the Carrier's desire to sell the balance of the term of the Contract of Carriage for a price calculated in accordance with the applicable formula set out in Clause 31 of this agreement.
  - b) The Contractor, if it desires to purchase the balance of the term of the contract, shall within thirty (30) days after receipt of such notice, cause to be delivered to the Carrier a written notice of acceptance of the offer. A cheque made payable to the Carrier in an amount calculated as set out in Clause 31 shall be delivered to the Carrier on the day of termination;
  - c) If the Contractor does not, within the said period of thirty (30) days, accept the Carrier's offer in the aforesaid manner, then the Carrier shall be at liberty to sell and assign the balance of the term of the contract to any other person approved by the Contractor and who is capable of carrying on the business of the Carrier pursuant to this agreement, such approval not to be unreasonably withheld.
- 32.2. The Contractor covenants with the Carrier not to serve a notice of termination of the Carrier's Contract of Carriage (except in the circumstances of Clause 30.1 - theft or serious and wilful misconduct) following service upon the Contractor of the notice of the Carrier's desire to sell the balance of the term of the Contract pursuant to Clause 32.1(a) for a period of at least six (6) months following the date of service upon it of the said notice of desire to sell.
- 32.3. For the purpose of this clause, an assignment shall include an assignment or transfer of a controlling interest in a company.

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### **33. Environment Protection and Pollution Control**

#### 33.1. Operational Procedures

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

#### 33.2. Contractor's/Carrier's Liability

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

**SCHEDULE A**  
CALCULATION OF UTILIZATION

Calculation of Utilization Cartage Rates for Country Concrete

<b>CPI INDICES</b>				
Base Index - June Quarter 1994	110.0	F	Sydney Consumer Price Index (All Groups Index) September Quarter 2003	
Index at review	142.4	B		
<b>PRODUCTIVITY</b>				
Volume (m3/truck/year)	6000	D	Based on criteria established for Sydney Metropolitan rate.	
Average load (m3)	5.00	D		
Average lead (km)	9.24	D		
Working days/year	253	F		
Average loads/day	4.74	X		
Trips/year	1200	X		
Paid km/year	11088	X		
Paid km / total km ratio	47%	F		
<b>Total km/year</b>	<b>23591</b>	<b>X</b>		<b>Kms allowed for all transfers = 1415</b>
<b>LABOUR</b>				
Weekly rate (\$)	\$543.86	A	TWU Award rate for driver for 40 hours/week. (Overtime calculated on 38 hours)	
Weeks/year	52	F		
Normal time wages (\$)	\$28,281	X		
Casual labour, 2 weeks leave (\$)	\$1,355	A (X)	Includes 15% plus 1/12 loading	
Casual labour, 3 RDOs (\$)	\$407	A (X)	Includes 15% plus 1/12 loading	
<b>Total casual labour (\$)</b>	<b>\$1,762</b>	<b>X</b>		





De-dagging time (hrs/year)	24	F	Estimated time spent per year on de-dagging barrel - premium for driver to do or payment for casual Rate paid = casual normal time hourly rate Allowance for additional time spent on return cartage of 0.8 to 3.0 m3 including pump blowbacks Rate paid = casual normal time hourly rate
Hourly payment (\$/hour)	\$16.94	A (X)	
Returned cartage (hrs/year)	20	F	
Hourly payment (\$/hour)	\$16.94	A (X)	
Detention time (\$)	\$238	C (X)	Allowance for time truck may be detained for RTA re-inspection due to agitator fault
Total extra time payments (\$)	\$984	X	
No of weeks overtime worked	30	F	Estimated overtime including overtime worked by casual labour 1.5 hours/week day @ time & half 2 hours @ time & half plus 4.5 hours @ double time per Saturday
Equiv normal time hours / week	11.25	F	
Equiv normal time hours / Sat	12.00	F	
Overtime cost (\$)	\$9,983	X	
<b>LABOUR (continued)</b>			
Superannuation (\$)	\$2,545	A (X)	9.000% of normal time wage, as per legal obligation.
Long service leave (\$)	\$544	A (X)	1 week
Leave loading (\$)	\$544	A (X)	25% of 4 weeks normal time wage = 1 week
Workers comp insurance (\$)	\$3,989	A (X)	9.867% of normal wages, casual labour, de-dagging labour and overtime
Total labour oncosts (\$)	\$7,622	X	
<b>TOTAL LABOUR COST (\$)</b>	<b>\$48,631</b>	<b>X</b>	

<b>Split of overtime labour</b>			
% charged to running cost	25%	F	= 5.7% of overtime cost
% charged to fixed labour cost	75%	F	
Total overtime cost (\$)	9983	X	
Total workers comp insurance (\$)	569	X	
"Running cost" labour (\$)	\$2,638	X	
"FIXED COST" LABOUR (\$)	\$45,993	X	



OWNERSHIP & OVERHEAD COSTS			
Depreciation (\$)	\$8,000	F	\$80,000 truck depreciated over 10 years straight line
Stamp duty on truck purchase (\$)	\$200	F	\$2000 amortized over 10 years
Reg'n, CTP insur & permit (\$)	\$4,131	B (X)	Truck registration * \$1,182 CTP ins.* \$2,949 Extra load permit
Insurance excl workers comp (\$)	\$3,220	B (X)	Truck \$2,649.00 Pub.Liab \$347.00 Agi.Dmge. \$224.00 Wrong.Del
Administration costs (\$)	\$1,821	C (X)	Accountants fee \$800, filing fee \$175, postage/telephone & miscellaneous \$400
Incorporation fee (\$)	\$105	F	\$1050 amortized over 10 years
Profit on investment (\$)	\$10,000	F	
GST Administration (\$)	\$776	E	
<b>TOTAL O &amp; O COSTS (\$)</b>	<b>\$28,252</b>	<b>X</b>	*Truck registration based on Mitsubishi FV458 * CTP from AMP Mary
RUNNING COSTS			
Fuel - based on km travelled			
Fuel Cost (\$/litre)	\$0.61	B	Ampol wholesale price for distillate 66 cents/litre rounded to nearest cent 3644444
Total km travelled	23591	X	Fuel Numbers \$0.87380 Rebate \$0.18510
Fuel consumption (litres/100km)	66	F	= 1.52 km/litre
Truck fuel cost (\$)	\$9,486	X	
RUNNING COSTS (continued)			
Repairs & servicing - all time based\			
Routine services per year	4	F	Unique to Country
Hours per routine service	4	F	



Workshop cost (\$/hour)	\$74.00	B	Stilwell's truck workshop rate	Bruce Hale 771-5500
Materials for routine service (\$)	\$1,986	C	Allow \$300 per routine service	
Routine service cost per year (\$)	\$3,170	X		
Minor R & M (hours/week)	2	F		
Truck working weeks/year	50	F	Conservative estimate for 4500 m3/year = 27400 km/year.	
Mechanic cost (\$/hour)	\$32.60	B		
Minor R & M cost per year	\$3,260	X		
Provision for major R & M (\$)	\$3,972	C		
Total servicing, R & M cost (\$)	\$10,402	X		
Tyres - based on km travelled				
No. of new tyres - radial steer	2	F	Conservative estimate for 4500 m3/year = 27400 km/year. Expected life of 50,000 km	
Cost of new tyre (\$ each)	\$573	B	Beaurepaire SP370 11R22.5 contact Mike O'Brien 648-3311 - Beaurepaire Silverwater	
Cost of new tyres (\$)	\$1,255	X		
No. of recaps - rear drive	8	F	Conservative estimate for 4500 m3/year = 27400 km/year. Expected life of 40,000 km. Unique to Co	
Cost of recaps (\$ each)	\$165.00	B		
Cost of recaps (\$)	\$1,320	X		
Expected no. of punctures	12	F	Allow 1 puncture per month	
Cost of puncture repair (\$ each)	\$40	C	Typical cost	\$30
Cost of punctures (\$)	\$477	X		
Total tyre cost (\$)	\$3,052	X		
"Running cost" labour (\$)	\$2,638	X		
TOTAL RUNNING COSTS (\$)	\$25,578	X		

Total running cost (\$/m3/paid km)	\$0.46	X	
% margin allowed on running cost	10%	F	
PAID RATE (\$/m3/paid km)	\$0.51	X	Rounded to nearest whole cent

	PRODUCTIVITY (m3/truck/year)								
	3000	3100	3200	3300	3400	3500	3600	3700	3800
"Fixed Cost" Labour (\$)	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993
Ownership & Overhead Cost (\$)	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252
Running cost (\$) @ \$/m3/km rate	\$0.51	14,137	14,608	15,080	15,551	16,022	16,493	16,965	17,436
LOD OPERATING COST (\$)	\$88,382	\$88,854	\$89,325	\$89,796	\$90,267	\$90,739	\$91,210	\$91,681	\$92,152
LOD OPERATING COST (\$/m3)	\$29.46	\$28.66	\$27.91	\$27.21	\$26.55	\$25.93	\$25.34	\$24.78	\$24.25
VOLUME INCENTIVE (\$/m3)	F	(\$1.90)	(\$1.73)	(\$1.56)	(\$1.39)	(\$1.22)	(\$1.05)	(\$0.94)	(\$0.83)

PAID CARTAGE @ AV LEAD (\$/m3)	\$27.56	\$26.93	\$26.35	\$25.82	\$25.33	\$24.88	\$24.40	\$23.95	\$23.53
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Gross income @ paid cartage (\$)	\$82,680	\$83,483	\$84,320	\$85,206	\$86,122	\$87,080	\$87,840	\$88,615	\$89,414
less running cost	14,137	14,608	15,080	15,551	16,022	16,493	16,965	17,436	17,907
Load fee component (\$)	\$68,543	\$68,875	\$69,240	\$69,655	\$70,100	\$70,587	\$70,875	\$71,179	\$71,507

	PRODUCTIVITY (m3/truck/year)									
	4100	4200	4300	4400	4500	4600	4700	4800	4900	
"Fixed Cost" Labour (\$)	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993
Ownership & Overhead Cost (\$)	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252
Running cost (\$) @ \$/m3/km rate \$0.51	19,321	19,792	20,263	20,735	21,206	21,677	22,148	22,620	23,091	
LOD OPERATING COST (\$)	\$93,566	\$94,037	\$94,509	\$94,980	\$95,451	\$95,922	\$96,394	\$96,865	\$97,336	
LOD OPERATING COST (\$/m3)	\$22.82	\$22.39	\$21.98	\$21.59	\$21.21	\$20.85	\$20.51	\$20.18	\$19.86	
VOLUME INCENTIVE (\$/m3) F	(\$0.40)	(\$0.30)	(\$0.20)	(\$0.10)	\$0.00	\$0.10	\$0.20	\$0.31	\$0.42	
PAID CARTAGE @ AV LEAD (\$/m3)	\$22.42	\$22.09	\$21.78	\$21.49	\$21.21	\$20.95	\$20.71	\$20.49	\$20.28	
Gross income @ paid cartage (\$) less running cost	\$91,922 19,321	\$92,778 19,792	\$93,654 20,263	\$94,556 20,735	\$95,445 21,206	\$96,370 21,677	\$97,337 22,148	\$98,352 22,620	\$99,372 23,091	
Load fee component (\$)	\$72,601	\$72,986	\$73,391	\$73,821	\$74,239	\$74,693	\$75,189	\$75,732	\$76,281	
LOAD FEE (\$/m3)	\$17.71	\$17.38	\$17.07	\$16.78	\$16.50	\$16.24	\$16.00	\$15.78	\$15.57	



	PRODUCTIVITY (m3/truck/year)									
	5200	5300	5400	5500	5600	5700	5800	5900	6000	
"Fixed Cost" Labour (\$)	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993	\$45,993
Ownership & Overhead Cost (\$)	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252	28,252
Running cost (\$) @ \$/m3/km rate \$0.51	24,504	24,976	25,447	25,918	26,389	26,861	27,332	27,803	28,274	28,274
LOD OPERATING COST (\$)	\$98,750	\$99,221	\$99,692	\$100,163	\$100,635	\$101,106	\$101,577	\$102,048	\$102,520	\$102,520
LOD OPERATING COST (\$/m3)	\$18.99	\$18.72	\$18.46	\$18.21	\$17.97	\$17.74	\$17.51	\$17.30	\$17.09	\$17.09
VOLUME INCENTIVE (\$/m3) F	\$0.81	\$0.95	\$1.09	\$1.23	\$1.33	\$1.43	\$1.52	\$1.61	\$1.70	\$1.70
PAID CARTAGE @ AV LEAD (\$/m3)	\$19.80	\$19.67	\$19.55	\$19.44	\$19.30	\$19.17	\$19.03	\$18.91	\$18.79	\$18.79
Gross income @ paid cartage (\$)	\$102,960	\$104,251	\$105,570	\$106,920	\$108,080	\$109,269	\$110,374	\$111,569	\$112,740	\$112,740
less running cost	24,504	24,976	25,447	25,918	26,389	26,861	27,332	27,803	28,274	28,274
Load fee component (\$)	\$78,456	\$79,275	\$80,123	\$81,002	\$81,691	\$82,408	\$83,042	\$83,766	\$84,466	\$84,466
LOAD FEE (\$/m3)	\$15.09	\$14.96	\$14.84	\$14.73	\$14.59	\$14.46	\$14.32	\$14.20	\$14.08	\$14.08

**SCHEDULE B**

EXTRA CHARGES UNIT RATE: Effective: 16 November 2003

SYMBOL	TITLE	RATE
"A"		no rate
"B"	kilometre rate =total running cost (@4500m3) / total km plus 10% @ ZXAR>Pay Area/Material > QOZ > COFF & NRIV NOZ > CANB, NCAS, SNSW & WNSW	\$0.99
"C"	mixing in yard = 2m3 x 3km @ 4500m3 p.a. utilisation rate @ ZXPQ>Pay Area/Mat> QPLANTMIX > NRIV & COFFS NPLANTMIX check for all others	\$36.06
"D"	waiting time = "J" / 60 @ ZXPQ >Pay Area/Mat> QWD > NRIV & COFFS NWD & NW check for all others	1.58
"E"	standby time per half hour = "K" x 2 (for double time)/ 2 (for half time) @ ZXPQ >Pay Area/Mat> QSTANDBY > NRIV & COFFS NSTANDBY check for all others	\$16.94
"F"	penalty rate = "K" x 1.25hrs / average load Updated front end	\$4.23
"G"	transfer to workshop = "B" @ ZXPQ >Pay Area/Mat > QTTFWK > NRIV & COFFS NTTFWK check for all others	\$0.99
"H"	transfer fee general = "B" @ ZXPQ >Pay Area/Mat > QTTF > NRIV & COFFS NTTF check for all others	\$0.99
"I"		no rate
"J"	hourly truck hire and driver = (average load @ average laed @ 4500m3 p.a. ) less 10% (NCONTRKHR) Function deleted 13/2/01 E Marquez	\$95.00
"K"	hourly hire Carrier's labour = Award rate for casual driver Same as "E" - Input not required	\$16.94
"L"	travel cost = the travelling rate under the Cement Mixers and Concrete Workers Central Batch Plant Award Manual calculation	\$0.58

## **SCHEDULE C**

### **SURCHARGE ITEMS INCLUDED IN THE UTILISATION RATE:**

1. TRANSFER FEES as described in the Transport Industry - Concrete Haulage Contract Determination Clause 6.2.
2. WAITING TIME as described in the Transport Industry - Concrete Haulage Contract Determination Clause 3.5.
3. LEFTOVER CONCRETE as described in the Transport Industry - Concrete Haulage Contract Determination Clause 3.10. for returns less than 3.0m<sup>3</sup>.
4. OUT OF HOURS PENALTY RATES as described in the Transport Industry - Concrete Haulage Contract Determination Clause 3.7. (Except where specifically excluded in Clause 4.1 (a) (iii) herein.



## SCHEDULE D

Example only

### Determination of Utilisation Level

Paid metres available for the period (V)	=	150000
Base fleet of trucks (T)	=	131
Working days in the quarter (W)	=	67.2

### UNAVAILABLE DAYS

Annual leave	60
Sick leave	10
RDO	15
Vehicle breakdown	20
Bereavement	0
Special approved leave	10
Unauthorised leave	10
Failure to report	15
<b>TOTAL DAYS</b>	<b>140</b>

Formula :  $U = V / ( T - R )$  , where  $R = S / W$

Therefore  $U = 150000 / ( 131 - R )$  where  $R = 140 / 67.2 = 2.08$

$= 150000 / ( 131 - 2.8 )$

$= 1163.5 \text{ m}^3 \text{ per truck for the quarter}$

## SCHEDULE E

### SAFETY NET CALCULATION - EXAMPLE OF APPLICATION

	Quarter			Cumulative			Supplement	
Quarter	Actual Earnings	G'Feed Earnings	(Shortfall) Surplus	Actual Earnings	G'feed Earnings	(Shortfall) Surplus	Qtrly Suppmnt	Cumul Suppmnt
1	17000	15000	2000	17000	15000	2000	0	0
2	17000	15000	2000	34000	30000	4000	0	0
3	14000	15000	-1000	48000	45000	3000	-1000	-1000
4	12000	15000	-3000	60000	60000	0	-3000	-4000
5	14000	15000	-1000	74000	75000	-1000	-1000	-5000
6	16000	15000	1000	90000	90000	0	1000	-4000
7	19000	15000	4000	109000	105000	4000	4000	0
8	19000	15000	4000	128000	120000	8000	0	0
9	17000	15000	2000	145000	135000	10000	0	0
10	15000	15000	0	160000	150000	10000	0	0
11	13000	15000	-2000	173000	165000	8000	-2000	-2000
12	11000	15000	-4000	184000	180000	4000	-4000	-6000
13	10000	15000	-5000	194000	195000	-1000	-5000	-11000
14	13000	15000	-2000	207000	210000	-3000	-2000	-13000
15	15000	15000	0	222000	225000	-3000	0	-13000
16	17000	15000	2000	239000	240000	-1000	2000	-11000
17	19000	15000	4000	258000	255000	3000	4000	-7000
18	18000	15000	3000	276000	270000	6000	3000	-4000
19	17500	15000	2500	293500	285000	8500	2500	-1500
20	17500	15000	2500	311000	300000	11000	1500	0

For this example it has been assumed that the safety net is \$60,000 per annum for the entire duration of the contract

## SCHEDULE F

### INSURANCE SPECIFICATION :

#### 1. GENERAL

- a) The Insurance coverage required by Clause 8 of the Concrete Carriers Agreement is as follows:
- b) Motor vehicle comprehensive or third party property.
- c) Motor vehicle compulsory third party (green slip).
- d) Workers' Compensation for all carrier's employees.
- e) Public liability cover to a minimum value of \$5 million with extension to cover the following:
  - i) Damage caused by the agitator.
  - ii) Damage due to incorrect product delivery.
- f) Comprehensive cover for damage to the agitator.

#### 2. MOTOR VEHICLE COMPREHENSIVE OR THIRD PARTY PROPERTY

The motor vehicle comprehensive policy must include a Third Party Liability in respect of bodily injury and/or property damage up to a limit of \$10 million for any one event.

The policy must also cover, but not necessarily be limited to the following:

- a) Finance payout.
- b) Any losses which may arise whilst the insured is operating beyond the limits of any carriageway or thoroughfare.
- c) Any losses due to theft, fire, flood and/or storm and tempest.
- d) Cross liability.
- e) Liability of passengers.
- f) Principal's Indemnity in respect of non-owned vehicles.
- g) Removal of debris / cleaning up costs.
- h) Signwriting.

#### 3. MOTOR VEHICLE COMPULSORY THIRD PARTY

This cover is that which is commonly known as "Green Slip" cover and is controlled by State Government legislation.

#### 4. WORKERS' COMPENSATION

As each Carrier operating in accordance with the Contract Carriers Agreement is trading as a Proprietary Limited Company, they are required, by law, to effect Workers' Compensation Insurance for each and every worker employed by their Company, including themselves. The rate and conditions are controlled by the Workers' Compensation legislation.

#### 5. PUBLIC LIABILITY

An All Risks Public Liability cover to a value of \$5 million is compulsory.

This policy must contain an extension to cover any damage or injury which may be attributed to the agitator owned by Readymix Holdings Pty Limited and carried and used by the Carrier.

This policy must also contain an extension to cover for any damage that may be attributed, whether directly or indirectly, to the delivery by the Carrier of an incorrect product to a customer.

#### 6. COMPREHENSIVE COVER FOR DAMAGE TO AGITATOR

A Comprehensive cover for any and all theft and/or damage to the agitator which is the property of Readymix Holdings Pty Limited but issued to the Carrier for his use.

The cover will extend to all situations whether the agitator is attached to the Carrier's vehicle or whilst removed for repair and/or maintenance.

The cover must be for a minimum value of \$40,000 and be a NIL EXCESS policy.