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SERIAL C8506

HY-TEC INDUSTRIES PTY LTD - MAXI CONCRETE CONTRACT DETERMINATION

Schedule of Contract Determination published on 15.1.2016 and subsequent Variations incorporated

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DETERMINATION

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1. Definitions and Interpretation

1.1 Definitions

In this Contract Determination:

"Agitator" means an assembly mounted on the chassis of the Vehicle (including, but not limited to, the barrel, hydraulic system, loading hopper and A-frame) with the rated mixing capacity and other specifications nominated by Hy-Tec;

"Agitator Party" means either Hy-Tec or the Contract Carrier as nominated by Hy-Tec;

"Approval" means any licence, permit, consent, approval, determination, certificate or permission from any Authority (including any conditions or requirements of any Approval);

"Authority" means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;

"Breach" means any breach of the terms of this Contract Determination or any part of the Policies and Procedures or any Law;

"Business Day" means any day except Saturday or Sunday or a day that is a Public Holiday in New South Wales;

"Cartage Contract" means a contract between Hy-Tec and a Contract Carrier for the Contract Carrier to provide Services to Hy-Tec in accordance with the terms of this Contract Determination;

"Company Trucks" means trucks owned and operated by Hy-Tec;

"Concrete" means a mixed, blended or batched product that, regardless of any other constituent, contains:

- (a) cement, aggregate, sand and water;
- (b) mortar containing cement, sand and water;
- (c) grout containing cement, sand and water;
- (d) slurry containing cement and water; or
- (e) binders containing cement and sand,

regardless of the method of production, laying or description of the finished product in which that product is to be used;

"Contract Carrier" means a Contract Carrier operating a Maxi Truck engaged by Hy-Tec to provide the Services in accordance with the terms of this Contract Determination;

"Contract Carrier Driver" means a director and controlling shareholder of the Contract Carrier who is engaged by the Contract Carrier, with Hy-Tec's prior consent, as the driver of the Vehicle;

"Contract Carrier Executive" means the representatives nominated by a majority of the Contract Carriers from time to time;

"CPI" means the consumer price index, all groups, Sydney;

"Delivery Docket" means the docket issued by Hy-Tec to the Contract Carrier Driver setting out details of:

- (a) Hy-Tec's customer;
- (b) the delivery address;
- (c) the Concrete specifications;
- (d) the Concrete quantity;
- (e) whether delivery is to be on a cash on delivery (COD) basis; and
- (f) any other information which Hy-Tec considers necessary;

"Driver" means the Contract Carrier Driver and/or a Substitute Driver;

"Home Plant" means the Plant at which the Contract Carrier must start providing the Services on each Working Day;

"Hy-Tec Colours" means the colours determined by Hy-Tec from time to time;

"Hy-Tec Logos" means the logos determined by Hy-Tec from time to time;

"Hy-Tec's Fleet" means the fleet of vehicles used by Hy-Tec to deliver Concrete to Hy-Tec's customers (including Company Trucks, Mini Trucks and vehicles owned by Contract Carriers);

"Hy-Tec's Representative" means the representative nominated by Hy-Tec from time to time;

"Law" means national, federal (including Commonwealth), state, territory or local government legislation, statutes, ordinances and other laws including regulations, by-laws and other subordinate legislation or law;

"Mini Truck" means a truck with a maximum legal payload of less than 3 cubic metres;

"Maxi Truck" means a truck other than a Mini Truck;

"Normal Working Hours" means Monday to Friday 6am to 4pm, Saturday 6am to 12pm, and any scheduled additional hours;

"Policies and Procedures" means Hy-Tec's policies and procedures in relation to the Services as notified by Hy-Tec to the Contract Carrier from time to time;

"Plant" means the batching plant from which deliveries of Concrete are despatched;

"Public Holidays" means a day which is a gazetted public holidays in New South Wales (including Easter Saturday) and including up to a total of ten (10) public holidays per annum;

"Rate" means the rates set out in Schedule 1;

"Services" means using the Vehicle to deliver Concrete to Hy-Tec's customers in accordance with Hy-Tec's directions;

"Standby Time" means time which is spent by the Contract Carrier waiting for the Vehicle to be loaded with Concrete outside of Normal Working Hours when Hy-Tec has requested the Contract Carrier to provide Services outside of Normal Working Hours;

"Substitute Driver" refers to a driver engaged by the Contract Carrier, with Hy-Tec's prior written consent, for the purposes of providing temporary relief for the Contract Carrier Driver;

"Surcharges and Fees" means the surcharges and fees set out in Schedule 1;

"Vehicle" means the vehicle owned and operated by the Contract Carrier for the purposes of providing the Services;

"Vehicle Specification" means the specifications for the Vehicle as determined by Hy-Tec;

"Working Day" means each day of the Working Week;

"Working Week" means six (6) days per week, from Monday to Saturday, with Normal Working Hours; and

"Yard Delegate" means the representative nominated by the Contract Carriers in respect of any Plant from time to time.

1.2 Interpretation

In this Contract Determination, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract Determination, and a reference to this Contract Determination includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, New South Wales, Australia time;
- (g) a reference to a party is to a party to this Contract Determination, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract Determination or any part of this Contract Determination; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2. Duties and Responsibilities

2.1 Incorporation and ABN

The Contract Carrier must:

- (a) be an incorporated entity with the Contract Carrier Driver as a director and controlling shareholder at all times; and
- (b) maintain an Australian Business Number at all times.

2.2 Vehicle

The Contract Carrier must supply the Vehicle:

- (a) in accordance with the Vehicle Specifications;
- (b) in accordance with the legal requirements for the relevant maximum legal payload; and
- (c) which must not at any time be more than 14 years old.

2.3 Replacement Vehicle

The Contract Carrier must obtain Hy-Tec's prior written consent before the Contract Carrier replaces the Vehicle.

2.4 Replacement Vehicle Specifications

If the Contract Carrier replaces the Vehicle, the Contract Carrier must acquire, install, maintain and repair the rear mounted power take off:

- (a) to enable the Agitator Party to attach all equipment necessary to operate the Agitator; and
- (b) with flange suitable to attach a drive shaft,

and this will represent the limit of the Contract Carrier's responsibility to provide equipment in relation to the Agitator unless the Contract Carrier is the Agitator Party.

2.5 Labour

The Contract Carrier must supply all labour necessary to provide the Services in accordance with Hy-Tec's requirements.

2.6 Annual Minimum

The Contract Carrier must provide the Services for a minimum period of fifty (50) Working Weeks per year and must ensure the Contract Carrier Driver is the driver of the Vehicle for a minimum of (48) Working Weeks per year.

2.7 Standards

The Contract Carrier must:

- (a) ensure all Services are performed with reasonable skill, care and diligence at all times; and
- (b) comply with the Policies and Procedures at all times.

2.8 Home Plant

If an Existing Contract Carrier is, prior the commencement of this Contract Determination, already providing the Services by starting each Working Day at a particular Plant, that Plant will be the Contract Carrier's Home Plant. Hy-Tec may change the Contract Carrier's Home Plant at any time for business or operational reasons.

2.9 Plant Transfers

If Hy-Tec directs the Contract Carrier to work from a Plant other than the Contract Carrier's Home Plant for one or more Working Days up to a maximum of 12 Working Days, the Contract Carrier must work from the Plant nominated by Hy-Tec for those Working Days and Hy-Tec will pay the Contract Carrier the Truck Transfer Fee for the first Working Day unless Hy-Tec is able to provide an initial load to the Contract Carrier from the Home Plant in which case Hy-Tec will not pay any transfer fee to the Contract Carrier.

2.10 Loading Order

- (a) The initial daily starting order will be in accordance with a cyclic roster.
- (b) Thereafter all trucks will be loaded in order of their return to the plant with the exception of:
 - (i) Mini mix loads (less than 3 cubic metres)
 - (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.
 - (iv) Notation: where the last load of the day or message can be sent in one (1) load so as to avoid extra cartage costs then Hy-Tec has the right to nominate a truck to take the load even though that truck is not the next in line in the roster. If sending the load in more than one truck will not involve extra cartage cost then the loading order will not change.
 - (v) the circumstances set out in clause 2.10 (c) below.
- (c) Hy-Tec will operate a fleet of Company Trucks driven by Hy-Tec's employees. This fleet of Company Trucks will work in all rosters on the same basis as the Contract Carrier fleet in accordance with clauses 2.10 (a) and (b) provided that where the needs of the business make it necessary, Hy-Tec has the right to change the order of any Company Truck provided that Hy-Tec does not exercise this right to diminish the utilisation of any Contract Carrier in the cyclic roster.
- (d) Subject to clauses 2.10 (b) and (c), Hy-Tec's Company Trucks will not be preferentially loaded.
- (e) The initial loading time and the initial plant from which such loading shall take place will be notified by Hy-Tec to each Contract Carrier before the close of business on the previous day.

2.11 Concrete

Concrete will always remain the property of Hy-Tec.

3. Introduction of Vehicles to the Fleet

3.1 Larger Vehicles

If Hy-Tec or one or more Contract Carriers wishes to introduce larger vehicles to Hy-Tec's Fleet then the following procedure and principles will apply:

- (a) Hy-Tec will have the right to introduce Hy-Tec's own larger vehicles to Hy-Tec's Fleet as Company Trucks;
- (b) there will be consultation between Hy-Tec and the Contract Carrier Executive before the vehicles are purchased and used in Hy-Tec's Fleet.
- (c) if as a result of the consultation process, Hy-Tec agrees one or more Contract Carrier may purchase a larger vehicle, each Contract Carrier will have the opportunity to purchase the larger vehicles on the basis of Plant seniority;
- (d) Hy-Tec will not unreasonably restrict any Contract Carrier from owning and operating larger vehicles in Hy-Tec's Fleet; and
- (e) the aim of introducing larger vehicles must be to improve the overall business of Hy-Tec.

3.2 New Contract Carriers

To avoid any doubt, Hy-Tec may, in its complete discretion, introduce additional Contract Carriers to Hy-Tec's Fleet.

4. Mini Trucks

- (a) If Hy-Tec wishes to add Mini Trucks to Hy-Tec's Fleet, there will be consultation between the parties before the Mini Trucks are purchased and used in Hy-Tec's Fleet.
- (b) Mini Trucks will operate on a cyclic roster applying only to Mini Trucks.

5. Operational Matters

5.1 Appearance

The Contract Carrier must ensure the Drivers always maintain a neat and clean appearance when providing the Services.

5.2 Deliveries

- (a) The Contract Carrier must not leave the Plant to deliver Concrete without the Delivery Docket.
- (b) The Contract Carrier must comply with Hy-Tec's reasonable requests regarding completion and management of Delivery Dockets.
- (c) The Contract Carrier must collect monies for COD deliveries in accordance with the Policies and Procedures.
- (d) The Contract Carrier must ensure that each load of Concrete is properly mixed and that the slump is as required by Hy-Tec.
- (e) The Contract Carrier must report, as soon as possible, all shortages, queries and incorrect slumps of Concrete to the person nominated by Hy-Tec.
- (f) Hy-Tec will maintain a written procedure on slump and ensure that a copy of the procedure is provided to the Contract Carrier.
- (g) Hy-Tec will endeavour to have the correct delivery address, map reference and any relevant delivery instructions clearly printed on all Delivery Dockets at all times.

5.3 Inability to Effect a Delivery

- (a) If a delivery is delayed or deferred for any reason, the Contract Carrier must immediately notify Hy-Tec to enable Hy-Tec to provide an explanation to Hy-Tec's customer.
- (b) Hy-Tec will advise the Contract Carrier, as early as possible, of any urgent or special instructions required for any particular customer.
- (c) If the Contract Carrier considers a delivery would involve an unreasonable risk of damage to property or injury to persons, the Contract Carrier must act in accordance with the Policies and Procedures.

5.4 Worksheets and Freight Notes

- (a) The Contract Carrier agrees to correctly complete, retain and forward to Hy-Tec all Delivery Dockets, worksheets and any other documents reasonably required by Hy-Tec.
- (b) The Contract Carrier agrees to make every endeavour to obtain a customer's signature on the Delivery Docket on delivery of Concrete.

5.5 Responsibility for Concrete

The Contract Carrier agrees to exercise all reasonable skill, care and diligence in the carriage and safe keeping of Concrete.

5.6 Damage to Concrete

The Contract Carrier will indemnify Hy-Tec for the cost of any Concrete which, as a result of the proven fault of the Contract Carrier, has:

- (a) a slump which does not comply with the requirements of AS1379; or
- (b) been damaged (as may be evidenced by a visual inspection which shows problems including, but not limited to, a change in colour, a change in proportion of stone or sand or a change in the size of the load).

6. Contract Carrier Driver and Substitute Driver

- (a) The Contract Carrier acknowledges that the duties and obligations of the Contract Carrier under this Contract Determination extend to the Contract Carrier Driver and any Substitute Driver engaged by the Contract Carrier
- (b) The Contract Carrier will be responsible and liable for all acts and omissions of the Contract Carrier Driver and any Substitute Driver as if the acts or omissions were acts or omissions of the Contract Carrier.
- (c) The Contract Carrier must obtain Hy-Tec's prior written approval before the Contract Carrier engages the Contract Carrier Driver or Substitute Driver.
- (d) If Hy-Tec reasonably considers the Contract Carrier Driver is, or has been, unable to drive for an extended period or consistently to Hy-Tec's roster, the Contract Carrier must make an application to Hy-Tec for approval to engage a Substitute Driver.
- (e) If the Contract Carrier requests Hy-Tec to approve a potential Substitute Driver, Hy-Tec may approve or reject the Substitute Driver in Hy-Tec's reasonable discretion after taking into consideration the Contract Carrier's obligations under this Contract Determination and any potential hardship to the Contract Carrier.

7. Fleet

- (a) Subject to clause 3, Hy-Tec may make changes to Hy-Tec's Fleet (including, but not limited to, changing the ratio of Contact Carriers to Company Trucks and changing the nature, size and configuration of trucks) after consultation with the Contract Carrier Executive.
- (b) Hy-Tec will not make changes to Hy-Tec's Fleet in accordance with clause 7(a) without a sound business reason for doing so.

8. Painting of Vehicle

8.1 Painting and Logos

- (a) The Contract Carrier agrees to ensure that the Vehicle is painted with Hy-Tec's Colours prior to using the Vehicle to provide Services.
- (b) Hy-Tec will affix Hy Tec's Logos to the Vehicle prior to the Contract Carrier using the Vehicle to provide Services.

8.2 Repainting

- (a) Any repainting of the Vehicle will be at Hy-Tec's discretion.
- (b) The Contract Carrier must arrange for the Vehicle to be repainted with Hy-Tec's Colours and Hy-Tec's Logos by a vehicle painting contractor nominated by Hy-Tec, at Hy-Tec's expense, on Hy-Tec's direction.

8.3 Preparation for Repainting

The Contract Carrier must, at the Contract Carrier's expense, prepare the Vehicle for repainting including, but not limited to, by:

- (a) providing a sound painting surface; and
- (b) cleaning and removing rust and corrosion.

8.4 Removal of Agitator for Repainting

The Agitator Party must remove the Agitator for any repainting of the Vehicle and make good any damage to the Vehicle caused by the removal of the Agitator.

8.5 Delay Caused by Removal of Agitator for Repainting

After the Contract Carrier provides the Vehicle for repainting, Hy-Tec will either (in Hy-Tec's discretion):

- (a) supply a substitute vehicle, if available, to the Contract Carrier and the Contract Carrier will pay to Hy-Tec an amount equal to the running costs set out in the rise and fall of the Rate for the hire of the vehicle for the first eight Working Days and will then for the ninth Working Day, and each subsequent Working Day, the Contract Carrier will not pay to Hy-Tec any amount in respect of the hire of the vehicle; or
- (b) not supply a substitute vehicle and pay the Contract Carrier no compensation for the first eight Working Days and then pay the Contract Carrier the Agitator Breakdown Rate (for a maximum of 8 hours per Working Day) for the ninth Working Day, and each subsequent Working Day, which the Contract Carrier is unable to use the Vehicle to provide the Services due to the repainting of the Vehicle.

9. Maintenance

9.1 Vehicle and Equipment

- (a) The Contract Carrier must maintain the Vehicle in a safe and good order, condition and appearance at the Contract Carrier's expense.
- (b) The Contract Carrier must keep the Vehicle equipped at all times with all equipment which Hy-Tec reasonably considers necessary for the safe and proper provision of the Services.
- (c) Hy-Tec will provide all cleaning materials for the Contract Carrier to clean the Vehicle.

9.2 Roadworthiness

- (a) Hy-Tec may refuse to load the Vehicle with Concrete if Hy-Tec considers the Vehicle is unroadworthy or defective.
- (b) If Hy-Tec refuses to load the Vehicle in accordance with clause 9.2(a), the Contract Carrier must arrange for the Vehicle to be inspected by a qualified heavy vehicle mechanic nominated by Hy-Tec in consultation with the Contract Carrier Executive.
- (c) If an inspection of the Vehicle in accordance with clause 9.2(b) shows the Vehicle is not unroadworthy or defective, Hy-Tec will pay the Contract Carrier compensation at the Agitator Breakdown Rate for the period for which Hy-Tec refused to load the Vehicle with Concrete (up to a maximum of 8 hours per Working Day) excluding Public Holidays and designated non Working Days for the Home Plant.

9.3 Agitator

- (a) The Agitator Party must provide regular maintenance of the Agitator at no cost to the other party.
- (b) The Contract Carrier must maintain the Agitator in a reasonable level of cleanliness.
- (c) Hy-Tec will inspect the Agitator regularly to monitor Concrete build up in the Agitator.
- (d) The Contract Carrier must provide to Hy-Tec a weighbridge certificate showing the gross weight of the Vehicle on each six-month anniversary of the Commencement Date.
- (e) Hy-Tec may weigh the Vehicle at any time to determine the Vehicle's gross weight and tare weights and reduce the Vehicle's load size in accordance with the outcome of any weight determination.
- (f) Hy-Tec will carry out de-dagging of the Agitator if Hy-Tec reasonably considers the Agitator needs de-dagging because of excessive build up of Concrete in the Agitator.
- (g) Hy-Tec will pay for one (1) de-dagging of the Agitator each calendar year and the Contract Carrier must pay the cost of all other de-dagging of the Agitator.
- (h) If there is an excessive build up of Concrete in the Agitator because of peculiarities of the Concrete rather than poor maintenance by the Contract Carrier, there will be consultation between the parties about payment of the Agitator de-dagging expenses.

9.4 Vehicle Costs

The Contract Carrier must pay all costs associated with the running of the Vehicle including, but not limited to, any registration or licence fees associated with any Approvals, road taxes and fines (if any) and all expenses for fuel, oil, tyres, insurances and other running costs.

9.5 Equipment Damage

If either Hy-Tec or the Contract Carrier damages the equipment of the other party, the party at fault will be responsible for the cost of repairs or replacement of the equipment.

10. Uniforms

- (a) The Contract Carrier must ensure the Contract Carrier Driver and any Substitute Driver wear uniforms at all times.
- (b) Hy-Tec will provide a satisfactory quantity of uniforms, with a minimum of six (6) days fresh apparel, and summer and winter options, for the Contract Carrier Driver.
- (c) Any uniforms provided by Hy-Tec to the Contract Carrier will remain the property of Hy-Tec.
- (d) Hy-Tec will replace items of uniforms which Hy-Tec provided to the Contract Carrier if reasonably necessary as a result of fair wear and tear (subject to return of old items).
- (e) If any item of uniform provided by Hy-Tec to the Contract Carrier needs to be replaced other than as a result of fair wear and tear, the Contract Carrier will repair or replace such items at the Contract Carrier's expense.
- (f) The Contract Carrier must ensure all uniforms are clean and tidy at all times.

11. Safety Equipment

- (a) The Contract Carrier must ensure the Contract Carrier Driver and any Substitute Driver wear appropriate safety equipment, including safety boots, at all times.
- (b) Hy-Tec will supply wet weather gear and safety gear, including safety boots for the Contract Carrier Driver.
- (c) Any wet weather gear and safety gear provided by Hy-Tec to the Contract Carrier will remain the property of the Hy-Tec.
- (d) Hy-Tec will replace items of wet weather gear and safety gear which Hy-Tec provided to the Contract Carrier if reasonably necessary as a result of fair wear and tear (subject to return of old items).
- (e) If any item of wet weather gear provided by Hy-Tec to the Contract Carrier needs to be replaced other than as a result of fair wear and tear, the Contract Carrier will repair or replace such items at the Contract Carrier's expense.

12. Insurance

12.1 Required Policies

The Contract Carrier must ensure the Contract Carrier maintains, at the Contract Carrier's expense, the following insurance policies in respect of the Vehicle and all Drivers:

- (a) compulsory third party insurance for the Vehicle as required by any relevant Law;
- (b) comprehensive insurance for the Vehicle for the Vehicle's market value;
- (c) third party property insurance for the Vehicle in the amount of \$20 million (or such higher amount as Hy-Tec may reasonably require from time to time) for each claim or occurrence;
- (d) comprehensive cover for loss and/or damage to the Agitator, which notes the interest of the Agitator Party in the Agitator;
- (e) public liability insurance for claims in respect of loss or damage to real or personal property and/or personal injury or death of any person arising from the performance of the Services in the amount of \$20 million (or such higher amount as Hy-Tec may reasonably require from time to time) for each claim or occurrence and with extensions to cover:
 - (i) damage caused by an Agitator fitted to the Vehicle; and
 - (ii) damage due to incorrect product delivery;
- (f) workers' compensation insurance as required by any relevant state legislation with extensions to cover:
 - (i) the Contract Carrier's liability at common law; and
 - (ii) Hy-Tec's liability (if any) in respect of persons engaged or employed by the Contract Carrier; and
- (g) such other insurances notified in writing by Hy-Tec to the Contract Carrier from time to time.

12.2 Obligation to Provide Copies

The Contract Carrier must provide copies of all insurance policies and certificates of currency in relation to the policies set out in clause 12.1:

- (a) before the Commencement Date; and
- (b) immediately when the Contract Carrier renews each policy.

12.3 Variation to Required Policies

Hy-Tec may from time to time make reasonable variations to the requirements set out in clause 12.1 by providing written notice to the Contract Carrier and clause 12.1 will then operate as if the clause referred to the varied requirements.

12.4 Insured's Obligations

In respect of an insurance policy referred to in clause 12.1, the Contract Carrier must ensure that the Contract Carrier:

- (a) pays all insurance premiums as and when they fall due;
- (b) complies with all terms of the insurance and all requirements of insurers including in particular those relating to the operation of the Vehicle by any Driver and those relating to disclosure;
- (c) gives immediate written notice to the insurer, with a copy to Hy-Tec, of anything required under any policy; and
- (d) makes available to Hy-Tec on demand copies of all policies, certificates of currency, renewal notes, premium receipts and correspondence relating to the insurance.

12.5 Recommended Policies

The Contract Carrier acknowledges Hy-Tec recommends the Contract Carrier and the Contract Carrier Driver maintains twenty-four hour personal accident and illness insurance.

13. Compliance with Laws

13.1 Compliance

The Contract Carrier must:

- (a) comply with all Laws in relation to the Services;
- (b) obtain all Approvals in relation to the Services;
- (c) ensure the Contract Carrier Driver and any Substitute Driver each hold a current drivers licence appropriately endorsed or issued in respect of the correct class of vehicle (minimum heavy rigid);
- (d) immediately report any accident to Hy-Tec's Representative and attend to any legal requirements at the scene of the accident (and Hy-Tec will arrange wherever practicable for a representative to attend accidents involving substantial equipment damage or personal injury); and
- (e) ensure each Driver provides Hy-Tec with an executed copy of the approval set out in Schedule 2 prior to providing any Services, to enable Hy-Tec to obtain details from the Road and Traffic Authority of NSW in relation to licence status at random intervals.

13.2 Carrying Capacity

If there are any changes to Laws relating to truck carrying capacities, the Contract Carrier may modify the Vehicle at the Contract Carrier's expense to take advantage of the increased capacity providing that:

- (a) the Vehicle must comply with the Vehicle Specification; and
- (b) if the modifications may affect the configuration of the Vehicle (including, but not limited to, increasing from a six (6) wheel truck to an eight (8) wheel truck), the parties will comply with the procedure and principles set out in clause 3.

14. Payment of Contract Carrier

14.1 Payments

- (a) Hy-Tec will pay to the Contract Carrier the Rate and any applicable Surcharges and Fees on the 15th and last Working Day of the month into the account nominated by the Contract Carrier.
- (b) Hy-Tec will not make any deduction from any payment to the Contract Carrier other than:
 - (i) statutory deductions;
 - (ii) money owed by the Contract Carrier to Hy-Tec in accordance with a court order;
 - (iii) the Contract Carrier's fuel purchases from Hy-Tec; and
 - (iv) deductions authorised by the Contract Carrier in writing.
- (c) Hy-Tec will prepare and give to the Contract Carrier a Recipient Created Tax Invoice (RCTI) setting out daily data, and total data for the relevant period, including docket numbers, quantity of loads, kilometres, extra payments, payment per load and job address. The RCTI will itemise the gross cartage payments due as well as the net payment (after deductions).
- (d) Payment of kilometres travelled will be based on the shortest heavy rigid transport route to site rounded up to the nearest whole kilometre. Hy-Tec will provide an automated docket printout to display details of the relevant transport route. This route will be determined using a computerised mapping program nominated by Hy-Tec which will be considered as the distance calculator for travel routes or distances. If Hy-Tec directs the Contract Carrier to take a particular route, Hy-Tec will pay the Contract Carrier on the basis of the kilometres travelled by the Contract Carrier in taking the route directed by Hy-Tec.
- (e) The Rates set out the method used to calculate the amount to be paid by Hy-Tec to the Contract Carrier for the Services.

15. Dispute Resolution

15.1 Notification of Dispute

If a dispute arises between Hy-Tec and the Contract Carrier, either Hy-Tec or the Contract Carrier may give a formal written notice of dispute to the other party identifying and setting out the details of the dispute.

15.2 Notification of Dispute

If Hy-Tec or the Contract Carrier receives a notification of dispute in accordance with clause 15.1, Hy-Tec and the Contract Carrier must attempt to resolve the dispute in accordance with the following procedure:

- (a) The Contract Carrier must continue to provide the Services, and each party must comply with all of the party's obligations in accordance with this Contract Determination, at all times even if Hy-Tec and the Contract Carrier are in dispute.
- (b) Hy-Tec and the Contract Carrier must attempt to resolve the dispute as close to the source of the dispute as possible with graduated steps, with reasonable time limits, for further discussion at higher levels of authority.
- (c) If the dispute is not resolved in accordance with clause 15.2(b), Hy-Tec will attempt to resolve the dispute in discussion with the Yard Delegate and/or the Contract Carrier Executive.
- (d) If the dispute is not resolved in accordance with clause 15.2(c), either Hy-Tec or the Contract Carrier may appoint a third party to assist with the resolution of the dispute (and the Contract Carrier may appoint the TWU as the Contract Carrier's representative);
- (e) If the dispute is not resolved in accordance with clause 15.2(d), either Hy-Tec or the Contract Carrier or the TWU may refer the dispute to the Industrial Relations Commission of NSW in accordance with the Industrial Relations Act 1996 (NSW).
- (f) Hy-Tec and the Contract Carrier will retain all of their rights under the Industrial Relations Act 1996 NSW at all times.

16. Agitator

16.1 Ownership of Agitator

- (a) The Agitator is the property of the Agitator Party.
- (b) The Agitator Party must pay to install the Agitator on the Vehicle.
- (c) The Agitator Party must make good any damage caused by the removal of the Agitator from the Vehicle.

16.2 Removal of Agitator

If Hy-Tec is the Agitator Party:

- (a) upon receipt of written notice, the Contract Carrier must make available the Vehicle for a reasonable amount of time to allow for the removal of the Agitator and for the making good any damage to the Vehicle caused by removal of the Agitator; and
- (b) Hy-Tec will not be liable for any economic loss or damage suffered by the Contract Carrier as a consequence of Hy-Tec's removal of the Agitator provided that if Hy-Tec retains the Vehicle in excess of two (2) days, Hy-Tec will pay the Contract Carrier at the Agitator Breakdown Rate for each additional Working Day.

17. Finance

17.1 Finance

If the Contract Carrier obtains finance using the Vehicle as security, the Contract Carrier must immediately provide to Hy-Tec written evidence from the financier acknowledging:

- (a) the interest of the Agitator Party in the Agitator; and
- (b) Hy-Tec's interest in any contents of the Agitator.

17.2 Refinance

If the Contract Carrier refinances the Vehicle throughout the term of this Contract Determination, the Contract Carrier will provide the information set out in clause 17.1 in respect of the new finance arrangement.

18. Environmental Protection

18.1 Hy-Tec's Responsibility

Hy-Tec will provide the Contract Carrier with a written procedure relating to the delivery of Concrete and will ensure that the procedure complies with all requirements of relevant laws in relation to environmental protection and pollution control.

18.2 Contract Carrier's Responsibility

The Contract Carrier must comply with Hy-Tec's reasonable written procedures in relation to environmental protection and pollution control.

19. Occupational Health and Safety

19.1 Hy-Tec's Responsibility

Hy-Tec will establish an occupational health and safety committee with duly elected representatives in each Plant.

19.2 Contract Carrier's Responsibility

The Contract Carrier must comply with Hy-Tec's occupational, health and safety policies and procedures.

19.3 Occupation Health and Safety Committee

- (a) Each Contract Carrier will be eligible for election for membership of the occupation health and safety committee through Hy-Tec's occupational health and safety committee election process.
- (b) Hy-Tec will pay any Contract Carrier elected to membership of the occupational health and safety committee for attendance at meetings of the committee at the rate of the Driver Only Rate.

20. Training

20.1 Acknowledgement

Hy-Tec and the Contract Carrier acknowledge the mutual benefits gained through training and each party commits to training programs to increase the competitive performance of the Hy-Tec and the Contract Carriers.

20.2 Contract Carrier's Responsibility

The Contract Carrier must complete training related to Services as determined by Hy-Tec.

20.3 Unpaid Training

The Contract Carrier must attend training which Hy-Tec reasonably considers essential to the operation of the Services without additional payment (including , but not limited to, driver training on the job, project site inductions, toolbox meetings, and blue card training).

20.4 Paid Training

If Hy-Tec requires the Contract Carrier to attend training in addition to the training set out in clause 20.3, the training will take place mutually agreed times and Hy-Tec will pay the Contract Carrier the Driver Only Rate if such training takes place outside Normal Working Hours.

21. Liability

Neither Hy-Tec nor the Contract Carrier will not be responsible to the other for any indirect or consequential loss, damage or liability including, without limitation, any loss of (or loss of anticipated) use, production, opportunity, revenue, income, profits, business savings or business interruption resulting from Plant, Agitator, Vehicle or other breakdowns that are beyond the party's reasonable control.

22. Reporting

22.1 Reporting

The Contract Carrier must provide Hy-Tec with immediate verbal notification, followed by prompt written notification, if the Contract Carrier becomes aware of any matter relating to the Contract Carrier or any Driver of which Hy-Tec could reasonably expect to be advised including, but not limited to:

- (a) breakdowns;
- (b) accidents;
- (c) damage to plant or equipment;
- (d) defects in plant or equipment;
- (e) loss or theft of plant or equipment;
- (f) insolvency;
- (g) criminal offences; and
- (h) loss or suspension of driver's licence.

22.2 Requests for Information

The Contract Carrier must provide any further relevant information, explanation, advice and records requested by Hy-Tec in relation to any relevant matter which is the subject of a report by the Contract Carrier or any Driver to Hy-Tec.

23. Contract Administration

23.1 Contract Administration Personnel

Hy-Tec and the Contract Carrier will provide to each other, and maintain, a listing of key personnel and their responsibilities involved in the ongoing administration and performance of this Contract Determination including names, dates and contact numbers including mobile and home telephone numbers.

23.2 Confidential Information

The Contract Carrier acknowledges that all information relating to this Contract Determination and to the current or future business interests, methodology, Hy-Tec Customer and supplier details or affairs of Hy-Tec is and will remain the sole and exclusive property of Hy-Tec. The Contract Carrier must keep all such information confidential and in particular will not disclose such information to any other person except as required by law or with the written consent of Hy-Tec during until five years after termination of this Contract Determination.

23.3 Notices

- (a) Any notice under this Contract Determination must be in writing, in English and signed by a person duly authorised to provide the notice and hand delivered or sent by post or facsimile to the recipient's address for notices set out in this Contract Determination (as may be varied by either party providing written notice to the other party).
- (b) A notice given in accordance with this clause 23.3 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting;
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight Business Day after the transmission, the recipient informs the sender that it has not received the entire notice,
 - (iv) but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

23.4 Tax Invoices

Hy-Tec as "Recipient" and the Contract Carrier as "Supplier" agree that in relation to supplies made pursuant to this Contract Determination, for the term of this Contract Determination:

- (a) the Recipient can issue tax invoices in respect of the supplies;
- (b) the Supplier will not issue tax invoices in respect of the supplies;
- (c) the Supplier acknowledges that it is registered for GST when it enters into this Contract Determination and that it will notify the Recipient if it ceases to be registered; and

- (d) the Recipient acknowledges that it is registered for GST when it enters into this Contract Determination and that it will notify the Supplier if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of any determinations or rulings issued in relation to any Recipient Created Tax Invoice.

23.5 GST

- (a) In this clause:

"Amount of the Consideration" means:

- (i) the amount of any payment for a supply; and
- (ii) in relation to non-monetary consideration, the GST exclusive market value of that in consideration.

"GST" means a goods and services tax or like tax payable in respect of a supply under this Contract Determination.

- (b) All payments to be made by Hy-Tec under this Contract Determination are calculated without regard to GST unless otherwise stated.
- (c) If a supply made by one party ("Supplier") to the other ("Recipient") under this Contract Determination is subject to GST, the Recipient agrees to pay to the Supplier an additional amount equal to the amount of the consideration for the supply multiplied by the prevailing GST rate.
- (d) The additional amount is payable at the same time and in the same manner as the consideration for the supply to which the additional amount relates.
- (e) The Supplier agrees to:
- (i) comply with Part VB of the Trade Practices Act 1974 (Cth); and
- (ii) refund any overpayment made by the Recipient under this clause promptly after the actual amount of the overpayment is ascertained.

23.6 Privacy

The Contract Carrier agrees, and will ensure each Driver agrees:

- (a) Hy-Tec may treat, collect, maintain, use and disclose personal information disclosed to Hy-Tec in the manner set out in any privacy policy of Hy-Tec, as may be varied by Hy-Tec from time to time;
- (b) Hy-Tec may disclose information about the nature and extent of Services, including truck utilisation data, to any third parties (including other contract carriers) for the purposes of Hy-Tec's business operations;
- (c) the Contract Carrier will use any personal information Hy-Tec provides to the Contract Carrier, or which the Contract Carrier handles for Hy-Tec, only for the purpose of fulfilling the Contract Carrier's obligations under this Contract Determination;
- (d) the Contract Carrier will take reasonable steps to ensure that any personal information the Contract Carrier holds under this Contract Determination is protected against misuse and loss, and from unauthorised access, modification or disclosure;

- (e) the Contract Carrier will not disclose any personal information without Hy-Tec's written authority (except to the individual to whom the personal information relates) and notify Hy-Tec immediately if the Contract Carrier becomes aware that a disclosure of personal information may be required by law;
- (f) the Contract Carrier will comply with all legislation, principles, industry codes and policies by which the Contract Carrier is bound in connection with the personal information Hy-Tec discloses to the Contract Carrier;
- (g) the Contract Carrier will handle personal information in a manner as directed by Hy-Tec from time to time, provided that the direction will not cause the Contract Carrier to breach any legislation, principles, industry codes or policies by which the Contract Carrier is bound;
- (h) the Contract Carrier will notify Hy-Tec immediately if the Contract Carrier becomes aware that Contract Carrier has breached or will breach any of terms of this clause 23.6; and
- (i) the Contract Carrier will not do anything with the personal information that will cause Hy-Tec to breach Hy-Tec's obligations under the Privacy Act 1988 (Cth).

23.7 Independent Contractor

The Contract Carrier acknowledges that the Contract Carrier is an independent contractor and nothing in this Contract Determination or any Cartage Contract establishes any employment or agency relationship.

23.8 Exclusivity

Each Contract Carrier must use the Vehicle to deliver concrete exclusively for Hy-Tec, and must not use the Vehicle to deliver Concrete for any other persons, during term of the Cartage Contract.

24. Area Incidence and Duration

- 24.1 This Contract Determination will apply to Hy-Tec Industries Pty Ltd ABN 90 070 100 702 and Maxi Contract Carriers engaged by them within the State of New South Wales.
- 24.2 This Contract Determination operates to the exclusion of all other contract determinations made before or after the making of this Contract Determination.
- 24.3 This Contract Determination will commence to operate on the first full pay period on after 17 December 2015 and will have a nominal term of three years and continue thereafter in accordance with the Industrial Relations Act 1996.

SCHEDULE 1 - RATES, SURCHARGES AND FEES

1. Commercial Sensitivity of Cartage Rates

- 1.1 It is acknowledged by the parties to this Contract Determination that Hy-Tec's Rates, Surcharges and Fees are commercially sensitive for both Hy-Tec and the Contract Carriers.

2. Hy-Tec to Pay Current Rates, Surcharges and Fees

2.1 Subject to clause 2.2 of this Schedule, Hy-Tec will:

- (a) pay to the Contract Carriers the Rates, Surcharges and Fees on the basis they were paid to the Contract Carriers as at the date this Contract Determination is made; and
- (b) continue to apply the periodic rise and fall formula on the basis it was applied to the Rates, Surcharges and Fees from the date this Contract Determination is made.

2.2 The Rates and/or Surcharges and Fees and/or the rise and fall formula referred to in clause 2.1 of this Schedule may be changed subject to:

- (a) agreement between Hy-Tec and the Contract Carrier Executive; or
- (b) variation of this Contract Determination in accordance with the Industrial Relations Act 1996.

SCHEDULE 2 - RMS AUTHORISATION

I,

Insert Full Name

of

.....

Insert Address

.....

Insert Drivers Licence Number

authorise the Roads and Maritime Services of NSW to provide to Hy-Tec Industries Pty Ltd
ABN 90 070 100 70 details relating to the status of any drivers licence held by me at any time.

Signed by

Signature

Witness Signature

Name

Witness Name

Date

Date