

**REGISTER OF
CONTRACT AGREEMENTS**

CONTRACT AGREEMENT NO: CA05/1

TITLE: Cement Australia - TWU Contract Agreement

I.R.C. NO: IRC4/5881

DATE APPROVED/COMMENCEMENT: 20 October 2004 / 1 January 2002

TERM: 36

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 4 February 2005

DATE TERMINATED:

NUMBER OF PAGES: 17

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to each contract carrier engaged by the principal contractor to transport products of Cement Australia, principally in NSW and Southern Queensland, who fall within the coverage of the Transport Industry General Carriers Contract Determination

PARTIES: Cement Australia Pty Limited -&- the Transport Workers' Union of New South Wales

CEMENT AUSTRALIA - TWU CONTRACT AGREEMENT

Clause No.	Subject Matter
1.	Interpretation
2.	The Contract And Vehicle
3.	Application
4.	Contract Rates
5.	Superannuation
6.	Electronic Funds Transfer
7.	Working Arrangements
8.	Liability Of Australian Cement For Damage To The Contract Carrier's Vehicle
9.	No Allocation Hierarchy
10.	Product Returns From Customers And Changed Delivery Address
11.	Uniforms And Personal Appearance
12.	Vehicle Maintenance And Presentation And Equipment
13.	Australian Cement Documentation
14.	Safety Of Operations, Safe Systems of Work And Occupational Health And Safety Standards
15.	Insurances
16.	Customer And Australian Cement Staff Relations
17.	Customer Service
18.	Performance Criteria For Services
19.	Consumption Of Alcohol And Drugs
20.	Disciplinary Procedure
21.	Dispute Settlement Procedure
22.	Nominated Driver And/Or Employees Of The Contract Carrier
23.	General Conditions, Duties And Responsibilities
24.	Termination
25.	Suspension
26.	Assignment
27.	Confidential Information
28.	Notices
29.	No Disclosure
30.	Further Assurances
31.	Entire Agreement
32.	Amendment
33.	No Waiver
34.	Costs
35.	Governing LAW
1.	Schedule - Rate Schedule
2.	Schedule - Cost Model
3.	Schedule - (Nominated Driver)
4.	Schedule - Seniority List
5.	Annexure 1 - 31

1. Interpretation

1.1 In this Agreement, unless the contrary intention appears from the context, the expression:

1.1.1 "the business" means the business of carrying products of AUSTRALIAN CEMENT in Australia but principally in NSW and southern Queensland.

- 1.1.2 "carrying" or "carry" means the transportation of products of AUSTRALIAN CEMENT by the Contract Carrier under a contract of carriage.
 - 1.1.3 "Contract of Carriage" has the same meaning as contained in the NSW Industrial Relations Act as amended from time to time;
 - 1.1.4 "Costs Model" shall be the costs model set out in Schedule 2.
 - 1.1.5 "Industrial Agreement" means this Agreement when and if registered as an industrial agreement or industrial instrument with equivalent effect that succeeds or replaces it.
 - 1.1.6 "motor vehicle" includes motor lorry.
 - 1.1.7 "POD" shall mean the proof of delivery docket or similar document which is signed by customers upon delivery of the products by the Contract Carrier.
 - 1.1.8 "products" are the goods of AUSTRALIAN CEMENT or the goods of a related company of AUSTRALIAN CEMENT being principally bulk cement products.
 - 1.1.9 "Rate Schedule" shall mean the rates applicable for services by the Contract Carrier for AUSTRALIAN CEMENT from time to time and at the date hereof shall be the rates contained in Schedule 1.
 - 1.1.10 "term" is the term of the Agreement as provided in Clause 2
 - 1.1.11 "Force Majeure" means, to the extent that the Party affected could not reasonably have been expected to foresee or prevent or control the same, any act, event or cause which is beyond the reasonable control of the Party concerned and shall include but not be limited to an act of God, strike, lockout, act of the public enemy, war, blockade, revolution, riot, insurrection, civil commotion, lightning, fire, storms, flood, explosion, governmental restraint or restrictions, embargoes, unavailability of equipment, laws, rules, regulations or directions of a governing body having jurisdiction and any other cause (other than a shortage or unavailability of funds) which is not reasonably within the control of the Party claiming the benefit.
- 1.2 For the purposes of this Agreement except to the extent that the subject matter or context may otherwise require:
- 1.2.1 Expressions indicating the singular number shall be capable of indicating the plural number and vice versa;
 - 1.2.2 Expressions indicating the masculine gender shall also be capable of indicating and including the feminine and neuter genders;
 - 1.2.3 Expressions indicating natural persons shall also be capable of indicating bodies corporate and vice versa;
 - 1.2.4 Unless otherwise indicated references to any statutory enactment are to enactments of the State of New South Wales and shall include any amendments or regulations or subordinate legislation or ministerial directions or ministerial rulings thereunder and shall also include any enactment intended by Parliament of the State of New South Wales to supersede or replace in any way the operation or effect of any enactment referred to in this Agreement;
 - 1.2.5 References to any statutory enactment of the Commonwealth of Australia or any State or Territory shall include any amendments or regulations or subordinate legislation or ministerial directions or ministerial rulings thereunder and shall also include any enactment intended by Parliament of the Commonwealth of Australia to supersede or replace in any way the operation or effect of any enactment referred to in this Agreement; and

1.2.6 Headings shall not form part of this Agreement and shall not be relevant to the construction hereof.

2. The Contract and Vehicle

- 2.1 This Agreement shall commence on the date hereof or such later date as the parties shall agree, and shall continue in force and effect until terminated.
- 2.2 AUSTRALIAN CEMENT hereby engages the Contract Carrier to supply without limitation one Vehicle being a prime mover as specified from time to time by AUSTRALIAN CEMENT ("the Vehicle") including the services of personnel, necessary to fulfil various tasks within the business and the Contract Carrier accepts such engagement subject to these terms and conditions.
- 2.3 The Contract Carrier shall provide the vehicle to meet the operational needs of AUSTRALIAN CEMENT.
- 2.4 AUSTRALIAN CEMENT hereby agrees that the current Contract Carrier vehicle may be used to undertake the services subject to its satisfactory maintenance.
- 2.5 AUSTRALIAN CEMENT may direct a Contract Carrier to paint its vehicle. AUSTRALIAN CEMENT will pay 50% of the cost of such painting except;
 - 2.5.1 If the vehicle requires painting because of the negligent conduct of the Contract Carrier or where the painting of the vehicle would be recoverable from a negligent third party or the Contract Carrier's comprehensive motor vehicle insurer in the event of a claim by the Contract Carrier.

3. Application

- 3.1 The parties acknowledge that the primary business of AUSTRALIAN CEMENT is highly competitive and that AUSTRALIAN CEMENT must provide superior service and products in order to remain in business. The Contract Carrier's service is integral and an essential part of the total service provided by AUSTRALIAN CEMENT. Flexibility of work practices, cost effective delivery of all services and service are the keys to an ongoing commitment by AUSTRALIAN CEMENT to the Contract Carrier.

4. Contract Rates

- 4.1 The applicable contract rates for Contracts of Carriage entered into between AUSTRALIAN CEMENT and the Contract Carrier shall be in accordance with the Rate Schedule in Schedule 1 to this Agreement.
- 4.2 The parties have consulted and agree on the Cost Model (Schedule 2).
- 4.3 The rates specified in this clause include an amount in lieu of all leave.
- 4.4 Ongoing Review. The contract rates will be adjusted every twelve (12) months in accordance with the Cost Model subject to:
 - 4.4.1 the first substantive review not taking place until December 2001; and
 - 4.4.2 if the rates alter by virtue of the application of the Costs Model the rates shall be so varied beginning 1 April for the following year and shall apply thereafter until again varied in accordance with this Agreement.
- 4.5 Either party may request a variation of the rates prior to the annual review if;
 - 4.5.1 the change is required because of a substantial change in the costs as a result of legislative change(s) or changes in the price of fuel; and
 - 4.5.2 the rate for services would vary by at least 2% in the cost per kilometre rate; and

- 4.5.3 the rates have not been varied more than twice in any one calendar year of the term in excess of the annual review rate change.
- 4.6 Where the resulting adjustment results in a rate increase of a fraction of a cent, that part of the increase shall be rounded down to the nearest half cent. Provided that the next adjustment will be based upon the actual (unrounded) increased rate.
- 4.7 Payment payable by AUSTRALIAN CEMENT to the Contract Carrier engaged by AUSTRALIAN CEMENT shall be in accordance the Rate Schedule and Cost Model and shall take place twice in each calendar month of the Agreement.
- 4.8 AUSTRALIAN CEMENT and the Contract Carrier agree that the formula contained in the Rate Schedule and Cost Model shall remain in force during the term of this Agreement.
- 4.9 AUSTRALIAN CEMENT may make the following deductions from any payment due to the Contract Carrier;
- 4.9.1 those deductions which the Contract Carrier has authorised in writing;
- 4.9.2 cost of fuel provided by AUSTRALIAN CEMENT or on the account of AUSTRALIAN CEMENT other than fuel required by the trailer power pack which is to the account of AUSTRALIAN CEMENT,
- 4.9.3 Court Orders and garnishees; and
- 4.9.4 deductions required by law.
- 4.10 AUSTRALIAN CEMENT shall be responsible for all fuel costs directly related to the operation of the trailer including any fuel costs in relation to the operation of a power take off on the Contract Carrier's vehicle.
- 4.11 If the Contract Carrier incurs a liability to pay Australian goods and services tax (GST) in connection with a supply to AUSTRALIAN CEMENT pursuant to this Agreement, the consideration that AUSTRALIAN CEMENT must pay to the Contract Carrier for that supply is increased by an amount equal to the GST liability the Contract Carrier incurs in making the supply and the amount of that GST liability is payable at the same time as the consideration is payable in respect of the supply.
- 4.12 The Contract Carrier and AUSTRALIAN CEMENT agree to do all things, including providing invoices or other documentation containing information that may be required, necessary or desirable to enable or assist the other to claim any credit, set off, rebate or refund in relation to any GST included in any payment made pursuant to this Agreement.
- 4.13 The parties hereby agree that AUSTRALIAN CEMENT shall be entitled to create the invoice referred to in clause 4.12 above, subject to AUSTRALIAN CEMENT not being in breach of any of its obligations under the Tax Act. The parties hereby acknowledge that the Tax Office has issued a ruling GSTR/D5 in relation to Recipient Created Tax Invoices and that AUSTRALIAN CEMENT will in issuing such invoices on behalf of the Contract Carrier be undertaking this task pursuant to such ruling.

5. Superannuation

- 5.1 AUSTRALIAN CEMENT also agrees to pay to the Contract Carrier an amount equivalent to any superannuation levy required by law to be paid to employees on the basis of the minimum labour rate applicable to a driver.
- 5.2 AUSTRALIAN CEMENT will pay such superannuation amount to a superannuation fund nominated by the Contract Carrier and in the absence of some nomination to an industry presided fund such as that administered by the Transport Workers Union.
- 5.3 The parties agree that they shall negotiate in good faith to include an amount equivalent to the superannuation contribution required herein to be included in future variations of the Cost Model and

thereafter there shall be no obligation upon AUSTRALIAN CEMENT to pay such amount to the Contract Carrier.

6. Electronic Funds Transfer

- 6.1 The AUSTRALIAN CEMENT shall pay Contract Carriers by means of electronic funds transfer (direct bank deposit).

7. Working Arrangements

- 7.1 The Contract Carrier shall make available its vehicle for duties seven day per week, subject to the Contract Carrier being able to provide an approved replacement driver if the Nominated Driver has exceeded his or her maximum driving hours per week.
- 7.2 AUSTRALIAN CEMENT requires sufficient number of contract carriers to make their vehicles available for deliveries to meet the operational requirements of AUSTRALIAN CEMENT and the Contract Carrier hereby acknowledges this requirement. AUSTRALIAN CEMENT provides no guarantee that during the term of this Agreement that any fixed delivery arrangements will subsist as AUSTRALIAN CEMENT' customers require frequent and flexible deliveries.
- 7.3 Contracts of Carriage performed by the Contract Carrier on Sundays and gazetted public holidays or the Union picnic day will attract the contract rates specified in the Rate Schedule or as varied from time to time pursuant to this Agreement.
- 7.4 It is the responsibility of the Contract Carrier to complete all deliveries of AUSTRALIAN CEMENT product in accordance with the manifest.

8. Liability of Australian Cement for Damage to the Contract Carrier's Vehicle

- 8.1 Nothing herein shall make AUSTRALIAN CEMENT liable for any damage to a Contract Carrier's vehicle whilst it is in the control of AUSTRALIAN CEMENT or upon AUSTRALIAN CEMENT premises for the purposes of loading subject to such damage not being caused by the negligence or wilful conduct of AUSTRALIAN CEMENT. AUSTRALIAN CEMENT shall use all reasonable endeavours in the care of such vehicles but accepts no liability for any damage or loss to any vehicle other than as set out in this clause.

9. No Allocation Hierarchy

- 9.1 Allocations to the Contract Carrier of product for delivery shall occur in the manner as determined by AUSTRALIAN CEMENT.
- 9.2 AUSTRALIAN CEMENT may engage casual carriers when AUSTRALIAN CEMENT determines the Contract Carrier is unable to meet customer delivery requirements because of high volumes of work.

10. Product Returns from Customers and Changed Delivery Address

- 10.1 Where the Contract Carrier is required as part of the normal delivery cycle to return product to AUSTRALIAN CEMENT from the customer, the Contract Carrier shall not be entitled to any payment for the return.
- 10.2 AUSTRALIAN CEMENT hereby agrees to reasonably consider paying some sum to the Contract Carrier in respect to any full return of product from a customer. Any sum to be paid will be based upon a reasonable assessment by AUSTRALIAN CEMENT of the additional costs incurred, including additional wear and tear upon the Contract Carrier's vehicle in undertaking the return.
- 10.3 Where the Contract Carrier is required, as part of the normal delivery cycle to alter the delivery address for product AUSTRALIAN CEMENT shall reasonably consider paying some sum to the Contract Carrier in respect to any additional delivery kilometres incurred by the Contract Carrier as result of the change of address for delivery.

11. Uniforms and Personal Appearance

- 11.1 When performing services for AUSTRALIAN CEMENT, the Contract Carrier shall ensure its employee driver wears the AUSTRALIAN CEMENT uniform and such employee is clean and tidy. AUSTRALIAN CEMENT accepts that on occasions as a direct result of the nature of the work undertaken by the employee drivers of the Contract Carrier that it is not possible for such employees to remain clean and tidy on all occasions during a day in which services are performed pursuant to this Agreement. It is a requirement of AUSTRALIAN CEMENT that all employees of the Contract Carrier when commencing any shift be clean and tidy and dressed in a clean AUSTRALIAN CEMENT uniform.
- 11.2 Uniforms will be supplied by AUSTRALIAN CEMENT at no cost to the Contract Carrier, and will be replaced on a fair wear and tear basis.
- 11.3 The Contract Carrier shall maintain all supplied uniforms in a clean and tidy condition.

12. Vehicle Maintenance and Presentation and Equipment

- 12.1 The Contract Carrier shall maintain its registered vehicle in a mechanically sound, roadworthy and clean condition.
- 12.2 The Contract Carrier shall maintain its vehicle at all times so that the vehicle complies with all the laws and regulations in force in NSW.
- 12.3 In the event of any damage being caused by way of mishap or accident to any part of the body, cab or chassis of the Contract Carrier's vehicle, repairs must be actioned as soon as possible by the Contract Carrier and such repairs to be of a standard acceptable to AUSTRALIAN CEMENT.
- 12.4 The Contract Carrier shall provide in its vehicle a working, connected (to an appropriate network) and maintained mobile phone that is turned on at all times whilst the Contract Carrier is undertaking work pursuant to this Agreement.
- 12.5 The Contract Carrier shall keep the AUSTRALIAN CEMENT trailer clean and is responsible for ensuring that the trailer is in a roadworthy condition. AUSTRALIAN CEMENT shall be responsible for all costs of repairs and maintenance to its trailer other than;
 - 12.5.1 the wheels and tyres which are the responsibility of the Contract Carrier; and
 - 12.5.2 any damage or maintenance required because of the misuse or negligent use of the trailer by the Contract Carrier.

13. Australian Cement Documentation

- 13.1 The Contract Carrier shall complete all AUSTRALIAN CEMENT documentation as reasonably required by AUSTRALIAN CEMENT in relation to the carriage of AUSTRALIAN CEMENT product, including all work sheets, manifests and consignment notes and POD's.
- 13.2 It is the responsibility of the Contract Carrier to obtain a signed POD whenever the delivery takes place at a customer's premises in which there are employees or representatives of the customer in attendance.
- 13.3 The Contract Carrier shall return all documentation as soon as practical but no less than weekly to AUSTRALIAN CEMENT when work is completed unless otherwise advised by AUSTRALIAN CEMENT.
- 13.4 If the Contract Carrier cannot effect a delivery it shall advise AUSTRALIAN CEMENT as soon as the Contract Carrier can establish contact with AUSTRALIAN CEMENT thus allowing sufficient time for alternate arrangements to be made.
- 13.5 The Contract Carrier shall not cease work without notifying AUSTRALIAN CEMENT.

- 13.6 The Contract Carrier shall advise AUSTRALIAN CEMENT as soon as possible if it is unable to work. If possible this should be the day before or at its earliest possible convenience.

14. Safety of Operations, Safe Systems of Work and Occupational Health and Safety Standards

- 14.1 The Contract Carrier shall observe all safety procedures and practices as required by AUSTRALIAN CEMENT or the customers of AUSTRALIAN CEMENT when attending upon such customer's premises.
- 14.2 The Contract Carrier shall adopt all AUSTRALIAN CEMENT occupational health and safety practices, procedures and standards in relation to its employees whilst such employees are undertaking duties required by the Contract Carrier under this Agreement.
- 14.3 The Contract Carrier hereby agrees to ensure that all its employees wear appropriate safety equipment, which is not limited to but includes safety boots and hard hats when required.

15. Insurances

- 15.1 The Contract Carrier shall during the term of this Agreement maintain the following insurances at all times;
- 15.1.1 public liability of at least \$5,000,000.00;
- 15.1.2 workers compensation insurance covering all employees who perform work under this Agreement;
- 15.1.3 third party property or comprehensive (including third party) insurance upon the vehicle.
- 15.2 When required by AUSTRALIAN CEMENT the Contract Carrier shall produce certificates of currency of the above insurances or evidence to the reasonable satisfaction of AUSTRALIAN CEMENT that such policies are current and paid.

16. Customer and Australian Cement Staff Relations

- 16.1 The Contract Carrier shall ensure its employees observe the necessity for civility with customers and staff of AUSTRALIAN CEMENT at all times.
- 16.2 The Contract Carrier shall be bound and adhere to those policies and procedures of AUSTRALIAN CEMENT that;
- 16.2.1 are relevant to the Contract Carrier; and
- 16.2.2 have been advised to the Contract Carrier from time to time by AUSTRALIAN CEMENT.

17. Customer Service

- 17.1 AUSTRALIAN CEMENT and the Contract Carrier commit themselves to maintaining high standards of customer service in relation to all aspects of the AUSTRALIAN CEMENT's business. It is the responsibility of the Contract Carrier to ensure that the products are appropriately delivered to the premises of the customer in accordance with the reasonable directions of such customers.

18. Performance Criteria for Services

- 18.1 As the service provided by the Contract Carrier is integral part of this Agreement the Contract Carrier will be required to meet all reasonable service and performance standards that are developed from time to time by AUSTRALIAN CEMENT and its customers.
- 18.2 If the Contract Carrier is continually in breach of the performance requirements of AUSTRALIAN CEMENT whether there are in existence performance standards or not, such continual breach or

breaches shall be considered grounds for termination of this Agreement subject to the terms of the disciplinary provisions applying.

19. Consumption of Alcohol and Drugs

- 19.1 The Contract Carrier shall ensure the Nominated Driver does not undertake any work or duties of the Contract Carrier pursuant to this Agreement whilst affected by alcohol or drugs (both legal and illegal) that impair the physical performance of such employees.
- 19.2 The Contract Carrier shall ensure its employees including the Nominated Driver does not consume alcohol or illegal drugs during the performance of duties.

20. Disciplinary Procedure

- 20.1 In the case of a breach by a Contract Carrier or its employees of any of the provisions of clauses 0 (Failure to Report as Required), 0 (Uniforms), 0 (Vehicle Maintenance and Presentation, 0 (AUSTRALIAN CEMENT documentation), 0 (Insurances), 0 (Customer and AUSTRALIAN CEMENT Staff Relations), 0 (Performance of Services) and 0 (Consumption of Alcohol), disciplinary action may be taken by the AUSTRALIAN CEMENT against the Contract Carrier concerned and may include any one or a combination of the following;
 - 20.1.1 a direction to rectify the problem;
 - 20.1.2 counselling of the employees including the Nominated Driver or directors of the Contract Carrier concerned;
 - 20.1.3 a verbal warning that a subsequent breach will involve more serious disciplinary action;
 - 20.1.4 a formal letter of warning indicating that a subsequent breach of the relevant clauses will result in the AUSTRALIAN CEMENT exercising its right to terminate this Agreement;
 - 20.1.5 temporary suspension of this Agreement.
- 20.2 AUSTRALIAN CEMENT shall also be entitled to direct the Contract Carrier not to utilise the services of any of its employees including the Nominated Driver when engaged on the services for AUSTRALIAN CEMENT pursuant to this agreement if such employee(s) breach;
 - 20.2.1 any of the provisions referred to in clause 20.1; or
 - 20.2.2 steal property from either AUSTRALIAN CEMENT or its customers; or
 - 20.2.3 wilfully or recklessly damage the property of AUSTRALIAN CEMENT or a customer of AUSTRALIAN CEMENT; or
 - 20.2.4 commit any motor traffic offence punishable by a period of disqualification whether engaged on the services in this agreement or not.
- 20.3 If the Contract Carrier fails to adhere to a direction under clause 20.2 from AUSTRALIAN CEMENT not to use the services of a specific employee of the Contract Carrier upon the Services AUSTRALIAN CEMENT may;
 - 20.3.1 suspend this agreement and not offer any further contracts of carriage to the Contract Carrier until substitute employees are approved by AUSTRALIAN CEMENT including as a replacement Nominated Driver; and/or
 - 20.3.2 forward a formal letter of warning indicating that a subsequent or continuing breach of the relevant clauses will result in the AUSTRALIAN CEMENT exercising its right to terminate this Agreement.

- 20.4 AUSTRALIAN CEMENT shall be entitled to immediately terminate the services of the Contract Carrier where the Contract Carrier or an employee of the Contract Carrier has;
- 20.4.1 stolen the property of AUSTRALIAN CEMENT or the property of a customer of AUSTRALIAN CEMENT; or
- 20.4.2 wilfully or recklessly damaged the property of AUSTRALIAN CEMENT or a customer of AUSTRALIAN CEMENT.

21. Dispute Settlement Procedure

- 21.1 The parties hereby agree to a commitment to a procedure of dispute resolution.
- 21.2 The parties shall take all necessary steps to ensure that the Contract Carrier, any duly appointed representative of the Contract Carrier, officers, officials, AUSTRALIAN Cement's executives and staff follow the procedure set out below. The intention being that any disputes shall promptly be resolved by discussions in good faith without interruptions to the business. The parties shall respectively notify each other as soon as possible of any matter that might give rise to a dispute.
- 21.3 The Procedure
- 21.3.1 In the event of a dispute or difficulty arising a representative of the Contract Carrier and the AUSTRALIAN CEMENT Transport Manager shall immediately confer and attempt to resolve the matter without delay.
- 21.3.2 In the event of Clause 21 either not applying or the procedure envisaged therein failing to resolve the matter, the senior representative, if such person exists of all contract carriers having similar agreements to this Agreement and AUSTRALIAN CEMENT Transport Manager shall immediately confer and attempt to resolve the matter without delay.
- 21.3.3 If no agreement is reached the senior representative shall discuss the matter in dispute with senior management. The representative may request the involvement of a Union Official at this time.
- 21.3.4 If no resolution is forthcoming, the Union Official may seek the assistance of the Secretary of the Union, and the senior manager may seek to involve AUSTRALIAN CEMENT Industrial Relations staff.
- 21.4 Right to Refer to the NSW Industrial Relations Commission ("the Commission")
- 21.4.1 The above steps shall not preclude reference of a matter to the Commission at any stage of this procedure if a party believes it necessary.
- 21.5 Continuity of operations
- 21.5.1 Pending completion of the procedure set out in this clause, there shall be no interruption to the business.
- 21.6 Preservation of Rights
- 21.6.1 The ultimate terms of settlement of the dispute shall not be affected in any way nor shall the rights of the Contract Carrier be prejudiced by the fact that performance of the Contracts of Carriage have continued without disruption.
- 21.7 Decision of Commission to be Binding
- 21.7.1 The decision of the Commission shall be accepted and adhered to by the parties subject to any appeal rights under the Act.

22. Nominated Driver and/Or Employees of the Contract Carrier

- 22.1 "Nominated driver" means a person nominated by the Contract Carrier to AUSTRALIAN CEMENT. Such person shall be a natural person and a director and shareholder of the Contract Carrier unless otherwise agreed by AUSTRALIAN CEMENT in writing. AUSTRALIAN CEMENT shall be under no obligation to consent to any person other than a person who is a director and shareholder of the Contract Carrier.
- 22.2 The initial nominated driver shall be the natural person the details of whom are set forth in Schedule 3.
- 22.3 For the purposes of this Agreement any act, default or misconduct by any person driving the Vehicle on behalf of the Contract Carrier under a Contract of Carriage to which the Contract Carrier is a party shall be deemed to be the act, default or misconduct of the Contract Carrier.
- 22.4 Subject to clause 22.5 the Contract Carrier shall only provide the service of the nominated driver when the Vehicle is being supplied to AUSTRALIAN CEMENT.
- 22.5 The parties acknowledge and agree that:-
- 22.5.1 Should the nominated driver be unable or unavailable to perform the services required, the Contract Carrier may seek the approval of AUSTRALIAN CEMENT to appoint a replacement driver;
- 22.5.2 It is the responsibility of the Contract Carrier to provide the vehicle as and when required by AUSTRALIAN CEMENT in accordance with this Agreement. In relation to short term absences of the nominated driver the Contract Carrier shall use its best endeavours to continue to supply the vehicle to AUSTRALIAN CEMENT.
- 22.5.3 If the nominated driver of the Contract Carrier requires leave the Contract Carrier shall advise AUSTRALIAN CEMENT of such request and the Contract Carrier shall thereafter ensure that such leave takes place in accordance with any AUSTRALIAN CEMENT schedule then in place in relation to the availability of the vehicle.
- 22.5.4 In the event that approval is given to the appointment of a temporary replacement driver, should such disability or non-availability continue beyond a total of six (6) calendar months (whether continuous or not) during any twelve (12) months period this shall constitute a breach of this Agreement and AUSTRALIAN CEMENT may give notice of intention to offer no further contracts of carriage pursuant to this Agreement provided that with the agreement of AUSTRALIAN CEMENT, an extension of the appointment of the temporary replacement driver may be allowed due to serious injury or illness on the part of the nominated driver or on other compassionate grounds but such extension shall not exceed a further six months. The consent of AUSTRALIAN CEMENT to such an extension shall not be unreasonably withheld. AUSTRALIAN CEMENT shall be entitled to refuse any further extension and shall not be required to provide reasons. Such refusal shall not be deemed unreasonable.
- 22.5.5 Further, the Contract Carrier shall not engage or use the services of a driver for the Vehicle unless the Contract Carrier has consulted with and gained the approval of AUSTRALIAN CEMENT which approval shall not be unreasonably withheld in relation to the suitability of the driver.
- 22.5.6 It shall remain the responsibility of the Contract Carrier to take out and maintain at all times a Workers Compensation insurance policy to cover the Nominated Driver or any other employee of the Contract Carrier used in undertaking Contracts of Carriage.
- 22.5.7 The Contract Carrier shall ensure that the replacement driver does not commit misconduct or fail to comply with the provisions of this Agreement.
- 22.5.8 It shall remain the responsibility of the Contract Carrier to ensure that the nominated driver holds at all times a current driver's licence appropriately endorsed or issued in respect of a motor Vehicle of the class of the Vehicle and to immediately notify AUSTRALIAN CEMENT if the licence is suspended or cancelled.

- 22.6 If requested by AUSTRALIAN CEMENT the driver of the Vehicle shall produce his or her current driver's licence correctly endorsed for the classification of the Vehicle. If the driver fails to produce the licence AUSTRALIAN CEMENT shall be entitled to refuse to allocate to the Contract Carrier any further work until such licence is produced.
- 22.7 The Contract Carrier agrees that the personnel supplied pursuant to this Agreement including the nominated or replacement driver shall be at all times under control of the Contract Carrier and the Contract Carrier shall subject to the provisions of this Agreement retain all normal rights, powers and responsibilities of an employer including remuneration, termination of service, hours of service, places of performance, provision of employment entitlements and such other rights, duties and responsibilities as are imposed by law or award or industrial agreement.
- 22.8 In relation to all personnel employed by the Contract Carrier in carrying out its obligations under this Agreement, the Contract Carrier shall comply with all requirements as to payroll tax, group tax or any other taxes or levies.

23. General Conditions, Duties and Responsibilities

- 23.1 The Contract Carrier agrees that it will undertake such cartage and ancillary work as reasonably required by AUSTRALIAN CEMENT.
- 23.2 The Contract Carrier acknowledges and agrees that it is not entitled to any specific route or run, or specific customers, or volume or remuneration from AUSTRALIAN CEMENT .
- 23.3 This Agreement is made on the understanding that it shall not be deemed to constitute any form of contract of employment or partnership between AUSTRALIAN CEMENT and the Contract Carrier or between AUSTRALIAN CEMENT and the personnel or employees of the Contract Carrier.

24. Termination

- 24.1 Subject to clause 21 AUSTRALIAN CEMENT shall be entitled to terminate this Agreement because of a material breach by the Contract Carrier from such date and the Contract Carrier shall not be entitled to damages, costs, losses, redundancy or any other compensation whatsoever (including loss of goodwill, if any) from AUSTRALIAN CEMENT.
- 24.2 The Contract Carrier may terminate its engagements under this Agreement by giving one (1) month's notice in writing of such termination to AUSTRALIAN CEMENT.
- 24.3 If the business of AUSTRALIAN CEMENT changes such that a reduction in the total number of contract carriers undertaking work similar to the Contract Carrier is required the following provisions shall apply;
- 24.3.1 AUSTRALIAN CEMENT shall call upon the Contract Carrier to agree to enter a mutual termination. The Contract Carrier shall not be bound to so agree.
- 24.3.2 AUSTRALIAN CEMENT agrees that in the event that the Contract Carrier does not agree to mutually terminate this Agreement it shall request all other contract carriers engaged in similar work to enter mutually agreed terminations of similar agreements.
- 24.3.3 If AUSTRALIAN CEMENT does not receive adequate numbers of indications of acceptance of an offer to terminate from contract carriers and/or the Contract Carrier then the parties agree that AUSTRALIAN CEMENT shall thereafter terminate this Agreement only after it has terminated other contract carrier agreements with contract carriers that have less seniority with AUSTRALIAN CEMENT than the Contract Carrier.
- 24.3.4 For the purposes of this clause the seniority of the Contract Carrier shall be in accordance with the seniority of the Nominated Driver set out in Schedule 4.

- 24.3.5 The benefit of the seniority position set out in Schedule 4 is not capable of assignment by the Contract Carrier and is personal to the Contract Carrier.
- 24.4 Upon assignment of this Agreement pursuant to Clause 26 the commencement date for seniority of the assignee contract carrier shall be the date such contract carrier undertakes its first Contract of Carriage with its nominated driver after such assignment.
- 24.5 Upon termination of the engagements of the Contract Carrier or upon assignment of this Agreement all monies due and owing to the Contract Carrier shall be paid forthwith by AUSTRALIAN CEMENT provided that any equipment supplied by AUSTRALIAN CEMENT has been removed from the Vehicle at the cost of AUSTRALIAN CEMENT and returned to AUSTRALIAN CEMENT. Such removal shall be carried out within three working days of the date of termination or assignment.
- 24.6 By arrangement with the Contract Carrier AUSTRALIAN CEMENT shall at its own expense remove any sign writing from the vehicle and AUSTRALIAN CEMENT may in its absolute discretion arrange for the vehicle to be repainted at its cost.
- 24.7 Subject to any legal remedies that may be available to the Contract Carrier at the time of termination and upon payment being made by AUSTRALIAN CEMENT of all remuneration due and payable to the Contract Carrier in accordance with this agreement as at the date of termination and the undertaking of all obligations of AUSTRALIAN CEMENT set out in this clause AUSTRALIAN CEMENT is hereby released from all liability which otherwise exists or, but for this clause, might arise, for damages, costs, losses, redundancy or compensation of any nature whatsoever to the Contract Carrier arising from this Agreement or any past agreement between the parties or the termination of this Agreement and engagements under this Agreement.
- 24.8 The Contract Carrier agrees that this Agreement is not deemed terminated by AUSTRALIAN CEMENT if AUSTRALIAN CEMENT assigns the Agreement in accordance with clause 26.2
- 24.9 No payments referred to in this clause shall be payable to the Contract Carrier by AUSTRALIAN CEMENT if this Agreement is assigned by AUSTRALIAN CEMENT in accordance with clause 26.2.

25. Suspension

- 25.1 Either party may suspend this Agreement if a force majeure event takes place for the duration of such force majeure event.
- 25.2 If either party suspends this Agreement pursuant to clause 25.1 above then neither party shall have any obligation to the other during such period of suspension.
- 25.3 Within a reasonable period after the cessation of the force majeure event or such force majeure event has ceased to affect the obligations of the parties this Agreement shall cease being suspended.
- 25.4 Nothing herein shall effect the term of the Agreement.

26. Assignment

- 26.1 AUSTRALIAN CEMENT shall not consent to any assignment of this Agreement by the Contract Carrier unless the proposed assignee from the Contract Carrier is approved by AUSTRALIAN CEMENT which approval shall not be unreasonably withheld and the assignee completes in a form and in terms satisfactory to AUSTRALIAN CEMENT its documents concerning assignments as applicable at that time including the execution of a new contract between the assignee and AUSTRALIAN CEMENT upon the same terms and conditions as this Agreement including any further changes agreed between the parties after the date hereof, and with the changes referred to herein including clause 26.4 with the rates of remuneration inserted as at the date of the commencement of work by the assignee. The current assignment documents are Annexure 1 hereto.
- 26.2 AUSTRALIAN CEMENT may assign this Agreement to any other person or corporation as it deems fit in its absolute discretion subject to any assignee being a financially viable organisation as at the date of

the assignment and the Contract Carrier hereby agrees to consent without objection or conditions to such assignment.

- 26.3 In the event of an assignment by AUSTRALIAN CEMENT of this Agreement in accordance with clause 26.2 the Contract Carrier hereby agrees to release AUSTRALIAN CEMENT from all obligations that may arise under this Agreement after the date of the assignment.
- 26.4 Any assignment by the Contract Carrier pursuant to clause 26.1 shall include a term that provides that the commencement date for seniority of the assignee contract carrier shall be the date such contract carrier undertakes its first Contract of Carriage after such assignment. The Contract Carrier hereby agrees that the new contract offered its assignee by AUSTRALIAN CEMENT shall contain such a term and the Contract Carrier shall not be entitled to object to such clause.
- 26.5 For the purposes of this clause any transfer or issue of any shares in the Contract Carrier (other than a transfer or issue to an existing shareholder at the date of this Agreement) shall be deemed an assignment of this Agreement and the above provisions of this clause shall apply to such assignment.

27. Confidential Information

- 27.1 For the purposes of this clause "Confidential Information" means:
- 27.1.1 all confidential, non-public or proprietary information relating to AUSTRALIAN CEMENT and its customers; and
- 27.1.2 all confidential, non-public or proprietary information concerning AUSTRALIAN CEMENT or its marketing, technology, products or production innovations and any information concerning its customers, but excludes information which is in or becomes part of the public domain other than through breach of this Agreement.
- 27.2 The Contract Carrier acknowledges that it will take all action necessary to maintain the confidential nature of Confidential Information provided or obtained by it.
- 27.3 The Contract Carrier must procure that their respective officers, employees agents or advisers (whether or not still employed or engaged in that capacity) do not do or omit to do anything which, if done or omitted to be done by the Contract Carrier, would be a breach of the Contract Carrier's obligations under this Agreement.

28. Notices

- 28.1 Any notice given under this Agreement must be in writing addressed to the intended recipient at the address shown below or the address last notified by the intended recipient to the sender:

AUSTRALIAN CEMENT HOLDINGS PTY LIMITED
Highgate Street
Auburn NSW 2144
Fax 02 9395 1585

«CONTRACT_CARRIER»
("the Contract Carrier")
Attention «C_C_CONTACT_NAME»
«C_C_ADDRESS»
Fax: «C_C_FAX_NO»

28.1.1 must be signed by a person duly authorised by the party; and

28.1.2 will be taken to have been given when delivered, received or left at the above address. If delivery or receipt occurs on a day when business is not generally carried on in the place to which the communication is sent or is later than 4 pm (local time) it will be taken to have been

duly given at the commencement of business on the next day when business is generally carried on in that place.

29. No Disclosure

- 29.1 Each party shall keep the terms of this Agreement confidential.
- 29.2 Exceptions to clause 29.1
- 29.3 A party may make any disclosures in relation to this Agreement;
 - 29.3.1 as it thinks necessary to its professional advisers, bankers, financial advisers and financiers, if those persons undertake to keep information disclosed confidential;
 - 29.3.2 to comply with any applicable law or requirement of any Government Agency;
 - 29.3.3 to any of its employees to whom it is necessary to disclose the information if that employee undertakes to keep the information confidential.
- 29.4 Except as required by any applicable law or the requirements of any Government Agency, all press releases and other public announcements relating to the transactions dealt with by this Agreement must be in terms agreed by the parties.

30. Further Assurances

- 30.1 Each party shall take all steps, execute all documents and do everything reasonably required by the other party to give effect to any of the obligations contemplated by this Agreement.

31. Entire Agreement

- 31.1 This Agreement contains the entire agreement of the parties with respect to its subject matter. It constitutes the only conduct relied on by the parties (and supersedes all earlier conduct or agreements by the parties) with respect to its subject matter.

32. Amendment

This Agreement may be amended only by another agreement in writing and executed by all parties.

33. No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

34. Costs

Each party shall bear its own costs arising out of the preparation of this Agreement.

35. Governing Law

- 35.1 This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales.

This Agreement is executed by the parties as follows:

THE COMMON SEAL of)	
«CONTRACT_CARRIER» (ACN «C_C_ABN»))	
is affixed in accordance with its Constitution in)	
the presence of:)	

Signature of authorised person)	Signature of authorised person
Print Name of authorised person)	Print Name of authorised person
Office held)	Office held

If the Contract Carrier is a company without a common seal then it may sign in the following manner.

The «CONTRACT_CARRIER» (ACN «C_C_ACN») has executed this Agreement in accordance with its Constitution in the presence of:)	Signature of authorised person
Signature of authorised person)	Print Name of authorised person
Print Name of authorised person)	Office held
Office held)	

SIGNED FOR AND ON BEHALF OF AUSTRALIAN CEMENT HOLDINGS PTY LIMITED by:

.....
(Witness - Signature)

.....
(Please print name)

ANNEXURE 1

ASSIGNMENT DOCUMENTS

DOCUMENT 1

This document to be completed by the legal advisor to the Assignee Contract Carrier]

CERTIFICATE

I.....
(Solicitor)

of.....
(Address)

Hereby certify as follows:

1. I am a principal of the firm of.....
2. I am a solicitor holding a current practicing certificate under the Legal Profession Act.
3. I explained the effect of the annexed Statutory Declaration by before it was executed by him/her.
4. After I explained the contents of such declaration and the contract carrier agreement I witnessed the execution in accordance with the Constitution of.....Pty Ltd to the said agreement.
5. I am a Solicitor acting on behalf of:Pty Limited.
6. I am not a Solicitor who is a member of a partnership or employed by a partnership, a member of which is acting for AUSTRALIAN CEMENT HOLDINGS Pty Limited.

Dated: 20...

.....
Solicitor

ASSIGNMENT DOCUMENTS

DOCUMENT 2

(This document to be completed by a director of the Assignee Contract Carrier and witnessed by the legal advisor who provided the solicitor’s certificate.)

STATUTORY DECLARATION

I,

(Name)

of

(Address)

Director, SAY ON OATH as follows:

1. I am a Director of.....Pty Ltd (ACN.....) ("the Applicant Contract Carrier") and say I am empowered to swear this declaration on behalf of the Applicant Contract Carrier.
2. The Applicant Contract Carrier is the applicant referred to in an application to be engaged as a contract carrier with AUSTRALIAN CEMENT HOLDINGS Pty Ltd (ACN 001 085 561) dated 20 .
3. I attended upon the offices of..... (Name of solicitor's firm) at.....and this declaration and the Contract Carriers Agreement was explained to me by.....(Name of solicitor). My attention was drawn to the terms of Clause 24 of the Agreement and I am aware and understand its terms.
4. After the explanation referred to in paragraph 3 above the Applicant Contract Carrier resolved to enter the Agreement and executed the Agreement in accordance with its Constitution in my presence and witnessed by me and..... (Name of additional witness).
5. I am aware that prior to being engaged by AUSTRALIAN CEMENT HOLDINGS Pty Limited that the Applicant Contract Carrier must be approved.
6. I hereby acknowledge that neither I nor the Applicant Contract Carrier rely upon any representation or warranty made by AUSTRALIAN CEMENT HOLDINGS Pty Limited, its officers, employees, representatives or agents in relation to the application by the Applicant Contract Carrier for engagement other than the matters acknowledged and confirmed herein and the Agreement.
7. I hereby acknowledge and agree that the benefit of the seniority list is not being assigned to the Applicant Contract Carrier and that the position of the Applicant Contract Carrier upon the seniority list shall be the date upon which the first contract of carriage is performed by the Applicant Contract Carrier pursuant to the Agreement.
8. I hereby acknowledge that any amount that the Applicant Contract Carrier has agreed to pay for the vehicle in excess of its market price as a mechanical device has been a matter of negotiation between myself on behalf of the Applicant Contract Carrier and the vendor, and that AUSTRALIAN CEMENT HOLDINGS Pty Limited does not approve or condone such sales.
9. I further acknowledge and agree on behalf of the Applicant Contract Carrier that AUSTRALIAN CEMENT HOLDINGS Pty Limited does not require that I, nor the Applicant Contract Carrier pay as a premium or fee any amount, directly or indirectly, to the vendor of the vehicle or any third party or AUSTRALIAN CEMENT HOLDINGS Pty Limited any amount in excess of the value of the vehicle as

a mechanical device, or in any other way, to secure work with AUSTRALIAN CEMENT HOLDINGS Pty Limited of contracts of carriage or otherwise.

10. I hereby acknowledge that any goodwill attached to the work of the vehicle is the goodwill of AUSTRALIAN CEMENT HOLDINGS Pty Limited.
11. I hereby acknowledge that AUSTRALIAN CEMENT HOLDINGS Pty Limited has the right to terminate its engagement in accordance with the Agreement and no compensation would be payable other than as set out in the Agreement.
12. I hereby acknowledge and agree that neither I nor the Applicant Contract Carrier will look to AUSTRALIAN CEMENT HOLDINGS Pty Limited, or any of its officers or employees or the vendor for any loss I or the Applicant Contract Carrier may suffer in relation to the purchase price of the vehicle if AUSTRALIAN CEMENT HOLDINGS Pty Limited terminates the engagement.
13. I hereby acknowledge that the "last on, first off" rule applies and will be implemented should there be any downturn in the volume of work which may include reorganisation of the work. If no further contracts were offered to the Applicant Contract Carrier because of this rule, I acknowledge for and on behalf of the Applicant Contract Carrier that no compensation would be payable by AUSTRALIAN CEMENT HOLDINGS Pty Limited to the Applicant Contract Carrier other than as set out in the Agreement.
14. I have been made aware and the details have been explained to me on behalf of the Applicant Contract Carrier of the terms of the Contract Carrier Agreement to which I acknowledge on behalf of the Applicant Contract Carrier it will be bound.
15. I hereby acknowledge that AUSTRALIAN CEMENT HOLDINGS Pty Limited will allocate work as it sees fit and that the Applicant Contract Carrier has no right to any particular customers or runs.
16. I hereby acknowledge that AUSTRALIAN CEMENT HOLDINGS Pty Limited will not be obliged to consent to any assignment of the vehicle to another contract carrier within five (5) years of the commencement of engagement.

Dated: 20

Before me:

Solicitor

(Signature)

Director

(Signature)

AGREEMENT PREPARED BY ASHLAW LEGAL SERVICES
PO Box 1034
Sutherland NSW 1499
All Rights Reserved