ENTERPRISE AGREEMENT

NO. EA 98/2/2

DATE REGISTERED 13-7.98

PRICE \$...30

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA98/212

TITLE: Peter J. Davis (Newcastle) Pty Ltd Enterprise Agreement 1998

I.R.C. NO: 98/3609

DATE APPROVED/COMMENCEMENT: Approved 13 July 1998 and commenced first full pay

Registered
Enterprise Agreement

Industrial Registrar

period on or after 13 July 1998

TERM:

24 months

NEW AGREEMENT OR

VARIATION:

New

GAZETTAL REFERENCE:

DATE TERMINATED:

NUMBER OF PAGES:

15

COVERAGE/DESCRIPTION OF

EMPLOYEES: Applies to all employees employed by the company engaged under the Building Tradesmen (State) Construction Award and other awards.

PARTIES: Peter J Davis (Newcastle) Pty Ltd -&- Michael Bartlett, Adam Burgess, Nigel Burgess, Mitchell Casey, Craig Cooge, Matthew Friedman, David Gwynne, Stephen Haines, Robert Hardy, Michael Jeffs, Jamie Johnson, Barry Lobley, Wayne McLeod, Peter Rich, Jamie Rothero, Michael Towers, Stephen Travis

This and the attached 15 pages is the annexure marked 'A' referred to in The Affidavit of Peter James Davis

ENTERPRISE AGREEMENT

Between



Peter J. Davis (Newcastle) Pty Ltd

&

the Employees

1. Title

This Agreement shall be known as the Peter J. Davis (Newcastle) Pty Ltd Enterprise Agreement 1998.

2. Arrangement

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3. **OBJECTIVES OF THE AGREEMENT**

This Agreement has been developed by representatives of Peter J. Davis Pty Ltd (the Company), and its employees. Enterprise Agreement

The objectives of this Agreement are:

Industrial Registrar * To contribute to long term improvement in the company's performance in regard to profitability, market share, and competitiveness, and so support the labour cost increases which are included herein:

- * To provide the means by which management and its employees can introduce significant flexibility at the workplace and promote management practices geared towards matching international best practice standards, through implementation of the efficiency measures contained herein and the promotion of a culture of continuous learning and improvement; and
- * To provide an improved employment environment that encourages and rewards safe working practices, high quality of work, self-improvement, and which will provide increased job-satisfaction and security of employment.

4. COMMITMENT

The parties to this Agreement commit themselves to ensuring that the objectives of the Agreement are achieved in the following ways:

- * through consultation and a free flow of information, the development of an environment where there will be better understanding between the Company and its employees;
- * actual implementation of the efficiency measures in this Agreement to achieve real gains in productivity, but not at the expense of health and safety standards;
- * establishment of quality procedures; and
- * ensuring that the Disputes Settlement Procedures provided in the Agreement are strictly adhered to.

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- 5. PARTIES, SCOPE, DURATION
- 5.1 PARTIES BOUND: This Agreement shall be binding on Peter J. Davis (Newcastle)
 Pty Ltd on the one hand, and the Company's employees on the other.
- 5.2 SCOPE: This Agreement shall apply to all employees of the Company covered under the Building Tradesmen (State) Construction Award, the Building Tradesmen (State) Construction 1996 Wages Adjustment Award, the Building and Construction Industry Labourers On-Site (State) Award, the Building and Construction Industry Labourers On Site 1996 Wages Adjustment (State) Award, and any related or "splinter" Awards (collectively, the Awards).
- 5.3 RELATIONSHIP TO PARENT AWARD: Where there is any inconsistency between this Agreement and the Awards this Agreement shall prevail to the extent browstrial Registrar the inconsistency.
- 5.4 <u>PERIOD OF OPERATION</u>: This Agreement shall come into effect from the beginning of the first full pay period commencing on or after the date of approval of the Agreement by the New South Wales Industrial Relations Commission, and shall continue in force for 2 years unless terminated beforehand in accordance with s44 of the Industrial Relations Act 1996 (NSW).
- 5.5 **EXISTING RATES OF PAY**: No employee's ordinary rate of pay shall be reduced as a result of this Agreement.
- 5.6 AGREEMENT VOLUNTARY: This Agreement was not entered into under duress by any party to it.
- 5.7 <u>NO PRECEDENT</u>: This Agreement shall not be used in any manner whatsoever to obtain similar arrangements, conditions, or benefits in any other enterprise.
- 5.8 <u>ANTI-DISCRIMINATION</u>: This Agreement does not breach any relevant statutory requirements, including the requirements of Chapter 2, Part 2 (Enterprise Agreements) of the Industrial Relations Act 1996, and the Anti-Discrimination Act 1977.
- 6 NO EXTRA CLAIMS

The parties agree not to pursue any extra claims against each other for the life of this Agreement.

7 CONSULTATION & DISPUTE RESOLUTION

7.1 CONSULTATIVE COMMITTEE: Consultation and participation are vital elements in seeking improved industrial relations. In an endeavour to keep the workforce informed a consultative committee shall be established where-by the workforce will be able to have input into decision making. The Committee shall comprise representatives of management and employees and it's main task will be to monitor the operation of this Agreement. The Committee shall meet each six months or more frequently if required. The decisions and recommendations of the Committee will be communicated to all employees.

- 7.2 **DISPUTE SETTLEMENT PROCEDURE:** The parties to this agreement are committed to minimising the incidence of lost time or production arising out of disputes or grievances, and to resolving any disputes by consultation and co-operation. Further, the Parties commit themselves to:
 - * resolving any disputes with each other without recourse to industrial action; and
 - * acceptance of determinations of the Workcover Authority or persons accredited by it in health & safety issues.

It is agreed that the following procedures will be adhered to at all times:

- (i) Disputes on any work related or industrial matter shall be dealt with as close to the Registered source as possible.
- (ii) The dispute shall be referred to the employee's immediate Site Foreman or Supervisor.
- (iii) If the matter remains unresolved the employee(s) will forward the matter to Senior Management.
- (iv) If the matter remains unresolved the employee(s) may refer the matter to the relevant Union Organiser who will submit the issue to Senior Management.
- (v) Work will continue as normal whilst the dispute settlement procedure is being followed or until the matter is resolved.
- (vi) If not resolved at this stage the matter will be submitted to the New South Wales Industrial Relations Commission for determination.
- (vii) The above procedures will apply in the event of a safety issue. In such an e normal work shall continue in areas other than the area subject of the dispa 'n. employees in that area shall be relocated to other areas/sites, or undertake training, forward planning, or other appropriate activities, until the matter is resolved. No employee shall be permitted to work in an unsafe area other than for safety rectification purposes.

HEALTH & SAFETY

The parties to this Agreement are committed to the safe operation of machinery and equipment, to the observance of safe working practices, the proper use of all personal safety equipment and to the safety and good health of all employees and other persons who may enter the workplace. To facilitate this it is provided that:

- (i) it is the company's obligation as far as is reasonably practicable to provide a safe and healthy workplace;
- (ii) it is each employee's obligation to take reasonable care for the health and safety of other persons in the workplace who may be affected by his/her act or omissions

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and to co-operate with the company in ensuring that the workplace is healthy and safe;

- (iii) any worker becoming aware of a situation which is actually or potentially unsafe will immediately report the situation to his/her supervisor or appropriate management representative;
- (iv) all issued safety equipment, clothing and footwear must be used and worn in the manner intended;
- (v) it is strictly against the rules of the workplace to misuse, interfere with, or make inoperative, any safety equipment, guards, or fire protection equipment;
- (vi) horseplay at the workplace is dangerous and can lead to the injury of those involved or bystanders, and is therefore prohibited;
- (vii) any damage to safety plant or equipment must be reported to the appropriate supervisor or management representative as soon as possible; and
- (viii) any breach of workplace safety rules and policies or of the above provisions may lead to disciplinary action or dismissal.

9 CLASSIFICATION & RATES OF PAY

- 9.1 <u>CLASSIFICATION & RATES OF PAY</u>: The Classifications and Rates of pay shall be as per the relevant award. These rates include Industry and Underground Allowances, Special Allowance, and Follow-the-job Loading. If at any time the rates of pay under this Agreement are less than the Award rate, the Award rate shall apply.
- 9.2 WAGE INCREASES THROUGH LIFE OF AGREEMENT: The rates of pay shall be adjusted from the same dates of effect and in the same proportion as the relevant award.
- 9.3.1 PRODUCTIVITY ALLOWANCE: In addition to the above rates, a Productivity Allowance of \$1.00 per hour, shall be paid in recognition of actual productivity improvements resulting from the implementation of this Agreement. The Payment shall be for hours worked and shall not be taken into account in the calculation of penalty, annual, sick or long service leave payments. The payment shall be in lieu of any project or site allowances applicable to the project, except as otherwise provided by subclause 9.3.2.

Apprentices shall be paid the productivity allowance on a percentage basis according to the following scale:

Year of Apprenticeship	Productivity %	Amount Per Hr.
4th year apprentice	80	0.80c
3rd year apprentice	70	0.70c
2nd year apprentice	60	0.60c
1st year apprentice	50	0.50c

- 9.3.2 <u>ADDITIONAL PRODUCTIVITY ALLOWANCE</u>: Where under its contractual obligations for particular projects/sites, the company is obliged to pay productivity or site allowances of a greater value than that at 9.3.1 (including those awarded by the relevant industrial tribunals) the following conditions shall apply:
 - (a) only the difference between the additional productivity allowance and the productivity allowance at 9.3.1 shall be paid where the company is contractually entitled to recover the cost of such allowance; and
 - (b) where any agreement under which such allowances arise provides for productivity measures not included in this Agreement the company may, at its discretion, adopt some or all of those additional measures for the duration of that project.

Where there is no contractual obligation to pay the productivity or site allowances mentioned above or the allowance is of a lesser value than at 9.3.1, the rates referred to at 9.1 and the productivity allowance as stated at 9.3.1 will be the rates to be paid on any site or project.

- 9.4 <u>APPRENTICES</u>: Wages and conditions for apprentices shall be in accordance withd the Building Tradesmen (State) Construction Award. However, the productivity agreement allowance at 9.3.1 shall apply to all apprentices on a percentage basis.
- 9.5 <u>CLOTHING</u>: Clothing shall be supplied and replaced at the discretion of the Company.
- 9.6 <u>DATLY FARES</u>: An amount of \$4.22 per day (\$1.98 per day for 1st & 2nd Year Apprentices) shall be paid in addition to the Award "daily fares" allowance. The additional payment shall continue until such time the award allowance overtakes it at which time the award allowance will prevail.

10 SUPERANNUATION

The Company shall make superannuation contributions at the prescribed statutory rate on behalf of each eligible employee into the Construction & Building Unions Superannuation Scheme (C+BUSS).

11 REDUNDANCY

The Company will make provision on behalf of each eligible employee an amount of \$25.00 per week for the purpose of redundancy/termination payments, which amount shall be paid into the Australian Construction Industry Redundancy Trust Fund (ACIRT). Provided that on commercial sites an additional contribution of \$16.60 per week shall be made into ACIRT where the company is contractually entitled to recover such additional contributions from the Principal or Head Contractor. Payment of entitlements from this fund shall be made direct to the employee by the Fund. Contributions in respect of apprentices shall be made as per the Award.

Employees with accumulated award redundancy entitlements prior to the date of approval of this Agreement, will have the value of those entitlements less any previous ACIRT payments

made for them paid into ACIRT within six months of approval of this agreement and continue to have ACIRT contributions made on their behalf during their employment.

12 TOP-UP INSURANCE

In an endeavour to provide added income security, the company shall make contributions on behalf of each employee for "Top-up" Workers Compensation and 24 Hour Accident Insurance to an insurance provider of its choice.

13 CONTRACT OF EMPLOYMENT

13.1 ENGAGEMENT OF EMPLOYEES: All prospective employees shall complete an Application for Employment form prior to engagement. Applicants may be required to undertake a pre-employment medical, the cost of which shall be borne by the Company. Any employee who knowingly provides false information in such application or in the medical may be dismissed.

All new employees (other than casuals) shall initially be engaged on probation for a period of two months and shall be paid as for daily hire. If during this time either party is not satisfied with the employment relationship, employment may be terminated by either the employee or the Company. Such termination shall not be regarded as harsh unjust or unreasonable. In addition, new employees shall undergo an industry approved safety induction programme.

- 13.2 <u>TERMINATION OF EMPLOYMENT</u>: Employment (other than casual employment) may be terminated by the giving of one day's notice on either side, or one day's pay shall be paid in lieu or forfeited. Nothing in this clause shall affect the right of the company to dismiss an employee without notice for misconduct or refusal of duty.
- 13.3 <u>CASUAL EMPLOYMENT</u>: The Company may engage casual employees for a period of up to 30 days in any one engagement, subject to the following:
 - (i) a casual employee for working ordinary time shall be paid at the relevant rate as prescribed in clause 9 of this Agreement for each hour worked, plus a loading of twenty (20%) per cent. The twenty per cent loading herein is in lieu of public holidays, annual leave, sick leave, redundancy, and to compensate for the nature of casual employment.
 - (ii) a casual employee shall be paid for a minimum of three (3) hours work;
 - (iii) casual employees shall be entitled to the benefits of Clauses 9 (Classifications & Rates of Pay), and, subject to their earning more than \$450 in any month, clause 10 (Superannuation), but shall not be entitled to any redundancy contributions;
 - (iv) casual employment may be terminated by the giving of an hours' notice on either side, or the payment or forfeiture of an hours' pay; and

(v) casual employees shall be required to have appropriate footwear on commencement with the Company.

14 **HOURS OF WORK**

- 14.1 ORDINARY HOURS: The ordinary working hours shall be 38 hours per week and may be worked on any day Monday to Friday inclusive, between the hours of 06:00 to 18:00 on the following basis:
 - (a) 8 hours per day, with 0.4 hours of each day worked accruing as an entitlement to take one day each 4 weeks as a Rostered Day Off (RDO) paid for as though worked; OR
 - (b) up to 10 hours per day up to a total of 40 hours per week, 2 hours of which shall accrue as an entitlement to take one day each 4 weeks as a Rostered Day Off (RDO) paid for as though worked.

Where a change in working patterns would create genuine hardship to any employee the Company shall take reasonable steps to minimise that hardship.

14.2 WORK OUTSIDE ORDINARY HOURS: Any hours worked outside the span of hours set in 14.1 above, or in excess of 40 hours per week shall be regarded as Overtime and dealt with in accordance with the relevant clauses of the Awards Registered .

15 ROSTERED DAYS OFF

The company and the employees may agree to vary the date of the monthly industrial Registrar rostered day off (RDO) in order to meet job requirements or personal needs. In such cases employees entitled to an accrued RDO shall:

- (i) take such RDO within 19 days after the industry nominated date; or
- (ii) "bank" all or some RDOs, provided that all banked RDOs are taken within 12 months of the time of their original accrual, as requested by the employee, and at least 1 week's notice is given of the intention to bank the RDO.

The Company shall attempt to accommodate all requests for the taking of "banked" RDOs, however the taking of such RDOs shall be subject to reasonable operational requirements, which shall be determined by the Company.

16 REST PERIODS, MEALS & CRIB TIMES

16.1 **OVERTIME CRIB BREAKS**: When an employee is required to work overtime after the usual ceasing time for the day or shift for more than two hours, the employee shall be entitled to a meal allowance as prescribed under the relevant awards and be allowed to take, without deduction of pay, a crib time of 20 minutes in duration on the completion of two hours overtime; and thereafter, after each four hours of continuous work the employee shall be allowed to take, also without deduction of pay, a crib time of 30 minutes in duration. In the event of an employee continuing at work for a period

Enterprise Agreement

of more than two hours after the usual ceasing time without taking the crib time of 20 minutes, the employee shall be regarded as having worked 20 minutes more than the time worked and be paid accordingly.

MEAL BREAKS: There shall be a cessation of work and working time for the purpose of a meal on each day of no less than 30 minutes which shall be taken no more than 5 hours after commencement of ordinary working hours on that day.

Notwithstanding the above, by agreement between the company and the employees affected, the time of commencement of the meal break may be staggered, varied, no break taken, or its duration extended to meet the reasonable requirements of that day's work. Where the meal break is not taken, the ordinary hours of work for that day shall cease 30 minutes before the usual ceasing time. Where the meal break is extended the time of cessation of work for that day shall be adjusted accordingly.

17 DISCIPLINARY PROCEDURES

- 17.1 <u>DISCIPLINARY PROCEDURES</u>: Where the company believes that an employee is not meeting the standards of performance or conduct reasonably expected of him or her, the following procedures shall apply:
 - (a) In the first instance the employee shall be counselled as to where his or henterprise Aureement performance /conduct is deficient; and (where appropriate) the steps to be taken to remedy the deficiency shall be identified, and a review period shall be set. In more registrar serious cases a written warning may be issued at this stage.
 - (b) Should the matter not be resolved, the employee shall be counselled again, and the company may issue a written warning advising the employee that his/her employment is in jeopardy if the deficiency is not rectified. In more serious cases this may be a final warning. A further review period may be set if appropriate.
 - (c) Should the matter still not be resolved, the employee shall be counselled again, and a further written warning given, which shall be a final warning unless in the opinion of the company this is not warranted.
- 17.2 <u>GUIDELINES FOR COUNSELLING SESSIONS</u>: The following shall apply to all counselling sessions:
 - (a) the employee shall be given the opportunity to respond to the alleged instances of deficient performance/conduct, and management shall consider the employee's response in making its decision as to the action to be taken;
 - (b) the employee may request that a person of his/her choice be present during the counselling session as an observer, and shall be given reasonable time to arrange for that person to be present if (s)he is not already in the workplace;

The company reserves the right to dismiss an employee without notice in cases of serious misconduct or refusal of duty.

18 SICK LEAVE

An employee other than a casual employee as defined, during his/her first year of employment shall be entitled to sick leave entitlement at the rate of one day at the beginning of each of the first ten calendar months of his/her first year of employment on account of personal illness or injury, which shall accrue in each year on the anniversary date of the commencement of employment up to a maximum of ten years. Such sick leave shall be granted subject to the following:

- (i) the employee shall, as far as is practicable, advise the Company before the normal work commencement time of their inability to attend for duty and the nature of the illness or injury and the estimated duration of the absence;
- (ii) in the case of an employee who claims sick leave for an absence of one day or more, such employee if in the year he/she has already been allowed paid sick leave on two occasions for one day only shall on or before his or her return to work, produce a certificate of a duly qualified medical practitioner. Such certificate shall state that in the practitioner's opinion, the employee was unable to attend for duty due to personal illness or injury (the nature of which shall be stated in the certificate), and the period of the inability to attend for duty; and

(iv) If an employee is terminated by his/her employer and is re-engaged by the same employer within a period of six months, then the employee's unclaimed balance of sick leave shall continue from the date of re-engagement.

The parties to this Agreement recognise that in order to increase the efficiency and dustrial Registrat competitiveness of the Company a greater competitiveness of the Company and competitiv competitiveness of the Company, a greater commitment to training and skills development is required of the Company and its employees. Accordingly the parties commit themselves to:

- (i) developing a more highly skilled and flexible workforce;
- (ii) providing employees with the opportunity to acquire additional skills; and
- (iii) removing demarcation barriers to enable utilisation of skills acquired.

20 ANNUAL CLOSE DOWN

Notwithstanding anything contained in the Awards, the company when giving any leave in conjunction with the Christmas-New Year holidays may, at the company's option, either:

- (a) stand off without pay during the period of leave any employee who is not yet entitled to an Annual Holiday; or
- (b) stand off without pay during the period of leave any employee who is not yet entitled to an Annual Holiday and pay (up to the period of leave then given) at a

rate of one-twelfth of an ordinary week's wages in respect of each 38 hours continuous service (excluding over-time).

Provided that where the company at its option decides to close down the establishment at the Christmas-New Year period for the purpose of giving the whole of the annual leave due to all, or the majority of the employees then qualified for such leave, the company shall give at least one (1) months' notice to the employees of the company's intention to do so.

Provided also that where the company requires work to be carried out during an annual close-down period notified as above, the company may, subject to the employees' agreement, recall an employee from annual leave, which agreement shall not be unreasonably withheld. In such cases the employee shall be re-credited with the amount of annual leave foregone, but shall not be entitled to a further payment of leave loading in respect of that leave.

21 UNION PICNIC DAY

Union Picnic Day shall be paid and taken as prescribed in the Award.

22 NEWCASTLE SHOW DAY

If it is necessary for an employee to work on the Newcastle Show Day and the employee would otherwise be entitled to paid leave for that day, then by agreement between the parties, employees may be required to work and be paid at ordinary time rates provided that a day off in lieu is provided at some other agreed time.

23 SPECIALIST SUBCONTRACTORS

The industry is moving towards broader subcontracts and the company will accommodate this with its employees where consistent with the restructuring approach. However it is recognised and agreed that in particular circumstances it may be appropriate to engage subcontractors to undertake certain specialist work. Preference will be given to specialist subcontractors with a registered enterprise agreement.

24 UNION MEMBERSHIP

The Company recognises that whether or not to join a union is a choice to be made by the individual employee. No employee will be either advantaged or disadvantaged in his/her employment because of his/her choice to join or not to join a union.

25 QUALITY ASSURANCE

It is agreed by the parties that the establishment and maintenance of a quality assurance programme and the maintenance of consistently high standards of workmanship and client satisfaction are essential to the Company's continued profitability. In order to achieve this it is agreed:

(a) all employees shall co-operate fully in the development and implementation of a company quality assurance programme; and

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(b) any employee who fails to produce the required standard of workmanship may be liable to disciplinary action, including termination of employment, provided that in such instances the company shall give each employee a reasonable opportunity to improve his/her performance, and will, where appropriate, provide any necessary training if the employee's poor performance does not relate to the usual skills which would reasonably be expected of a person with that employee's experience and/or qualifications.

26 **INCLEMENT WEATHER**

The following procedures shall be implemented to limit the loss of productivity due to inclement weather, and ensure that as far as is practicable work will continue as normal unless this would create risks to health or safety:

(i) if it is reasonable for employees to transfer from lunch sheds to work areas unaffected by inclement weather they will do so, and transfer using raincoats or umbrellas shall be deemed reasonable;

Registered

(ii) employees shall not leave the site if in the Company's opinion useful work is available in the area not affected by inclement weather;

- (iii) employees shall accept transfer to other sites not affected by inclement weather, and the Company shall provide transport where necessary or pay a kilometre allowance as per the award rate where employees use their own vehicles; and
- (iv) where the above are not practical, employees will remain on site or return to the company's depot and undertake relevant training/learning applications, maintenance to plant and equipment, or other worthwhile activities at the discretion of the Company.

27 PAYMENT BY ELECTRONIC TRANSFER

Wages will be paid through electronic funds transfer for all employees. The pay week will commence on a Wednesday and finish on the succeeding Tuesday.

28 POSTING OF AGREEMENT

A copy of this Agreement shall be posted and kept posted by the company in a prominent place on the company's premises accessible to the employees.

Industrial Registrar

This Agreement is made on this	day of
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COMPANY	
Executed for and on behalf of Peter J. 1	Davis (Newcastle) Ptv Ltd:
The Common Seal of Peter J. Davis (Newcastle)	
pursuant to its Article of Association in the prese	ence of
11 SHE SHE	Director
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	Registered Enterprise Agreemen
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M. L. BARTLETT (Name in block letters)	(Name in block letters)	
Classification: FORISMAN	Classification:	
Signed: 5 Trains	Signed:	
STEVEN TRAVIS (Name in block letters)	(Name in block letters)	*************
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