

Industrial Relations Commission  
of New South Wales

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Tendered by Diamond.....

Date 28/9/09.....

**CONTRACT CARRIER  
AGREEMENT**

DATED 28/9/09

**HY-TEC INDUSTRIES PTY LTD  
ABN 90 070 100 702**

**AND**

**TRANSPORT WORKERS UNION OF NSW  
ABN 77 710 588 395**

## CONTRACT CARRIER AGREEMENT

### BETWEEN

**HY-TEC INDUSTRIES PTY LTD (ABN 90 070 100 702)** of Level 1, 157 Grenfell St, ADELAIDE SA 5000 ("Hy-Tec")

### AND

**TRANSPORT WORKERS UNION OF NSW (ABN 77 710 588 395)** of 31 Cowper St, PARRAMATTA NSW 2150 ("the TWU") for and on behalf of each Contract Carrier

### RECITALS

- A. Hy-Tec wishes to engage each Contract Carrier to provide the Services.
- B. Hy-Tec and the TWU have agreed Hy-Tec will engage each Contract Carrier to provide the Services in accordance with the terms of this Contract.

### AGREEMENT

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Contract:

**"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 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;

**"Certificate of Financial Advice"** means the certificate of financial advice set out in Schedule 4;

**“Certificate of Legal Advice”** means the certificate of legal advice set out in Schedule 5;

**Change of Control** means a change in control of:

- (a) the composition of the board of directors of a corporation;
- (b) more than half the voting rights attaching to shares in a corporation; or
- (c) more than half the issued shares of a corporation.

**“Commencement Date”** means 1 October 2009;

**“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 each of the entities set out in Schedule 1 and any other entity engaged by Hy-Tec to provide the Services in accordance with the terms of this Contract;

**“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;

**“Insolvent”** means the following events, or any analogous event, in relation to a party:

- (a) passing a resolution under section 436A of the Corporations Act 2001 (Cth);
- (b) placing into administration under Part 5.3A of the Corporations Act 2001 (Cth);
- (c) a deed of arrangement is entered into by creditors;
- (d) an application is made to a court for winding up and not stayed within 14 days;
- (e) resolving to be wound up voluntarily;
- (f) a winding up order is made;
- (g) a receiver or receiver and manager is appointed;
- (h) a court orders that there be a meeting of creditors or members for any purpose related to Part 5.1 of the Corporations Act 2001 (Cth); and/or
- (i) a mortgagee takes possession of any assets;

**“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;

**“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 2;

**“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 3;

**“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, 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, and a reference to this Contract 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, 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 or any part of this Contract; 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 in accordance with:

- (a) the Vehicle Specifications; and
- (b) the legal requirements for the relevant maximum legal payload.

### **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 the Contract Carrier is, prior the commencement of this Contract, 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 Contact 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**

If Hy-Tec or one or more Contract Carrier 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.



#### **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 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 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 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.
- (f) A failure by any Driver to comply with this clause 11 will be dealt with under clause 16.

## **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 6 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. DURATION OF AGREEMENT**

### **14.1 Duration**

This Contract will commence on 1 October 2009 and will remain in force until 30 September 2012 and thereafter will continue to operate in accordance with:

- (a) the provisions of the Industrial Relations Act 1996 (NSW); and
- (b) this clause 14.

### **14.2 Duration for Contract Carrier**

In respect of all Contract Carriers (other than Contract Carriers of Mini Trucks):



- (a) The Cartage Contracts will:
  - (i) commence on 1 October 2009 or, if the Contract Carrier is engaged to provide Services after 1 October 2009, the date on which the Contract Carrier is engaged to provide Services; and
  - (ii) terminate on 30 September 2021 unless the parties agree to a shorter term or the Cartage Contract is terminated earlier in accordance with the terms of this Contract.
- (b) It is the intention of the parties, notwithstanding the provisions of the Industrial Relations Act 1996 (NSW), to comply with the terms of this Contract in accordance with clause 14.2(a)
- (c) The parties agree that:
  - (i) the Contract Carrier must replace the Vehicle with a new Vehicle between 1 October 2009 and 1 January 2014 unless the Contract Carrier has purchased a new Vehicle between 1 October 2005 and 30 September 2009; and
  - (ii) the Contract Carrier must not, at any time during the Term of this Contract, utilise a vehicle that is more than 14 years old.
- (d) Hy-Tec may direct the Contract Carrier to suspend compliance with the Contract Carrier's obligations set out in clause 14.2(c) for any period determined by Hy-Tec in Hy-Tec's sole discretion and the Contract Carrier must comply with the direction.
- (e) If the Contract Carrier fails to obtain and operate a new Vehicle in accordance with this clause 14.2, Hy-Tec may:
  - (i) refuse to load the Vehicle;
  - (ii) suspend the Contract Carrier's Cartage Contract; and/or
  - (iii) terminate the Contract Carrier's Cartage Contract without the payment of any compensation to the Contract Carrier.

## **15. PAYMENT OF CONTRACT CARRIER**

### **15.1 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.

## **16. PERFORMANCE AND DISCIPLINE**

### **16.1 Misconduct and Performance Issues by Contract Carrier**

- (a) If there are misconduct or performance issues in relation to the Contract Carrier, or a Driver, Hy-Tec may provide:
- (i) a verbal warning to the Contract Carrier; or
  - (ii) a written warning to the Contract Carrier,  
setting out the details of the misconduct or performance issues.
- (b) If there are repeated misconduct or performance issues in relation to the Contract Carrier, or one or more Drivers, Hy-Tec may:
- (i) provide a written warning to the Contract Carrier;
  - (ii) withdraw Hy-Tec's approval for any Driver to perform the Services; or
  - (iii) terminate the Contract Carrier's Cartage Contract.

### **16.2 Default by Contract Carrier**

- (a) If the Contract Carrier is in default of the Contract Carrier's obligations under this Contract, Hy-Tec may provide a notice to the Contract Carrier specifying

the default and requiring the Contract Carrier to remedy the default within fourteen (14) days.

- (b) If Hy-Tec provides a notice to the Contract Carrier in accordance with clause 16.2(a), and the Contract Carrier fails to remedy the default within fourteen (14) days of receipt of the notice, Hy-Tec may (without prejudice to Hy-Tec's other rights or remedies under this Contract or law):
  - (i) suspend the Contract Carrier's Cartage Contract, without payment of any compensation to the Contract Carrier, until the Contract Carrier has remedied the default; or
  - (ii) terminate the Contract Carrier's Cartage Contract without payment of any compensation to the Contract Carrier.

### **16.3 Dispute about Procedure**

If a dispute arises about the application of this clause 16, either Hy-Tec or the Contract Carrier may invoke the dispute resolution procedure set out in clause 17.

## **17. DISPUTE RESOLUTION**

### **17.1 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.

### **17.2 Notification of Dispute**

If Hy-Tec or the Contract Carrier receives a notification of dispute in accordance with clause 17.1, 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, 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 17.2(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 17.2(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 17.2(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.

## **18. TERMINATION OF CONTRACT**

### **18.1 Termination Without Compensation**

Hy-Tec may terminate a Contract Carrier's Cartage Contract without paying any compensation to the Contract Carrier in the event that the Contract Carrier (or Contract Carrier Driver or Substitute Driver) has:

- (a) committed a serious Breach or a serious act of misconduct (which includes, but is not limited to, the commission of a criminal offence by the Contract Carrier, Contract Carrier Driver or Substitute Driver);
- (b) been subject to a Change of Control;
- (c) been declared to be Insolvent; and/or
- (d) been declared to be of unsound mind or mentally incompetent.

### **18.2 Termination with Compensation**

In respect of each Contract Carrier (other than each Contract Carrier that operates a Mini Truck):

- (a) Hy-Tec has the right to terminate the Cartage Contract of the Contract Carrier at any time and for any reason by paying to the Contract Carrier the following sum in respect of goodwill:

<b>Date of Termination</b>	<b>Compensation</b>
1 October 2009 to 30 September 2012	\$100,000
1 October 2012 to 30 September 2018	\$ 70,000
1 October 2018 to 29 September 2021	\$ 50,000
on and after 30 September 2021	\$ 0

- (b) The parties acknowledge Hy-Tec will not be liable to pay any compensation in respect of termination of a Cartage Contract, or any other agreement with a Contract Carrier, which occurs on or after 30 September 2021.

### **18.3 Notice on Termination of Cartage Contracts**

If Hy-Tec terminates a Cartage Contract in accordance with clause 18.2, Hy-Tec must also provide the Contract Carrier with no less than four (4) weeks written notice of termination which Hy-Tec may pay in lieu of notice in the amount of the average gross cartage earnings for all Contract Carriers for the previous four (4) weeks less the average running costs for all Contract Carriers for the previous four (4) weeks.

#### **18.4 Negotiations for New Contract**

The parties will, at least one year prior to the last date set out in clause 18.2(a), commence negotiations with a view to executing a new contract to commence on termination of this Contract.

### **19. MISCELLANEOUS**

#### **19.1 Relationship**

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

#### **19.2 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.

### **20. AGITATOR**

#### **20.1 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.

#### **20.2 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.

## **21. ASSIGNMENT OF CARTAGE CONTRACT**

### **21.1 Requirement for Consent to Assignment**

The Contract Carrier may not assign, or purport to assign, a Cartage Contract to a third party without obtaining Hy-Tec's prior written consent in accordance with this clause 21.

### **21.2 Consequences of Failure to seek Consent to Assignment**

If the Contract Carrier purports to assign a Cartage Contract to a third party otherwise than strictly in accordance with clause 21, Hy-Tec may terminate the Cartage Contract without providing any notice or compensation to the Contract Carrier.

### **21.3 Request for Consent to Assignment**

If the Contract Carrier wishes to assign a Cartage Contract to a third party, the Contract Carrier must provide to Hy-Tec:

- (a) a written request for Hy-Tec to consent to the assignment at least 28 days before the proposed date of assignment; and
- (b) the contact details of the person to whom the Contract Carrier proposes to assign the Contract as soon as these details are available.

### **21.4 Hy-Tec's Option**

If the Contract Carrier provides a written request to Hy-Tec for consent to a proposed assignment of the Cartage Contract in accordance with clause 21.3, Hy-Tec will, within 21 days of receiving the request, either:

- (a) provide written consent to the request;
- (b) provide written notice that Hy-Tec refuses to consent to the request; or
- (c) terminate the Cartage Contract in accordance with clauses 18.2 and 18.3 (and Hy-Tec has the discretion to make an offer to purchase the Vehicle associated with the Cartage Contract).

### **21.5 Consideration of Request for Assignment**

In determining whether to approve a Contract Carrier's proposal to assign the Cartage Contract to a third party, Hy-Tec may:

- (a) interview the Contract Carrier;
- (b) interview the proposed assignee;
- (c) check the proposed assignee's referees;
- (d) undertake criminal record checks;
- (e) undertake the training set out in clause 21.10; and

- (f) make any other enquiries Hy-Tec considers reasonably necessary, and may refuse to consent to the proposed assignment on any reasonable grounds.

#### **21.6 Withholding Consent**

Hy-Tec may not unreasonably withhold consent for the assignment of a Cartage Contract based on personality conflicts.

#### **21.7 Acknowledgement**

The Contract Carrier acknowledges Hy-Tec does not acknowledge any value of any Cartage Contract other than in accordance with clause 18.

#### **21.8 Notification**

The Contract Carrier agrees to:

- (a) notify any potential assignee of the Cartage Contract of the terms of this clause 21;
- (b) include a clause to the effect of clause 21 in any contract to assign the Cartage Contract; and
- (c) guarantee and indemnify Hy-Tec against any loss suffered by Hy-Tec due to any assignment of the Cartage Contract.

#### **21.9 Prohibition Against Assignment**

The Contract Carrier covenants not to assign the Cartage Contract within twenty four (24) months of the commencement of the Cartage Contract or before 30 September 2011 whichever is the later.

#### **21.10 Training of New Contract Carrier**

Any prospective Contract Carrier must spend the minimum amount of time training to operate the Agitator and other equipment and training to slump Concrete (including, but not limited to, testing in the field) as may be reasonably required by Hy-Tec. The prospective Contract Carrier must be assessed as competent by Hy-Tec before Hy-Tec will approve the prospective Contract Carrier.

#### **21.11 Certificate of Financial Advice**

Any prospective Contract Carrier must provide to Hy-Tec a Certificate of Financial Advice signed by a certified practising accountant.

#### **21.12 Certificate of Legal Advice**

Any prospective Contract Carrier must provide to Hy-Tec a Certificate of Legal Advice signed by a practising solicitor.

## **22. FINANCE**

### **22.1 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.

### **22.2 Refinance**

If the Contract Carrier refinances the Vehicle throughout the term of this Contract, the Contract Carrier will provide the information set out in clause 22.1 in respect of the new finance arrangement.

## **23. ENVIRONMENTAL PROTECTION**

### **23.1 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.

### **23.2 Contract Carrier's Responsibility**

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

## **24. OCCUPATIONAL HEALTH AND SAFETY**

### **24.1 Hy-Tec's Responsibility**

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

### **24.2 Contract Carrier's Responsibility**

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

### **24.3 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.

## **25. TRAINING**

### **25.1 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.

### **25.2 Contract Carrier's Responsibility**

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

### **25.3 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).

### **25.4 Paid Training**

If Hy-Tec requires the Contract Carrier to attend training in addition to the training set out in clause 25.3, 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.

## **26. 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.

## **27. REPORTING**

### **27.1 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.

## **27.2 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.

## **28. CONTRACT ADMINISTRATION**

### **28.1 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 including names, dates and contact numbers including mobile and home telephone numbers.

### **28.2 Proper Law and Jurisdiction**

This Contract is governed by, and to be interpreted in accordance with, the laws of the state of New South Wales and the parties agree to submit to the jurisdiction of the courts of the state of New South Wales.

### **28.3 Confidential Information**

The Contract Carrier acknowledges that all information relating to this Contract 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.

### **28.4 Variation**

This Contract may be varied only by agreement in writing by the parties.

## **28.5 Notices**

- (a) Any notice under this Contract 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 (as may be varied by either party providing written notice to the other party).
- (b) A notice given in accordance with this clause 28.5 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,

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.

## **28.6 Tax Invoices**

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

- (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 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 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.

## **28.7 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.

- (b) All payments to be made by Hy-Tec under this Contract 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 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.

## **28.8 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;
- (d) the Contract Carrier will take reasonable steps to ensure that any personal information the Contract Carrier holds under this Contract 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 28.8; 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).

#### **28.9 Waiver**

Any waiver under this Contract must be in writing.

#### **28.10 Severance**

If any part of this Contract is void or unenforceable, that part will be severed from this Contract and all other parts of the Contract will remain in full force and effect.

#### **28.11 Costs**

Each party is responsible for the party's own legal and other costs associated with the negotiation of this Contract.

#### **28.12 Entire Agreement**

This Contract consists of the body of this Contract and the Schedules and is the entire agreement between the parties and supersedes any prior agreements, arrangements or understandings between the parties in relation to the subject matter of this Contract.

#### **28.13 Inconsistency**

If there is any inconsistency between the documents which comprise this Agreement, the documents will take precedence in the following order: Schedule 1, Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6 and then the body of this Contract.

### **29. RELEASE**

#### **29.1 Release Terms**

In this clause 29:

**"Claim"** means any claim, demand, action or proceeding for damages, debt, restitution, compensation, injunctive relief, specific performance or any other remedy, whether arising at common law, in equity, under statute or otherwise;

**"Contract Carrier Entities"** means the Contract Carrier, any Related Entity of the Contract Carrier, the Contract Carrier Driver and any member of the Personnel of the Contract Carrier;

**"Payment Amount"** means \$1,000;

**"Personnel"** means any officer, employee, agent, representative or contractor of a party;

**"Previous Agreement"** means any previous agreement for cartage services between Hy-Tec and the Contract Carrier;

**"Related Entity"** means any related entity as defined in the Corporations Act 2001 (Cth);

**"Released Persons"** means Hy-Tec, any Related Entity of Hy-Tec and any member of the Personnel of Hy-Tec (excluding the Contract Carrier); and

**"Relevant Matters"** means any matters in respect of, relating to, or arising in whole or in part, either directly or indirectly out of or in connection with the Previous Agreement, the Services or the conduct of any of the Released Persons prior to or during the term of the Previous Agreement including, but not limited to, any issue raised in connection with matter number IRC 831 of 2009 wherever or whenever arising, whether known or unknown at the time of execution of this Contract and whether or not presently in contemplation of the parties.

## **29.2 Release**

In exchange for the Payment Amount and Hy-Tec's other obligations set out in this Contract, the Contract Carrier:

- (a) releases and forever discharges each of the Released Persons from any Claim in relation to any of the Relevant Matters;
- (b) irrevocably covenants with each of the Released Persons not to commence any Claim against any of the Released Persons in relation to any of the Relevant Matters in any jurisdiction;
- (c) waives any liability of each of the Released Persons from any Claim in relation to any of the Relevant Matters; and
- (d) indemnifies each of the Released Persons in relation to any damage, loss, costs, charge, expense, outgoing or payment (including but not limited to legal expenses) incurred in respect of, relating to, or arising in whole or in part, either directly or indirectly out of or in connection with any Claim by any of the Contract Carrier Entities against any of the Released Persons in relation to any of the Relevant Matters.

## **29.3 Breach of Covenant**

The Contract Carrier acknowledges that if any of the Contract Carrier Entities breach any of the covenants set out in clause 29.2, money damages would not be an adequate remedy and the Contract Carrier must consent, on the application of any Released Person, to the entry of a permanent injunction enjoining the Contract Carrier and/or any of the Contract Carrier Entities from breaching the covenants.

## **29.4 Enforcement**

The Contract Carrier acknowledges that each of the Released Persons is entitled to enforce this Contract directly for the purpose of enforcing the releases, discharges,

covenants, waivers and indemnities granted in the favour of the Released Person to the same extent as if the Released Person was named as a party to this Contract.

#### **29.5 Benefit**

Without prejudice to the ability of each party and each of the Released Persons to enforce this Contract directly for the person's own benefit, Hy-Tec holds the benefit of each release, discharge, covenant, waiver and indemnity set out in this Contract, to the extent that the release, discharge, covenant, waiver or indemnity is expressed to apply in favour of the Released Persons, on trust for each of the Released Persons.

#### **29.6 Plea in Bar**

Each of the Released Persons may plead this Contract in bar to any Claim by any of the Contract Carrier Entities.

#### **29.7 Acknowledgements**

The TWU and the Contract Carrier acknowledges that the TWU and the Contract Carrier:

- (a) enter into this Contract freely and voluntarily based upon the Contract Carrier's own information, legal advice and investigation;
- (b) do not execute this Contract or the transactions contemplated by the Contract Carrier as a result of or in reliance on any promise, representation, advice, statement or information of any kind given or offered to the Contract Carrier by or on behalf of any other party whether in answer to any inquiry or not; and
- (c) enter into this Contract with the intention of settling on a final basis, according to the provisions of this Contract, all Claims against each of the Released Persons and any other disputes which now exist, or may exist, or have ever existed, with any of the Released Persons in relation to any of the Relevant Matters notwithstanding that the Contract Carrier Entities may become aware of or come into possession of new information in relation to any of the Relevant Matters.


#### **29.8 Assistance with Claims**

The TWU and the Contract Carrier agree:

- (a) neither the TWU or the Contract Carrier will advance, cause, procure, finance, support, encourage or otherwise directly or indirectly facilitate in any way (except on compulsion of law including but not limited to service of a subpoena) the advancement, institution or prosecution of any Claim against any of the Released Persons in relation to any of the Relevant Matters; and
- (b) to use best endeavours to ensure that the TWU and each of the Contract Carrier Entities does not advance, procure, finance, support, encourage or otherwise directly or indirectly facilitate in any way (except on compulsion of law including, but not limited to, service of a subpoena) the advancement, institution or prosecution of any Claim against any of the Released Persons in relation to any of the Relevant Matters.

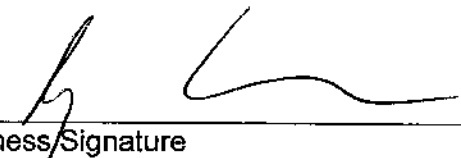
**EXECUTED AS AN AGREEMENT**

**Executed for and on behalf of  
HY-TEC INDUSTRIES PTY LTD  
ABN 90 070 100 702**

  
\_\_\_\_\_  
Signature

M. A. FINNEY  
\_\_\_\_\_  
Name


Executive General Manager  
\_\_\_\_\_  
Position

  
\_\_\_\_\_  
Witness Signature

ANTHONY JUCETA  
\_\_\_\_\_  
Witness Name


28.9.09.  
\_\_\_\_\_  
Date

**Executed for and on behalf of  
TRANSPORT WORKERS UNION OF  
NSW ABN 77 710 588 395**

  
\_\_\_\_\_  
Signature

Wayne Forno  
\_\_\_\_\_  
Name

State Secretary  
\_\_\_\_\_  
Position

  
\_\_\_\_\_  
Witness Signature

Grahame Hastings  
\_\_\_\_\_  
Witness Name

28.9.09  
\_\_\_\_\_  
Date



**SCHEDULE 1 - CONTRACT CARRIERS**

<b>Name</b>	<b>ABN</b>
Daher Transport Pty Ltd	46 129 057 272
<del>M &amp; S Concrete Carrier Pty Ltd</del>	<del>78 084 319 933</del>
M D N Transport Pty Ltd	50 109 437 470
Will Try Pty Ltd	25 100 165 697
ASL Trading Pty Ltd	59 111 168 453
<del>M &amp; S Concrete Carrier Pty Ltd</del>	<del>78 084 319 933</del>
Boab Pty Ltd	42 100 475 572
CSH Concrete Pty Ltd	56 104 171 217
R T Lorens Pty Ltd	90 104 233 356
Havenyork Pty Ltd	38 050 041 202
Salair Pty Ltd	71 061 983 720
Robert A Newcombe Pty Ltd	55 098 929 465
Ask Carriers Pty Ltd	86 087 096 660
Sri Supplies Pty Ltd	31 108 684 911
Erik Transport Pty Ltd	85 112 012 941
Andkal Pty Ltd	44 087 796 781
Organised Slime Pty Ltd	11 088 606 179
Jason Heaford Pty Ltd	96 137 749 298
Jawmac Pty Ltd	70 093 250 172
Jentally Pty Ltd	70 127 141 271
Elias Estphan Transport Pty Ltd	58 101 338 283
H&D Concrete Pty Ltd	38 115 721 385
Jenray (Australia) Pty Ltd	71 093 937 485
Large Head Pty Ltd	30 094 146 648
CNAS Pty Ltd	73 106 059 036
Taley Holdings Pty Ltd	72 002 163 555
Maunbent Pty Ltd	14 002 622 586
Bruquel Pty Ltd	48 106 207 532
B.J.Thomas Pty Ltd	11 102 010 739
F & R Enterprises Pty Ltd	79 102 303 444
Nekal Pty Ltd	48 102 357 602
Xerri J Transport Pty Ltd	88 108 183 366
<del>Maunbent Pty Ltd</del>	<del>14 002 622 586</del>
G & J Avery Transport Pty Ltd	94 100 474 164
Day & Night Services Pty Ltd	68 103 494 186
P & C No. 96 Pty Ltd	54 105 121 711
D & C Vassallo Pty Ltd	82 771 626 811
Jamcrete Pty Ltd	75 099 475 420

MOREBENT PTY LTD

82 139 660 398

## SCHEDULE 2 - RATES

### 1. Definitions

In this Schedule 2:

**“Average Group Productivity”** means the average annual paid cubic metres carried by a group of Contract Carriers in an Utilisation Group.

**“Quarter”** means each three-month period ending on 31 March, 30 June, 30 September and 31 December each year.

**“Utilisation Cartage Rates”** means the cartage rates paid for various annualised levels of truck productivity measured in cubic metres per truck per year (m<sup>3</sup>/truck/year) as set out in the spreadsheet attached to this schedule 2.

**“Utilisation Group”** means a group of concrete trucks having the same configuration and including the Contract Carrier's Vehicle. For the purposes of this Contract a Utilisation Group will be formed at each concrete plant owned and operated by Hy-Tec so that the Utilisation Cartage Rates are calculated on the basis of truck utilisation at each plant.

### 2. Utilisation Rate Operation

The initial rate is set out in PART ONE of the spreadsheet attached to Schedule 2 and will apply until 31 December 2009 on which date there will be a partial rise and fall review (on the cost indices of fuel and wages) and the reviewed rate will apply until 1 October 2010 after which date the rate will be calculated as set out in clauses 2.1 to 2.3 of this Schedule 2 below.

#### 2.1 Average Group Productivity Review

- (a) On or before the 15<sup>th</sup> day of the calendar month after the end of each Quarter, Hy-Tec will calculate the Average Group Productivity for the previous Quarter. The Average Group Productivity calculated on a moving annual total basis, will measure the average volume of paid carted quantities for all trucks of the same configuration in the relevant Utilisation Group to which the owner belonged. All calculations under this clause exclude the Company Trucks or any other fleet engaged by Hy-Tec for the purpose of carting concrete in Hy-Tec's NSW business.
- (b) In calculating the Average Group Productivity, Hy-Tec will have regard to:
  - (i) the paid metres carted during the relevant Quarter by all Contract Carriers in the same utilisation group;
  - (ii) the number of Contract Carriers' Vehicles in the Utilisation Group for the Quarter; and
  - (iii) the number of Working Days for all Contract Carriers in the Utilisation Group in the Quarter after deduction of the unavailable days during the Quarter as a result of authorised and unauthorised absence and vehicle breakdown.

#### 2.2 Calculation of Utilisation Cartage Rate

Subject to variations arising under the provisions of clause 15 of this Contract and the provisions of Schedule 3, the Contract Carrier will be entitled to be paid a cartage rate based on the paid metres carted during the relevant Quarter for the volume carted by the Contract Carrier at the Utilisation Cartage Rates specified in the spreadsheet annexed to this Schedule 2 based on the average productivity volume as determined by the Average Group Productivity analysis applicable to the Utilisation Group to which the Contract Carrier belongs. A Utilisation Group will be formed on a plant by plant basis. There will be no changes to a Utilisation Group once formed without prior consultation provided that all parties agree Utilisation Groups will have to change from time to time to accommodate changes in vehicle numbers, plant locations or business needs.

### **2.3 Variation of rates for Rise and Fall purposes**

On March 31st each year the Rate will be reviewed for rise and fall purposes pursuant to the formula set out in the spreadsheet attached to this Schedule 2. If the Rates is varied as a result of that review the varied Rate will take effect from 16th April. Another rise and fall review pursuant to the formula set out in the spreadsheet attached to this Schedule 2 will be carried out on September 30th of each year but the Rate will only vary if the review shows a change in costs exceeding 3% from the time of the last Rate change. (If the increase or decrease in the Rate arising from the review is less than 3% of the Rate, the Rate will remain unchanged and the increase or decrease will accrue cumulatively and will be added to or deducted from the outcome of Rate reviews conducted on September 30th of future years). The variation (if effected) would take effect from 16th October.

Annual Utilisation:

5500

Load Fee:

\$ 0.78

km Rate:

Min Zone: 3

Rates Exclude GST

Load Size	1	2	3	4	5	6	7	8	9	10	11	12	13
3.0	\$ 53.36	\$ 53.36	\$ 53.36	\$ 55.70	\$ 58.04	\$ 60.38	\$ 62.72	\$ 65.06	\$ 67.40	\$ 69.74	\$ 72.08	\$ 74.42	\$ 76.76
3.2	\$ 56.91	\$ 56.91	\$ 56.91	\$ 59.41	\$ 61.91	\$ 64.40	\$ 66.90	\$ 69.39	\$ 71.89	\$ 74.39	\$ 76.88	\$ 79.38	\$ 81.87
3.4	\$ 60.47	\$ 60.47	\$ 60.47	\$ 63.12	\$ 65.78	\$ 68.43	\$ 71.08	\$ 73.73	\$ 76.38	\$ 79.04	\$ 81.69	\$ 84.34	\$ 86.99
3.6	\$ 64.03	\$ 64.03	\$ 64.03	\$ 66.84	\$ 69.64	\$ 72.45	\$ 75.26	\$ 78.07	\$ 80.88	\$ 83.68	\$ 86.49	\$ 89.30	\$ 92.11
3.8	\$ 67.59	\$ 67.59	\$ 67.59	\$ 70.55	\$ 73.51	\$ 76.48	\$ 79.44	\$ 82.41	\$ 85.37	\$ 88.33	\$ 91.30	\$ 94.26	\$ 97.23
4.0	\$ 71.14	\$ 71.14	\$ 71.14	\$ 74.26	\$ 77.38	\$ 80.50	\$ 83.62	\$ 86.74	\$ 89.86	\$ 92.98	\$ 96.10	\$ 99.22	\$ 102.34
4.2	\$ 74.70	\$ 74.70	\$ 74.70	\$ 77.98	\$ 81.25	\$ 84.53	\$ 87.80	\$ 91.08	\$ 94.36	\$ 97.63	\$ 100.91	\$ 104.18	\$ 107.46
4.4	\$ 78.26	\$ 78.26	\$ 78.26	\$ 81.69	\$ 85.12	\$ 88.55	\$ 91.99	\$ 95.42	\$ 98.85	\$ 102.28	\$ 105.71	\$ 109.15	\$ 112.58
4.6	\$ 81.81	\$ 81.81	\$ 81.81	\$ 85.40	\$ 88.99	\$ 92.58	\$ 96.17	\$ 99.75	\$ 103.34	\$ 106.93	\$ 110.52	\$ 114.11	\$ 117.69
4.8	\$ 85.37	\$ 85.37	\$ 85.37	\$ 89.12	\$ 92.86	\$ 96.60	\$ 100.35	\$ 104.09	\$ 107.84	\$ 111.58	\$ 115.32	\$ 119.07	\$ 122.81
5.0	\$ 88.93	\$ 88.93	\$ 88.93	\$ 92.83	\$ 96.73	\$ 100.63	\$ 104.53	\$ 108.43	\$ 112.33	\$ 116.23	\$ 120.13	\$ 124.03	\$ 127.93
5.2	\$ 92.49	\$ 92.49	\$ 92.49	\$ 96.54	\$ 100.60	\$ 104.65	\$ 108.71	\$ 112.77	\$ 116.82	\$ 120.88	\$ 124.93	\$ 128.98	\$ 133.05
5.4	\$ 96.04	\$ 96.04	\$ 96.04	\$ 100.26	\$ 104.47	\$ 108.68	\$ 112.89	\$ 117.10	\$ 121.32	\$ 125.53	\$ 129.74	\$ 133.95	\$ 138.16
5.6	\$ 99.60	\$ 99.60	\$ 99.60	\$ 103.97	\$ 108.34	\$ 112.70	\$ 117.07	\$ 121.44	\$ 125.81	\$ 130.18	\$ 134.54	\$ 138.91	\$ 143.28
5.8	\$ 103.16	\$ 103.16	\$ 103.16	\$ 107.68	\$ 112.21	\$ 116.73	\$ 121.25	\$ 125.78	\$ 130.30	\$ 134.83	\$ 139.35	\$ 143.87	\$ 148.40
6.0	\$ 106.71	\$ 106.71	\$ 106.71	\$ 111.39	\$ 116.07	\$ 120.75	\$ 125.43	\$ 130.11	\$ 134.79	\$ 139.47	\$ 144.15	\$ 148.83	\$ 153.51
6.2	\$ 110.27	\$ 110.27	\$ 110.27	\$ 115.11	\$ 119.94	\$ 124.78	\$ 129.62	\$ 134.45	\$ 139.29	\$ 144.12	\$ 148.96	\$ 153.80	\$ 158.63
6.4	\$ 113.83	\$ 113.83	\$ 113.83	\$ 118.82	\$ 123.81	\$ 128.81	\$ 133.80	\$ 138.79	\$ 143.78	\$ 148.77	\$ 153.77	\$ 158.76	\$ 163.75
6.6	\$ 117.39	\$ 117.39	\$ 117.39	\$ 122.53	\$ 127.68	\$ 132.83	\$ 137.98	\$ 143.13	\$ 148.27	\$ 153.42	\$ 158.57	\$ 163.72	\$ 168.87
6.8	\$ 120.94	\$ 120.94	\$ 120.94	\$ 126.25	\$ 131.55	\$ 136.86	\$ 142.16	\$ 147.48	\$ 152.77	\$ 158.07	\$ 163.38	\$ 168.68	\$ 173.98
7.0	\$ 124.50	\$ 124.50	\$ 124.50	\$ 129.96	\$ 135.42	\$ 140.88	\$ 146.34	\$ 151.80	\$ 157.26	\$ 162.72	\$ 168.18	\$ 173.64	\$ 179.10
7.2	\$ 128.06	\$ 128.06	\$ 128.06	\$ 133.67	\$ 139.29	\$ 144.91	\$ 150.52	\$ 156.14	\$ 161.75	\$ 167.37	\$ 172.99	\$ 178.60	\$ 184.22
7.4	\$ 131.62	\$ 131.62	\$ 131.62	\$ 137.39	\$ 143.16	\$ 148.93	\$ 154.70	\$ 160.48	\$ 166.25	\$ 172.02	\$ 177.79	\$ 183.56	\$ 189.34

Lead Size	14	15	16	17	18	19	20	21	22	23	24	25	26
3.0	\$ 78.10	\$ 81.44	\$ 83.78	\$ 86.12	\$ 88.46	\$ 90.80	\$ 93.14	\$ 95.48	\$ 97.82	\$ 100.16	\$ 102.50	\$ 104.84	\$ 107.18
3.2	\$ 84.37	\$ 86.87	\$ 89.36	\$ 91.86	\$ 94.36	\$ 96.85	\$ 99.35	\$ 101.84	\$ 104.34	\$ 106.83	\$ 109.33	\$ 111.83	\$ 114.32
3.4	\$ 89.64	\$ 92.30	\$ 94.95	\$ 97.60	\$ 100.25	\$ 102.90	\$ 105.56	\$ 108.21	\$ 110.86	\$ 113.51	\$ 116.16	\$ 118.82	\$ 121.47
3.6	\$ 94.92	\$ 97.72	\$ 100.53	\$ 103.34	\$ 106.15	\$ 108.96	\$ 111.76	\$ 114.57	\$ 117.38	\$ 120.19	\$ 123.00	\$ 125.80	\$ 128.61
3.8	\$ 100.19	\$ 103.15	\$ 106.12	\$ 109.08	\$ 112.05	\$ 115.01	\$ 117.97	\$ 120.94	\$ 123.90	\$ 126.87	\$ 129.83	\$ 132.79	\$ 135.76
4.0	\$ 105.46	\$ 108.58	\$ 111.70	\$ 114.82	\$ 117.94	\$ 121.06	\$ 124.18	\$ 127.30	\$ 130.42	\$ 133.54	\$ 136.66	\$ 139.78	\$ 142.90
4.2	\$ 110.74	\$ 114.01	\$ 117.29	\$ 120.56	\$ 123.84	\$ 127.12	\$ 130.39	\$ 133.67	\$ 136.94	\$ 140.22	\$ 143.50	\$ 146.77	\$ 150.05
4.4	\$ 116.01	\$ 119.44	\$ 122.87	\$ 126.31	\$ 129.74	\$ 133.17	\$ 136.60	\$ 140.03	\$ 143.47	\$ 146.90	\$ 150.33	\$ 153.76	\$ 157.19
4.6	\$ 121.28	\$ 124.87	\$ 128.46	\$ 132.05	\$ 135.63	\$ 139.22	\$ 142.81	\$ 146.40	\$ 149.99	\$ 153.57	\$ 157.16	\$ 160.75	\$ 164.34
4.8	\$ 126.56	\$ 130.30	\$ 134.04	\$ 137.79	\$ 141.53	\$ 145.28	\$ 149.02	\$ 152.76	\$ 156.51	\$ 160.26	\$ 164.00	\$ 167.74	\$ 171.48
5.0	\$ 131.83	\$ 135.73	\$ 139.63	\$ 143.53	\$ 147.43	\$ 151.33	\$ 155.23	\$ 159.13	\$ 163.03	\$ 166.93	\$ 170.83	\$ 174.73	\$ 178.63
5.2	\$ 137.10	\$ 141.16	\$ 145.21	\$ 149.27	\$ 153.33	\$ 157.38	\$ 161.44	\$ 165.49	\$ 169.55	\$ 173.61	\$ 177.66	\$ 181.72	\$ 185.77
5.4	\$ 142.38	\$ 146.59	\$ 150.80	\$ 155.01	\$ 159.22	\$ 163.44	\$ 167.65	\$ 171.86	\$ 176.07	\$ 180.28	\$ 184.50	\$ 188.71	\$ 192.92
5.6	\$ 147.65	\$ 152.02	\$ 156.38	\$ 160.76	\$ 165.12	\$ 169.49	\$ 173.86	\$ 178.22	\$ 182.59	\$ 186.96	\$ 191.33	\$ 195.70	\$ 200.06
5.8	\$ 152.92	\$ 157.45	\$ 161.97	\$ 166.49	\$ 171.02	\$ 175.54	\$ 180.07	\$ 184.59	\$ 189.11	\$ 193.64	\$ 198.16	\$ 202.69	\$ 207.21
6.0	\$ 158.19	\$ 162.87	\$ 167.55	\$ 172.23	\$ 176.91	\$ 181.59	\$ 186.27	\$ 190.95	\$ 195.63	\$ 200.31	\$ 204.99	\$ 209.67	\$ 214.35
6.2	\$ 163.47	\$ 168.30	\$ 173.14	\$ 177.98	\$ 182.81	\$ 187.65	\$ 192.48	\$ 197.32	\$ 202.16	\$ 206.99	\$ 211.83	\$ 216.66	\$ 221.50
6.4	\$ 168.74	\$ 173.73	\$ 178.73	\$ 183.72	\$ 188.71	\$ 193.70	\$ 198.69	\$ 203.69	\$ 208.68	\$ 213.67	\$ 218.66	\$ 223.65	\$ 228.65
6.6	\$ 174.01	\$ 179.16	\$ 184.31	\$ 189.45	\$ 194.61	\$ 199.75	\$ 204.90	\$ 210.05	\$ 215.20	\$ 220.36	\$ 225.49	\$ 230.64	\$ 235.79
6.8	\$ 179.29	\$ 184.59	\$ 189.90	\$ 195.20	\$ 200.50	\$ 205.81	\$ 211.11	\$ 216.42	\$ 221.72	\$ 227.02	\$ 232.33	\$ 237.63	\$ 242.94
7.0	\$ 184.56	\$ 190.02	\$ 195.48	\$ 200.94	\$ 206.40	\$ 211.86	\$ 217.32	\$ 222.78	\$ 228.24	\$ 233.70	\$ 239.16	\$ 244.62	\$ 250.08
7.2	\$ 189.83	\$ 195.45	\$ 201.07	\$ 206.68	\$ 212.30	\$ 217.91	\$ 223.53	\$ 229.15	\$ 234.78	\$ 240.38	\$ 245.99	\$ 251.61	\$ 257.23
7.4	\$ 195.11	\$ 200.88	\$ 206.65	\$ 212.42	\$ 218.20	\$ 223.97	\$ 229.74	\$ 235.51	\$ 241.28	\$ 247.06	\$ 252.83	\$ 258.60	\$ 264.37

Load Size	27	28	29	30	31	32	33	34	35	36
3.0	\$ 109.52	\$ 111.86	\$ 114.20	\$ 116.54	\$ 118.88	\$ 121.22	\$ 123.56	\$ 125.90	\$ 128.24	\$ 130.58
3.2	\$ 116.82	\$ 119.31	\$ 121.81	\$ 124.31	\$ 126.80	\$ 129.30	\$ 131.79	\$ 134.29	\$ 136.79	\$ 139.28
3.4	\$ 124.12	\$ 126.77	\$ 129.42	\$ 132.08	\$ 134.73	\$ 137.38	\$ 140.03	\$ 142.68	\$ 145.34	\$ 147.99
3.6	\$ 131.42	\$ 134.23	\$ 137.04	\$ 139.84	\$ 142.65	\$ 145.46	\$ 148.27	\$ 151.08	\$ 153.88	\$ 156.69
3.8	\$ 138.72	\$ 141.69	\$ 144.65	\$ 147.61	\$ 150.58	\$ 153.54	\$ 156.51	\$ 159.47	\$ 162.43	\$ 165.40
4.0	\$ 146.02	\$ 149.14	\$ 152.26	\$ 155.38	\$ 158.50	\$ 161.62	\$ 164.74	\$ 167.86	\$ 170.98	\$ 174.10
4.2	\$ 153.32	\$ 156.60	\$ 159.88	\$ 163.15	\$ 166.43	\$ 169.70	\$ 172.98	\$ 176.26	\$ 179.53	\$ 182.81
4.4	\$ 160.63	\$ 164.06	\$ 167.49	\$ 170.92	\$ 174.35	\$ 177.79	\$ 181.22	\$ 184.65	\$ 188.08	\$ 191.51
4.6	\$ 167.93	\$ 171.51	\$ 175.10	\$ 178.69	\$ 182.28	\$ 185.87	\$ 189.45	\$ 193.04	\$ 196.63	\$ 200.22
4.8	\$ 175.23	\$ 178.97	\$ 182.72	\$ 186.46	\$ 190.20	\$ 193.95	\$ 197.69	\$ 201.44	\$ 205.18	\$ 208.92
5.0	\$ 182.53	\$ 186.43	\$ 190.33	\$ 194.23	\$ 198.13	\$ 202.03	\$ 205.93	\$ 209.83	\$ 213.73	\$ 217.63
5.2	\$ 189.83	\$ 193.89	\$ 197.94	\$ 202.00	\$ 206.05	\$ 210.11	\$ 214.17	\$ 218.22	\$ 222.28	\$ 226.33
5.4	\$ 197.13	\$ 201.34	\$ 205.56	\$ 209.77	\$ 213.98	\$ 218.19	\$ 222.40	\$ 226.62	\$ 230.83	\$ 235.04
5.6	\$ 204.43	\$ 208.80	\$ 213.17	\$ 217.54	\$ 221.90	\$ 226.27	\$ 230.64	\$ 235.01	\$ 239.38	\$ 243.74
5.8	\$ 211.73	\$ 216.28	\$ 220.78	\$ 225.31	\$ 229.83	\$ 234.36	\$ 238.88	\$ 243.40	\$ 247.93	\$ 252.45
6.0	\$ 219.03	\$ 223.71	\$ 228.39	\$ 233.07	\$ 237.75	\$ 242.43	\$ 247.11	\$ 251.79	\$ 256.47	\$ 261.15
6.2	\$ 226.34	\$ 231.17	\$ 236.01	\$ 240.84	\$ 245.68	\$ 250.52	\$ 255.36	\$ 260.19	\$ 265.02	\$ 269.86
6.4	\$ 233.64	\$ 238.63	\$ 243.62	\$ 248.61	\$ 253.61	\$ 258.60	\$ 263.59	\$ 268.58	\$ 273.57	\$ 278.57
6.6	\$ 240.94	\$ 246.09	\$ 251.23	\$ 256.38	\$ 261.53	\$ 266.68	\$ 271.83	\$ 276.97	\$ 282.12	\$ 287.27
6.8	\$ 248.24	\$ 253.54	\$ 258.85	\$ 264.15	\$ 269.46	\$ 274.76	\$ 280.06	\$ 285.37	\$ 290.67	\$ 295.98
7.0	\$ 255.54	\$ 261.00	\$ 266.46	\$ 271.92	\$ 277.38	\$ 282.84	\$ 288.30	\$ 293.76	\$ 299.22	\$ 304.68
7.2	\$ 262.84	\$ 268.46	\$ 274.07	\$ 279.69	\$ 285.31	\$ 290.92	\$ 296.54	\$ 302.15	\$ 307.77	\$ 313.39
7.4	\$ 270.14	\$ 275.92	\$ 281.69	\$ 287.46	\$ 293.23	\$ 299.00	\$ 304.78	\$ 310.55	\$ 316.32	\$ 322.09

## Hy-Tec July 06 Contract Adjustments for Rise Falls

### Rise & Fall Adjustment - (3 Axle 4x6 New Trucks)

Period Covered: Jan - Mar 09

	<u>Base</u>	<u>Current</u>	<u>Change</u>	
Input Date	<u>Apr-Jun 08</u>	<u>Jan - Mar 09</u>	<u>\$</u>	<u>%</u>
Annualised Utilisation (m <sup>3</sup> )	5,600	5,600		0.0%
<b><u>(a) Labour</u></b>				
	\$ 17.40	\$ 17.40	\$ -	0.0%
<b><u>(b) Fuel</u></b>				
Average Price per Quarter including discounts <sup>1</sup>	\$ 1.200	\$ 1.2	\$ -	0.0%
<u>less</u> Diesel Fuel Rebates	\$ 0.165	\$ 0.1651	\$ -	0.0%
Net Average Price per quarter	\$ 1.035	\$ 1.035	\$ -	0.0%
<b><u>(c) Tyres</u></b>				
	\$ 2,145	\$ 2,145	\$ (0.04)	0.0%
<b><u>(d) Miscellaneous Repairs</u></b>				
Quarterly CPI change for Sydney (All Groups) <sup>2</sup>	163.5	163.5	\$ -	0.00%
<b><u>(e) Registration, Third Party Insurance &amp; Licences</u></b>				
- Workcover	\$ 3,449	\$ 3,449	\$ -	0.0%
- Truck Insurance	\$ 3,426	\$ 3,426	\$ -	0.0%
- Public Liability	\$ -	\$ -	\$ -	0.0%
- Personal Insurance	\$ -	\$ -	\$ -	0.0%
Insurance	<u>\$ 6,875</u>	<u>\$ 6,875</u>	<u>\$ -</u>	<u>0.0%</u>
- Registration	\$ 1,132	\$ 1,132	\$ -	0.0%
- Green Slip	\$ 1,789	\$ 1,789	\$ -	0.0%
- Other Rego Costs	\$ -	\$ -	\$ -	#DIV/0!
Total Vehicl Rego & Related Items	<u>\$ 2,921</u>	<u>\$ 2,921</u>	<u>\$ -</u>	<u>0.0%</u>
				0.0%

## **Hy-Tec July 06 Contract Adjustments for Rise Falls**

6 month review Quarterly CPI change for Sydney (All Groups)<sup>2</sup>

Quarter review with 3 month average over 1.53, 6 month review if under on the 6 month average

6 month review Quarterly CPI change for Sydney (All Groups)<sup>2</sup>

6 month review Quarterly CPI change for Sydney (All Groups)<sup>2</sup>

As per web site 15Jan & 15Jul  
ABR as at 15th Jan & 15th Jul

RTA 15 Jan & 15 Jul  
ABR as at 15th Jan & 15th Jul



### **SCHEDULE 3 - SURCHARGES AND OTHER FEES**

The Surcharges and Fees are set out below. The parties agree the Surcharges and Fees will remain fixed for the first twelve (12) months of the term of this Contract. The Surcharges and Fees will then be increased in accordance with any increases in the CPI on each anniversary of the Commencement Date. The rise and fall adjustments of the Rates will be treated separately and Surcharges and Fees will not be subject to rise and fall.

#### **1. Waiting Time Surcharge**

The Contract Carrier must wait at the delivery address for the Customer to take delivery of Concrete. A period of waiting time of 7.5 minutes per cubic metre of Concrete is already included in the Rate and Hy-Tec will not pay the Contract Carrier any waiting time surcharge in respect of such period of time. (For example, if the load is 6 cubic metres, Hy-Tec will not pay the Contract Carrier any waiting time surcharge for waiting for a period of up to 45 minutes.) Hy-Tec will pay to the Contract Carrier a waiting time surcharge of \$1.22 for each full minute of waiting time in excess of the waiting time already included in the Rate of 7.5 minutes per cubic metre.

#### **2. Outside Hours Surcharges**

##### **(a) Outside Hours Surcharge 1**

If the Contract Carrier delivers a load of Concrete which has a Delivery Docket time of between 5pm to 7pm on Monday to Friday, Hy-Tec will pay to the Contract Carrier an outside hours surcharge of \$5.15 per cubic metre of Concrete in the load.

##### **(b) Outside Hours Surcharge 2**

If the Contract Carrier delivers a load of Concrete which has a Delivery Docket time of between:

- (i) 7pm to 5am on Monday to Friday;
- (ii) 1pm to 5pm on Saturday; or
- (iii) 12:01am on Monday to 5am on Monday,

Hy-Tec will pay to the Contract Carrier an outside hours surcharge of \$12.88 per cubic metre of Concrete in the load (noting that this outside hours surcharge framework is intended to assist regular and/or major customers of Hy-Tec).

##### **(c) Outside Hours Surcharge 3**

If the Contract Carrier delivers a load of Concrete which has a Delivery Docket time of between 5pm on Saturday to 12am on Monday morning, Hy-Tec will pay to the Contract Carrier an outside hours surcharge of \$19.05 per cubic metre of Concrete in the load.

#### **3. External Truck Hire Fee**

If Hy-Tec and the Contract Carrier agree that Hy-Tec will engage the Contract Carrier to provide Concrete delivery services for a third party Concrete supplier, Hy-Tec will pay the

Contract Carrier an external truck hire fee of \$80 per hour, for a minimum of six hours per Working Day, during each Working Day of the engagement.

**4. Return Concrete Surcharge**

If Hy-Tec directs the Contract Carrier to return more than 3 cubic metres of Concrete from the delivery address to Hy-Tec's Plant, Hy-Tec will pay to the Contract Carrier a return concrete surcharge of \$10 per cubic metre plus the per zone rate.

**5. Agitator Breakdown Rate**

The Agitator Breakdown Rate is \$60 per hour, for a maximum of eight hours per Working Day, and will apply in the circumstances set out in clauses 8.5(c) and 9.2(c) of this Contract.

**6. Truck Transfer Fee**

The Truck Transfer Fee is \$60 per transfer and will apply in the circumstances set out in clause 2.9 of this Contract.

**7. Concrete Dumping Surcharge**

If Hy-Tec directs the Contract Carrier to dump less than 3 cubic metres of Concrete at a location that:

- (a) is more than 1km, but less than 5km, from a Hy-Tec Plant, Hy-Tec will pay to the Contract Carrier a concrete dumping surcharge of \$40; or
- (b) is more than 5km from a Hy-Tec Plant, Hy-Tec will pay to the Contract Carrier a Concrete dumping surcharge of \$40 plus the zone rate for each kilometre from the Hy-Tec Plant to the dump location in excess of 5km.

**8. Plant Mixing Fee**

If Hy-Tec directs the Contract Carrier to use the Contract Carrier's Vehicle to mix a load of Concrete, Hy-Tec will pay to the Contract Carrier a plant mixing fee of \$15.36 per cubic metre of Concrete.

**9. Transfer to Workshop Fee**

If Hy-Tec directs the Contract Carrier to take the Contract Carrier's Vehicle to a workshop for repairs, and the workshop is more than 5km away from a Hy-Tec Plant, Hy-Tec will pay to the Contract Carrier a transfer to workshop fee of \$60.

**10. Wash Out Fee**

Hy-Tec will not pay any wash out fee to the Contract Carrier.

**11. Standby Time Surcharge**

If Hy-Tec directs the Contract Carrier to attend a Hy-Tec Plant and commence providing Services outside of the Normal Working Hours and Hy-Tec loads the Contract Carrier:

- (a) within 1 hour or less of the Contract Carrier's scheduled commencement time, Hy-Tec will not pay the Contract Carrier any stand by time surcharge; or
- (b) after more than 1 hour of the Contract Carrier's scheduled commencement time, Hy-Tec will pay the Contract Carrier a standby time surcharge at a rate of \$60 per hour,

provided that:

- (c) if the load is cancelled, Hy-Tec will pay the Contract Carrier \$180; and
- (d) Hy-Tec must pay to the Contract Carrier the greater of the rate for the load or \$180.

**12. Driver Only Rate**

If Hy-Tec and the Contract Carrier agree that Hy-Tec will engage the Contract Carrier to provide a driver only (without the Vehicle) to provide services or attend training or safety or other meetings, Hy-Tec will pay the Contract Carrier a driver only rate of \$30 per hour.

**SCHEDULE 4 - CERTIFICATE OF FINANCIAL ADVICE**

1. THIS CERTIFICATE IS PROVIDED BY:

.....  
a principal of the firm .....  
of .....

2. I ATTENDED IN CONFERENCE:

.....  
of .....  
..... (the Contract Carrier)  
on ..... (date)

3. THE CONTRACT CARRIER PRODUCED THE FOLLOWING DOCUMENTS TO ME:  
Hy-Tec Industries Pty Ltd – Cartage Carrier Contract (The Contract).

4. THE IDENTIFICATION OF PERSONS EXECUTING DOCUMENTS  
The following evidence to identify the interviewee(s) as authorised to act on behalf of  
the Contract Carrier was produced to me:

.....  
.....  
.....

5. BEFORE ANY DOCUMENTS WERE SIGNED, I advised the Contract Carrier of the  
financial obligations and risks involved in entering into the Contract.

6. I AM NOT ACTING FOR HY-TEC INDUSTRIES PTY LTD IN RELATION TO THE  
NEGOTIATION OF THE CONTRACT.  
ACCOUNTANT'S CERTIFICATE

I, .....  
certify that the information contained in this certificate is true and correct.

SIGNED:

DATED:

**SCHEDULE 5 - CERTIFICATE OF LEGAL ADVICE**

1. THIS CERTIFICATE IS PROVIDED BY:

.....  
a principal of the firm .....  
of .....  
(a solicitor holding a current unrestricted Practising Certificate in the State of NSW).

2. I ATTENDED IN CONFERENCE:

.....  
of .....  
..... (the Contract Carrier)  
on ..... (date)

3. THE CONTRACT CARRIER PRODUCED THE FOLLOWING DOCUMENTS TO ME:  
Hy-Tec Industries Pty Ltd – Contract Carrier Contract - (The Contract).

4. THE IDENTIFICATION OF PERSONS EXECUTING DOCUMENTS

The following evidence to identify the interviewee(s) as authorised to act on behalf of the Contract Carrier was produced to me:

.....  
.....  
.....

5. BEFORE ANY DOCUMENTS WERE SIGNED, I advised the Contract Carrier of the general nature and effect of the Contract and the legal obligations involved in entering into the Contract and in particular explained the implications of clause 18 (Termination of Contract), 19 (Miscellaneous), 21 (Assignment of Cartage Contract) and 29 (Release).

6. I AM NOT ACTING FOR HY-TEC INDUSTRIES PTY LTD IN RELATION TO THE NEGOTIATION OF THE CONTRACT.  
SOLICITOR'S CERTIFICATE

I, .....  
certify that the information contained in this certificate is true and correct.

SIGNED:

DATED:

**SCHEDULE 6 - RTA AUTHORISATION**

I, .....  
*Insert Full Name*

of .....  
*Insert Address*

.....  
*Insert Drivers Licence Number*

authorise the Road and Traffic Authority 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