

REGISTER OF CONTRACT AGREEMENTS

CONTRACT AGREEMENT NO: CA04/8

TITLE: Soil 'n' Stuff Pty Ltd Contract Carriers Agreement

I.R.C. NO: IRC2/5620

DATE APPROVED/COMMENCEMENT: 10 November 2004

TERM: 36 months

**NEW AGREEMENT OR
VARIATION:** New

GAZETTAL REFERENCE: 21 January 2005

DATE TERMINATED:

NUMBER OF PAGES: 4

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by Soil 'n' Stuff Pty Ltd, located at 144 Harrow Road, Kogarah, NSW 2217, who perform contracts of carriage

PARTIES: Soil 'N' Stuff Pty Ltd -&- the Transport Workers' Union of New South Wales

SOIL 'N STUFF PTY. LTD. CONTRACT CARRIERS AGREEMENT.

TABLE OF CONTENTS

1. Title
2. Parties To The Agreement
3. Contract Agreement To Prevail Over Contract Determination
4. Term of Agreement
5. Rates
6. Review Of Rates
7. Local Rules Instructions And Conditions
8. Alteration Of Composition Of Fleet Or Business
9. Independent Contract Carrier
10. Financial And Other Arrangements
11. Liability
12. Availability Of Contract Carrier And Vehicle
13. Liquor, Drugs And Medication
14. Fines
15. Force Majeure
16. Disputes Procedure
17. Anti Discrimination
18. Signatories

1. Title

This Agreement shall be known as the Soil 'n Stuff Pty. Ltd. Contract Carriers Agreement.

2. Parties to the Agreement

Soil 'n Stuff Pty Limited ABN 53 003 748 230, 144 Harrow Road Kogarah, NSW 2217; and

Transport Workers Union of New South Wales for and on behalf of its members and those eligible to be members who perform contracts of carriage for Soil 'n Stuff

3. The Contract Agreement is to Prevail Over the Contract Determination

In accordance with section 327 of the *Industrial Relations Act* NSW 1996, the provisions of this agreement prevail over the provisions of the Transport Industry - General Carriers Contract Determination that deal with the same matters in so far as the provisions of the determination apply to a person bound by the agreement.

4. Term of Agreement

This contract agreement shall have a nominal term of 3 Years commencing from the date of approval by the Industrial Relations Commission of NSW

5. Rates

- (a) Each contract carrier shall be paid in accordance with the matrix which is schedule A to this agreement.
- (b) The Principal contractor is required to pay contract carriers on a fortnightly basis.
- (c) The terms of schedule A prescribe the only basis upon which payment are to be made to the carriers. However, the aggregate earnings of a contract carrier under this agreement, averaged out over a period not exceeding 4 weeks, must not be less than the remuneration the contract carrier would have received had it been paid the applicable rates prescribed by the Transport Industry - General Carriers Contract Determination over the same 4 week period.

6. Review of Rates

The rates shown in schedule A shall be increased every 12 months in accordance with and to the extent of the Consumer Price Index for the previous twelve months as published by the Australian Bureau of Statistics. Increases pursuant to this review clause shall be payable from the first pay period to commence on or after each anniversary of the approval of this agreement.

7. Local Rules Instructions and Conditions

Carriers shall continue to observe the general rules, instructions and conditions of principal contractor.

8. Alteration of Composition of Fleet Or Business

The principal contractor shall not increase or decrease the number of contract carriers engaged by it or otherwise reorganise the business in a manner likely to affect the number of carriers used by the principal contractor or their remuneration without first advising and consulting the Contract Carriers. In the event of a dispute arising in respect of the matter the parties to the agreement can notify a dispute to the N.S.W. Industrial Relations Commission. In the event of any dispute, work will continue without interruption.

9. Independent Contract Carrier

- (a) The Contract Carrier is and at all times will remain an independent contractor and is not the employee, partner, legal representative, agent, joint venturer or franchiser of the Company. The Contractor has no right or authority to assume or create any obligations or to make any representations or warranties on behalf of the Company.
- (b) The Contract Carrier shall have no lien over the goods carried by the Contractor as part of the delivery services or over any monies received on behalf of the Company.

10. Financial and Other Arrangements

The company will use its best endeavours to provide the contract carrier with a continuous work supply. However, the Contract Carrier accepts that the Company has not given any guarantee or warranty on the cartage charges to be paid under this Agreement as to:

- (a) the earning capacity of the Contractor under this Agreement;
- (b) the minimum amount of delivery services which will be provided to the Contractor under this Agreement; and/or
- (c) subject to subclause (c) of clause 5, the minimum level of revenue the Contractor may earn under this Agreement.

11. Liability

The contract carrier shall indemnify the company against any liability, loss, damage, or claims relating to workers compensation or other claims, where such liability, loss, damage or claim is occasioned by the provision or purported provision of services as a result of any wilful or negligent act or omission by the contract carrier.

12. Availability of Contract Carrier and Vehicle

- (a) The Contract Carrier acknowledges that this Contract Agreement requires the Contract Carrier to make deliveries on weekends and public holidays. Sunday and public holidays deliveries will be performed on a rostered basis or availability, this will be in agreement with The Company and the Contract Carriers.

- (b) In the event that the usual driver of the Vehicle is taking annual leave or is otherwise unavailable, the Vehicle must be available for work. It is the responsibility of the Contract Carrier to supply a driver for the Vehicle, who must be approved by the Company. (Or reasonable effort made to get a driver).

13. Liquor, Drugs and Medication

The Contract Carrier, any employee and any sub-contractor engaged within the terms of this Agreement shall not consume any alcoholic liquor, drugs or medication likely to impair driving capacity while carrying out work under this Agreement, or while waiting to commence or continue any such work, nor shall that person carry out any work relating to the services, if by reason of having taken alcohol, drugs or medication, he or she is unable properly to carry out the services to be performed under this Agreement, or is likely to injure the reputation of the Company.

14. Fines

The Contract Carrier shall be liable for and pay any fines which may be imposed on the Contract Carrier for breaches by the Contract Carrier of any statute, regulation or by-law governing or regulating the driving parking and operating of the Vehicle.

15. Force Majeure

Neither party shall be liable for any failure to perform or delay in performing its obligations hereunder where such failure or delay is occasioned by strike, combination of workmen, lockout, legislative, government or other prohibitions or restrictions, fire, flood, hostilities or other causes whatsoever (whether similar in nature or not to the foregoing) beyond such party's reasonable control.

16. Disputes Procedure

Any dispute, difficulty or question arising between the parties to this Agreement shall be addressed in accordance with the disputes procedure set out in the Transport Industry - General Carriers Contract Determination.

17. Anti-Discrimination

- 17.1 It is the intention of the parties bound by this agreement to seek to achieve the object in section 3(f) of the *Industrial Relations Act, 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 17.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the agreement which, by its terms or operation, has a direct or indirect discriminatory effect.
- 17.3 Under the *Anti-Discrimination Act, 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 17.4 Nothing in this clause is to be taken to affect:
- 17.4.1 any conduct or act which is specifically exempted from anti-discrimination legislation;
 - 17.4.2 offering or providing junior rates of pay to persons under 21 years of age;
 - 17.4.3 any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act, 1977*; or
 - 17.4.4 a party to this agreement from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

17.4.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES

(a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

(b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

SIGNATORIES

Signed for and on behalf of Soil 'n Stuff Pty Limited

Witnessed By:

Signed for and on behalf of the Transport Workers' Union of New South Wales:

Witnessed By:

Signed by the Delegate:

Signed by the organiser: