

REGISTER OF CONTRACT AGREEMENTS

CONTRACT AGREEMENT NO: CA05/4

TITLE: **CSR Building Products Limited trading as PGH Bricks and Pavers**

I.R.C. NO: IRC5/1714

DATE APPROVED/COMMENCEMENT: 18 April 2005 / 26 April 2005

TERM: 36

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 17 June 2005

DATE TERMINATED:

NUMBER OF PAGES: 22

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all contract carriers employed by CSR Building Products Limited t/a PGH Bricks and Pavers, located at Level 3, 9 Help Street, CHATSWOOD NSW 2067.

PARTIES: CSR Building Products Limited t/as PGH Bricks and Pavers -&- the Transport Workers' Union of New South Wales

CSR BUILDING PRODUCTS LIMITED T/AS PGH BRICKS AND PAVERS

CONTRACT CARRIER AGREEMENT

This Agreement is made on 14 March 2005.

BETWEEN

CSR BUILDING PRODUCTS LIMITED (ABN 55 008 631 356) trading as PGH Bricks and Pavers of Level 3, 9 Help Street, Chatswood, NSW, 2067 ("CSR")

AND

THE TRANSPORT WORKERS UNION OF NEW SOUTH WALES for and on behalf of Carriers engaged by CSR under the terms of this Agreement

RECITALS

- A. CSR carries on business that includes the manufacturing and selling of bricks and pavers.
- B. CSR and the TWU have agreed on terms (which are contained herein) which will apply to Carriers engaged by CSR for the cartage of Goods in the Cartage Area.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context indicates otherwise:

"Business Day" means a day other than Saturday, Sunday and a public holiday.

"Business Hours" means the hours of operation of each Site on a business day.

"Cartage Area" means the area defined in Annexure 2.

"Carrier" means a Contract Carrier as defined in the *Industrial Relations Act 1996* (NSW) engaged by CSR pursuant to the terms of this Agreement to provide Cartage Services out of CSR's Sites.

"Cartage Contract" is the contractual relationship between CSR and a Carrier engaged to provide Cartage Services pursuant to this Agreement.

"Cartage Services" means the pick-up, transport and delivery of Goods between the Sites and Customers in the Cartage Area.

"CSR" includes CSR Building Products Limited and any "Related Body Corporate" within the meaning of the *Corporations Act 2001* (Cth).

"Customer" includes any client or entity for whom CSR makes or arranges to make any delivery of Goods in the Cartage Area.

"Driver" means any employee or sub-contractor of the Carrier who is engaged or employed by the Carrier from time to time to perform the Cartage Services in accordance with this Agreement.

"Goods" means bricks, pavers and masonry products manufactured and/or sold by CSR.

"Inter-Centre Work" means delivery of CSR's Goods to Newcastle, and the Central Coast as defined in Annexure 2.

"Key Performance Indicators" means the Key Performance Indicators referred to in Clause 4.14 and set out in Schedule 1 to this Agreement.

"Linfox" means Linfox Australia Pty Limited and any "Related Body Corporate" within the meaning of the *Corporations Act 2001* (Cth).

"Local Work" means delivery of Goods to the metropolitan area of Sydney, within a radius of 80 kilometres from CSR's plants at Cecil Park, Horsley Park, and Schofields.

"Parties" means CSR its assigns and successors and the Carrier and its assigns and successors.

"Rates" means the rates set out in Schedule 3 to this Agreement as varied pursuant to Clauses 6.2, 6.3 and 6.4.

"Remuneration" means remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, or in connection with the work done by employees.

"Sites" means CSR sites nominated by CSR from which CSR's Distribution operations are conducted.

"Standard Operating Procedures" means a document to be prepared in accordance with Clause 4.16 and which sets out the procedures to be followed by the Carrier and CSR.

"Vehicle" means the approved truck or trucks and associated equipment to be provided by the Carrier for the performance of the Cartage Services.

1.2 A word importing:

- (a) the singular number includes the plural,
- (b) the plural number includes the singular,
- (c) any gender includes every other gender.

1.3 A reference to:

- (a) this Agreement includes a reference to any schedule to this Agreement,
- (b) schedule, clause or paragraph refers to a schedule, clause or paragraph of this Agreement.

1.4 A reference to an Act, Law, Regulation or By-law includes any amendment or re-enactment of it that is for the time being in force.

1.5 Where under this Agreement the day or last day specified:

- (a) for doing any act; or
- (b) for the payment of any money; or
- (c) on which any entitlement is due to arise; or
- (d) any notice is deemed to be served,

is not a Business Day, that day is to be taken as being the next day which is a Business Day.

1.6 The Schedules to this Agreement form part of this Agreement for all purposes.

2. Term

2.1 Initial Term

The parties agree that the Carriers engaged pursuant to this Agreement shall be granted a Cartage Contract of five (5) years duration to commence on 26 April 2005 ("Term") unless this Cartage Contract is extended in accordance with Clause 2.2 or terminated in accordance with Clause 7.

2.2 Expiration of Term

At the expiration of the Term, the Cartage Contract will continue until:

- (a) replaced by a new Cartage Contract executed by CSR and the Carrier; or
- (b) terminated by a party in accordance with Clause 7.

2.3 Discussions to renew the Cartage Contract

CSR and the Carrier agree to meet approximately six months prior to the expiration of the Term of the Cartage Contract and will have negotiations in good faith concerning a possible further Cartage Contract between the parties.

2.4 Term of This Agreement

The term of this Agreement shall be three (3) years from 26 April 2005. This Agreement shall be registered with the Industrial Relations Commission of New South Wales

3. Cartage Services

3.1 Manner of performance

The Carrier must perform the Cartage Services:

- (a) expeditiously and in a competent and business-like manner;
- (b) in accordance with all reasonable instructions given by CSR;
- (c) using the Vehicle (or Vehicles as the case may be); and
- (d) during Business Hours and at such other times as are reasonably requested by CSR.

4. Carrier's Responsibilities

4.1 Statutory Requirements

The Carrier will observe and comply with the provisions of all Acts, Regulations, by-laws, Ordinances and other instructions controlling, regulating or otherwise affecting the operation of the Vehicles.

4.2 Proof of Compliance and Insurance

- (a) The Carrier will obtain, maintain and promptly, upon request by CSR, produce to CSR for inspection:
 - (i) A certificate of registration for each and every Vehicle allocated to perform Cartage Services by the Carrier;
 - (ii) A valid current driver's licence for each and every Driver who performs the Cartage Services for the Carrier;
 - (iii) A licence to operate all equipment (such as forklifts or cranes) which a Driver may be required to operate in the course of performing Cartage Services for each and every Driver who performs the Cartage Services for the Carrier;

- (iv) A certificate of currency for a comprehensive third party property damage insurance policy with a cover of not less than ten million dollars for third party property damage in respect of any one accident;
 - (v) A certificate of currency for a public liability insurance policy with a cover of not less than ten million dollars in respect of any liability incurred by the Carrier in the performance of the Cartage Services for CSR; and
 - (vi) A certificate of currency for a goods-in-transit insurance policy with a cover of not less than ten thousand dollars in respect of Goods carried by the Carrier from time to time.
- (b) In addition to the matters contained in Clause 4.13, the Carrier must ensure that all relevant insurance policies it enters into indemnify CSR at all times against all damage, costs and liability arising out of the performance of the Cartage Services by the Carrier and its Drivers and other persons as employed or engaged by the Carrier from time to time.

4.3 Vehicle Drivers

- (a) The Carrier must ensure that its Drivers:
- (i) are suitably qualified and medically fit to carry out the Cartage Services;
 - (ii) are neatly dressed in the uniform agreed between CSR and the Carrier, if part of the Carrier's or approved subcontractor's, core fleet;
 - (iii) exercise all reasonable care, skill and diligence in the performance of the Cartage Services;
 - (iv) are respectable, responsible, behave courteously, and foster the goodwill of CSR with its Customers;
 - (v) obey regulations made and directions given by CSR and its Customers (provided such regulations and directions are within the law), and any relevant authority;
 - (vi) assist in the loading and unloading of the Vehicle;
 - (vii) check each load for correct number of pallets or packs of product, safety, and satisfactory method of loading; and
 - (viii) have been trained and comply with all the appropriate CSR Site policies and procedures relating to safety and distribution as issued by the Site manager.
 - (ix) have been approved by CSR before commencing any driving of the vehicle for the purposes of this Agreement.
- (b) The Carrier must insure and keep insured all Drivers and other persons it may from time to time employ or contract with against liability for workers compensation claims in the manner required by law and shall upon request of CSR provide CSR with copies of such insurance policies and receipts for all premiums. Such insurance policies will indemnify CSR at all times against all damage, costs and liability at common law arising out of the performance of the Cartage Services by the Carrier and its Drivers and other persons as employed by the Carrier from time to time.
- (c) The Carrier must accept all responsibility and liability to make provisions for Annual Leave, Sick Leave, Long Service Leave, Superannuation levies, Training Guarantee levies, Payroll Tax or any other payments required to be made to, by or for or on behalf of the Carrier or any employee or agent of the Carrier by virtue of the Carrier performing Cartage Services pursuant to this Agreement and no claim can be made on CSR for these or any similar payments and the Carrier indemnifies and agrees to keep CSR indemnified from and against any liability to make any such payments on its behalf.

- (d) The Carrier must ensure that all Drivers comply with the terms of this Agreement and are clearly informed that the Driver has no contractual or other legal relationship with CSR.
- (e) The Carrier must ensure that the Driver's run sheets and all documents reasonably required by CSR in connection with the Cartage Services are correctly completed and promptly given to CSR.
- (f) The Carrier is responsible to ensure that any person who drives the Vehicle for the purposes of the Agreement does so in accordance with all applicable fatigue management legislation.

4.4 Driver Documentation

The Carrier must provide CSR with a written statement in the form of the statement in Schedule 2 to this Agreement within 7 days from the date of operation of this Agreement, and on a monthly basis during the whole term of the Cartage Contract pursuant to this Agreement, in respect of all Drivers employed by the Carrier, including but not limited to any director of the Carrier who is also an employee of the Carrier, and who receives Remuneration for services provided to the Carrier in connection with or incidental to this Agreement.

4.5 Fees and Necessary Equipment

- (a) The Carrier is responsible for all road tolls, permits, weighbridge and other fees including fines, the supply and maintenance of all necessary equipment and gear and costs necessary or desirable for the safe and legal performance of the Cartage Services.
- (b) In addition to, and without limiting the generality of the Carrier's responsibility as set out in Clause 4.5(a) above, the Carrier is responsible to ensure that all Vehicles carry all equipment necessary to secure and protect CSR's product in accordance with the CSR PGH Load Restraint guidelines, or as otherwise required by law.
- (c) If the Carrier requires the use of CSR owned equipment to perform the Cartage Services, and where CSR consents to the supply of such equipment, the Carrier agrees to negotiate with CSR the terms, conditions, and charges associated with the use of such equipment before using such equipment.

4.6 Vehicle Requirements

The Carrier warrants that each Vehicle is suitable for the performance of the Cartage Services and must maintain each Vehicle and its equipment in good working order, keeping the Vehicle clean and presentable. The Carrier will, promptly upon request by CSR, produce for inspection to CSR relevant certificates of inspection and roadworthiness, and such other evidence of "fitness for purpose" or "good working order" as may be reasonably requested. The Carrier is responsible to ensure that all Vehicles carry all equipment necessary to secure and protect CSR's product.

CSR must approve the Vehicle before the Carrier is permitted to use the Vehicle for the purpose of providing Cartage Services pursuant to this Agreement.

4.7 Uniforms

- (a) CSR may at its sole discretion supply Drivers with a uniform agreed with the Carrier, such agreement not to be unreasonably withheld.
- (b) The Carrier is responsible for the proper care of uniforms and for the provision of safe and compatible footwear, high visibility vests, and wet weather clothing for its Drivers.

4.8 Reporting to CSR

- (a) The Carrier must immediately report any loss or accident involving any Vehicle or its load to the operations staff of CSR and attend to any legal requirements in respect of such loss or accident.

- (b) If the Carrier is unable to perform Cartage Services, it must promptly telephone CSR and state why and for how long the Carrier will be unable to perform the Cartage Services.
- (c) Where the Carrier encounters a site whereby performing the Cartage Services will cause one or more breaches of applicable environmental laws when moving on and off the delivery site, the Carrier will contact CSR and explain the situation and the appropriate resolution will be determined by CSR. At all times the Carrier will proceed in accordance with the determination of CSR. No resolution will require the Carrier to be actually or potentially exposed to prosecution for a breach of any law.

4.9 Cellular Phone

- (a) The Carrier must install in each of the Vehicles and maintain a cellular phone. All costs associated with the phone are to be borne by the Carrier.

4.10 Painting and Signage

CSR may require and the Carrier must:

- (a) at CSR's expense, allow CSR to paint each of the Carrier's Vehicles as required from time to time, in such colours and affix such signs, advertisements and logos as CSR may, from time to time, specify.
- (b) at CSR's expense, remove CSR's signs, advertisements and logos from each Vehicle and allow CSR to re-paint the Vehicle to original paint and signage (as existed at the commencement date of this Agreement) upon the termination of the Term.
- (c) enter into a discussion with CSR to reach agreement regarding when the Carrier's Vehicles can be painted as per Clause 4.10 (a).

4.11 Preloading

If requested by CSR, the Carrier may at its' discretion consent to parking the Vehicle overnight at CSR's Sites to allow it to be preloaded by CSR, such consent not to be unreasonably withheld.

4.12 Safe Storage

The Carrier shall be responsible for the safe storage of the Vehicle at such times as it is not in use. If CSR provides premises at which the Carrier may leave the vehicle, CSR shall not be liable for any loss or damage to the Vehicle or other property stored or used at the premises, except where such loss or damage is due to the wilful or negligent act or omission of CSR or its employees.

4.13 Indemnity

Whether or not an insurance claim is available, the Carrier must indemnify CSR at all times against all damages, costs and liability arising out of the performance of the Cartage Service by the Carrier including, but not limited to;

- (a) any claim for compensation (including any claim for workers compensation) by any person engaged directly or indirectly by the Carrier in the performance of the Cartage Services or any aspect of this Agreement; and
- (b) any claim for damage to or loss of any Vehicle or its equipment or gear while on the Sites except to the extent that such damages, costs or liability, are due to the wilful or negligent act or omission of CSR or its employees.

4.14 Key Performance Indicators

The Parties agree that the Key Performance Indicators contained in Schedule 1 to this Agreement and any other Key Performance Indicators as may be agreed by the Parties are the Key Performance Indicators for the purpose of assessment of the quality and performance of the Cartage Services by the Carrier during the Term of the Cartage Contract pursuant to this Agreement.

4.15 New Technology

The Carrier will work with CSR to introduce new technology in order to reduce the cost to CSR and improve the quality of the Cartage Services. In the event that the new technology changes the Carrier's costs substantially, the Parties are entitled to request an adjustment of rates in accordance with Clause 6.4. In the event that there is a dispute regarding the introduction of new technology, the provisions of Clause 13 Dispute Resolution will apply.

4.16 Standard Operating Procedures

- (a) CSR and the Carrier must complete, within 28 days of the commencement date of this Agreement, Standard Operating Procedures for the performance of all aspects of the Cartage Services including: occupational health and safety requirements at CSR Sites and Customer sites, provision of other documentation from the Carrier, CSR, and the Customer as provided for in the Standard Operating Procedure, and complaint resolution regarding issues raised by Customers. CSR must consult with the Carrier regarding the content of the Standard Operating Procedures.
- (b) If CSR wishes to vary the Standard Operating Procedures for any reason whatsoever, CSR may, after consulting with the Carrier, direct the Carrier to implement those changes.
 - (i) CSR will consult with the Carrier in relation to any proposed changes to the Standard Operating Procedures which CSR wishes to implement from time to time and the parties agree to negotiate in good faith in relation to the implementation of such changes, it being the intention of the parties that there be ongoing improvement in the standard of the Cartage Services provided.
 - (ii) The Carrier must not unreasonably refuse to implement the changes.
 - (iii) In the event that CSR and the Carrier fail to agree on the implementation of any proposed changes to the Standard Operating Procedures, the procedures set out in Clause 13 Dispute Resolution will apply.

4.17 Representative Discussions

A suitable representative or representatives of each of CSR and the Carrier will, as required, discuss any issues relating to the performance of the Cartage Services.

4.18 Loading and Delivery of Goods

- (a) The Carrier must deliver Goods directly and promptly to the address shown on the delivery docket issued by CSR and unload and place Goods in as safe and secure manner as possible having regard to the characteristics of the site in question. In accordance with the Standard Operating Procedures the Goods shall be placed at the delivery site or at such other location endorsed on the delivery docket by the recipient of the Goods or the recipient's agent.
- (b) The Carrier must in the operation of the Carrier's Vehicle observe such speed limits as may be imposed by CSR in respect of its premises.
- (c) The Carrier must load and unload the Carrier's Vehicle in a manner satisfactory to CSR, and if required by CSR, secure the Goods on the Vehicle in accordance with the CSR PGH Load Restraint guidelines.
- (d) In conjunction with CSR the Carrier must ensure that the Vehicle is loaded with the quantity of Goods specified in each delivery docket.

- (e) The Carrier is responsible for all CSR Goods carried by it in the performance of Cartage Services and will reimburse CSR for all Goods which are damaged or are not accounted for, during the performance of such services. However the Carrier will not be responsible for any damage or shortfalls where the Carrier has loaded, carted, and unloaded the Goods in accordance with the Carriers Responsibilities of this Clause 4.
- (f) The Carrier and CSR must make all reasonable efforts to ensure that Goods are loaded on time and as quickly as possible, but CSR will not be liable to the Carrier in any way for any delays in either the loading of Goods or in making Goods available for loading. The Carrier will, where practical, be permitted to load Goods onto the Carrier's Vehicle.
- (g) The Carrier must ensure that Goods are handled carefully from the commencement of loading until placed upon the delivery site.
- (h) The Carrier must comply with the reasonable instructions of CSR regarding any order.
- (i) The Carrier is responsible to ensure that when the Vehicle is loaded it is loaded within its legal loading limit as defined by prevailing legislation.

4.19 Safety

The Carrier must:

- (a) comply with relevant safety legislation and regulations;
- (b) comply with CSR's applicable occupational health and safety policies and procedures including those in relation to drugs and alcohol ;
- (c) ensure that a safe system of work is followed by the Carrier's employees and agents when providing the Cartage Services; and
- (d) ensure the Carrier's employees and agents participate in any induction or other programs agreed between CSR and the Carrier (such agreement not to be unreasonably withheld) relating to operational and occupational health and safety issues concerning the provision of the Cartage Services which are conducted by on behalf of CSR or CSR's Customers from time to time.

4.20 Surveillance

- (a) The Carrier consents to the use of video surveillance on CSR sites and CSR Customer sites that is consistent with applicable occupational health and safety and privacy legislation.
- (b) The Carrier consents to the attachment, installation, use, maintenance and retrieval of devices such as global positioning systems or radio or like devices which may track the location of the Carrier's vehicle(s) and movements or assist in such tracking. The Carrier also consents to the collection, use and maintenance by CSR of any records generated by those devices. Any records generated are agreed to be confidential to CSR and the Carrier, and will not be used by one party against the other without the written consent of the other party. A copy of any records generated will upon request be made available to the Carrier.

5. CSR's Responsibilities

5.1 Payment for services

- (a) CSR must:
 - (i) pay the Carrier for Cartage Services at rates which are agreed between CSR and the Carrier in writing from time to time. The rate set at the commencement of this Agreement is contained in Part 1 of Schedule 3 to this Agreement.

- (ii) pay the Carrier by EFT for Cartage Services (excluding any Drop Allowance) twice monthly in accordance with the rates referred to in Clause 5.1(a) (i) on the first (1st) and sixteenth (16th) days of each month based on a recipient created tax invoice. The payment made on the 1st of the month shall be payment for the Cartage Services for the period from the 16th to the last day of the previous month. The payment for Cartage Services rendered after the 1st day of the month until the 15th day of the month shall be paid on the 16th day of the same month.
 - (iii) pay the Carrier by EFT the Drop Allowance monthly in accordance with the rates referred to in Clause 5.1(a) (i) on the sixteenth day of each month based on a recipient created tax invoice. This payment will be for Drop Allowance relating to Cartage Services from the previous month.
 - (iv) advise the Carrier as early as possible of urgent or special delivery instructions for particular work or particular Goods.
 - (v) specify prior to 2.30pm on the preceding day the starting place for the Vehicle on the next working day, and the Cartage Services required from that Site for the first load, provided that any Inter-Centre Work will be at the discretion of the Carrier (such consent not to be unreasonably withheld). Failure to specify this information for the Vehicle on the next working day prior to 2.30pm due to unavoidable operational delays or requirements will not constitute a breach of this Agreement.
- (b) CSR will not be liable to pay the Carrier for any Cartage Services where the Carrier is unable to satisfactorily complete an agreed delivery, provided that the inability to satisfactorily complete an agreed delivery is not due to the actions, fault or neglect of either CSR or the Customer.

5.2 Uniforms

CSR may provide, at its sole discretion and expense, to the Carrier an adequate number of uniforms (of a design agreed with the Carrier) for the Carrier's Drivers, and will replace the uniforms as often as is reasonably required.

5.3 Product packaging

CSR and not the Carrier will be responsible to ensure that product is packaged so as to make it safe for carriage on the Vehicle.

6. Adjustment of Rates

6.1 Rates payable

The Rates payable at the commencement of this Agreement are set out in Part 1 of Schedule 3 to this Agreement.

6.2 Review of rates

The Rates will be reviewed every 12 months in accordance with Part 2, "Variation of Rates", of Schedule 3 to this Agreement. In the event that there is documented evidence of non-compliance by the Carrier with the Key Performance Indicators, the Rates will not necessarily be increased.

Any Rate variation payable in accordance with Schedule 3 Part 2 - Variation of Rates applicable from 1 July 2005 will be reduced by 2.5% to reflect incorporation of a negotiated 2.5% increase in the Rates payable at the commencement of this Agreement. This however will not result in a rate decrease in the event that the rate variation calculated in accordance with Schedule 3 Part 2 - Variation of Rates is less than 2.5% - in this case the rates will be maintained at the levels payable at the commencement of this Agreement.

The Drop Allowance of \$9.00 payable for the second and each subsequent drop of each load will not be varied during the Term of the Cartage Contracts pursuant to this Agreement.

6.3 Request for increase by Carrier

The Carrier may request an increase in the Rates at any time if its costs of performing the Cartage Services are substantially increased for reasons beyond its control. CSR will not unreasonably refuse such a request.

6.4 Re-negotiation of rates

The Rates may be re-negotiated to reflect any cost efficiencies gained through productivity improvements, technology benefits or a substantial reduction in the operating costs of the Carrier achieved through co-operation with CSR.

6.5 Goods and services tax

If a goods and services tax ("GST") applies to any supply made under or in connection with this Agreement or any extension of it:

- (a) CSR will, in addition to providing a valid recipient created tax invoice identifying the GST on each component of the Cartage Services supplied, pay the Carrier for the Cartage Services as provided in Clause 5, plus an amount on account of GST, such amount not to exceed the amount of the Carrier's liability for GST in respect of the goods and/or services; and
- (b) failing agreement by the parties, such adjustments shall be determined in accordance with the dispute resolution procedure under Clause 13.

7. Termination

7.1 Summary termination by CSR

- (a) CSR may immediately terminate the Cartage Contract pursuant to this Agreement, by giving written notice to the Carrier, if the Carrier:
 - (i) has a receiver, manager or official manager appointed over its assets;
 - (ii) has a petition filed against it for its winding up, whether voluntarily or not which is not withdrawn within 21 days, or a meeting is summonsed at which it is proposed to move a resolution to have the Carrier wound up; or
 - (iii) makes an assignment in favour of, or a composition or arrangement with, its creditors.
- (b) CSR may immediately terminate the Cartage Contract by giving written notice to the Carrier, if the Carrier seriously or wilfully breaches any of the terms of this Agreement or of any Cartage Services including but not limited to:
 - (i) refusing to perform Cartage Services in accordance with the terms of this Agreement;
 - (ii) wilful or negligent destruction of or damage to CSR property;
 - (iii) obstruction of CSR premises;
 - (iv) misappropriation of CSR property;
 - (v) denigrating CSR's name or products; or
 - (vi) any matter which may be the subject of indictable criminal proceedings

provided however that CSR must first have regard to all of the circumstances of the relevant breach before exercising any right to terminate under this Clause 7.1 (b).

7.2 Termination by CSR - Carrier Breach of Obligation

- (a) CSR may terminate the Cartage Contract pursuant to this Agreement by giving at least 14 days notice to the Carrier, if the Carrier fails to perform or observe any of its covenants or obligations under this Agreement, provided that before terminating the Cartage Contract for breach of an obligation by the Carrier (other than a breach of this Agreement covered by Clauses 7.1 and 7.3) CSR takes the following steps:
 - (i) CSR gives the Carrier a written direction to rectify the breach and a written warning that a failure to rectify the breach, or a subsequent breach will lead to more serious disciplinary action and may put the Cartage Contract in jeopardy;
 - (ii) if there is a further breach of this Agreement following a written warning being given in accordance with Clause 7.2 (a) (i), CSR will send a formal letter of warning to the Carrier indicating that a subsequent breach of the Agreement will result in CSR terminating the Cartage Contract.

7.3 Termination by CSR - Fleet Reduction

CSR may terminate the Cartage Contract pursuant to this Agreement during the Term by giving at least 6 months notice to the Carrier where there has been a significant restructure of or downturn in CSR's business which, in CSR's reasonable opinion, requires CSR to reduce the number of Carriers providing Cartage Services. Without limiting CSR's discretion under this clause, CSR will have regard to the Carrier's compliance with the Key Performance Indicators and the terms of this Agreement in determining whether the Cartage Contract is to be terminated in accordance with this Clause 7.3.

7.4 Summary Termination by Carrier

The Carrier may immediately terminate the Cartage Contract pursuant to this Agreement by giving written notice to CSR, if CSR reduces the rates payable for Cartage Services other than under the terms of this Agreement

7.5 Termination by Carrier

- (a) The Carrier may terminate the Cartage Contract pursuant to this Agreement by providing CSR with reasonable written notice of not less than 3 months (unless otherwise agreed) if:
 - (i) the person who regularly drives the Carrier's Vehicle wishes to retire, or suffers serious illness or incapacity; or
 - (ii) due to special circumstances, it would cause the person who controls the Carrier serious financial or domestic hardship for the Carrier to continue to discharge its obligations under the Cartage Contract until the expiration of the Term.
- (b) The Carrier must on request by CSR provide information and documentation, to the reasonable satisfaction of CSR, detailing the circumstances relied upon in Clauses 7.5 (a) (i) and (ii).

7.6 Termination at or after expiration of the Term

Either party may terminate the Cartage Contract pursuant to this Agreement at any time at or after the expiration of the Term for any reason by providing six (6) months written notice to the other party prior to or after such expiration of the Term (or such lesser amount of notice as is agreed in writing by CSR and the Carrier) ("Termination Notice Period"). During the Termination Notice Period the terms of this Agreement continue to apply to the parties

7.7 Application of this Agreement after Expiry

This Agreement shall continue to apply after its expiry until the parties register a fresh agreement with the Industrial Relations Commission of New South Wales. It is not the intention of either party to this Agreement to change the terms of this Agreement during the life of the five (5) year Cartage Contracts granted by the provisions of this Agreement.

8. Assignment

8.1 Restrictions on assignment

The rights and interests of the Carrier under the Cartage Contract pursuant to this Agreement are personal to the Carrier and cannot be sold, assigned, subcontracted or transferred by the Carrier.

8.2 Recommendation on sale of Vehicle

At any time after the expiration of the Term or if the Carrier becomes entitled to terminate the Cartage Contract in accordance with Clause 7.5, the Carrier may:

- (a) inform CSR of its intention to sell a Vehicle or Vehicles which has or have been used by the Carrier to perform Cartage services; and
- (b) recommend to CSR in writing that CSR enter into an agreement - in like or similar terms to the Cartage Contract with the purchaser of such Vehicle.

8.3 CSR not bound by any recommendation of Carrier

CSR is not bound by any recommendation made by the Carrier under Clause 8.2 but agrees that:

- (a) if CSR determines in its sole discretion that it wishes to engage another Carrier it will consider the recommendation and may enter into a Cartage Contract pursuant to this Agreement in similar terms to this Agreement with the recommended purchaser if in CSR's reasonable opinion the recommended purchaser would be suitable to cart product for CSR; and
- (b) it will inform the Carrier, within thirty (30) days, of any action which CSR proposes to take in response to such recommendation.

8.4 Representations of Carrier

- (a) Subject to Clause 8.5, the Carrier must not in any dealings, negotiations, contracts or arrangements of any kind with a potential purchaser of any Vehicle which has been used by the Carrier in performing Cartage services, make any oral or written representation:
 - (i) concerning the Cartage services contrary to or inconsistent with Clause 8.5; or
 - (ii) that the Carrier's Vehicle is for sale at a price in excess of the Vehicle's market price as a mechanical device.
- (b) The Carrier must immediately inform CSR if the Carrier makes any oral or written representation of the nature referred to in Clause 8.4.

8.5 Permitted disclosure

The Carrier may disclose to a potential purchaser that the Carrier carts product for CSR under this Agreement and may disclose the terms of this Agreement to the potential purchaser.

8.6 Carrier indemnity

- (a) The Carrier will indemnify CSR in respect of all claims, demands, actions, proceedings, judgments, orders, penalties and damages arising from any representation made by the Carrier to a potential purchaser referred to in Clause 8.4.

- (b) Where the Carrier has purchased, or has signified its intention to CSR that it will purchase, a Vehicle for the Cartage of Goods from any person who has at any time previously performed Cartage Services for CSR, the Carrier will be deemed to have purchased the Vehicle at its market value.
- (c) The Carrier agrees that no goodwill will attach to any Vehicle utilised for the performance of the Cartage services.

9. Goodwill

- (a) It is the intention of the Parties that goodwill does not and will not attach, and has never attached, to any Vehicle or Vehicles used by a Carrier to perform the Cartage Services for CSR under a Cartage Contract pursuant to this Agreement or any agreement between the Carrier and CSR or the Carrier and Linfox which preceded this Agreement.
- (b) The Carrier acknowledges and agrees that no goodwill attaches to the Cartage Contract or this Agreement and particularly that no goodwill is payable by CSR to the Carrier upon termination or expiration of the Cartage Contract or this Agreement.
- (c) The Carrier acknowledges and agrees that CSR has no obligation whatsoever to pay the Carrier, and the Carrier has no entitlement to receive, any amount in respect of or in connection with any amount for goodwill (whether as reimbursement, compensation or damages) paid by the Carrier to any other person for a Vehicle or Vehicles.

10. Confidential Information

- 10.1 The Carrier acknowledges that all information relating to the current or future business interests, methodology or affairs of CSR is and will remain the sole and exclusive property of CSR.
- 10.2 The Carrier agrees to keep all such information confidential during the currency of the Cartage Contract and this Agreement and after the termination of the Cartage Contract or this Agreement.
- 10.3 In particular the Carrier will not disclose such information to any other person except as required by law or with the prior written consent of CSR.

11. Conflicts of Interest

- 11.1 The Carrier is not restricted to providing Cartage Services or other services for or on behalf of persons other than CSR provided that the performance of those services does not conflict with the obligations and responsibilities set out in this Agreement. If the Carrier becomes aware of an actual or potential conflict arising from the performance of those services, they must notify CSR immediately in writing and must cease any such work if they are requested to do so by CSR in writing.

12. Use of Trade Marks and Copyright Material

The Carrier will not use or permit to be used by any person any trademarks or trade name of CSR nor make any unauthorised copy of CSR's copyright material or other intellectual property and the Carrier does not, by performance of this Agreement or otherwise, acquire any rights in any patent, trademark, trade name or copyright of CSR.

13. Dispute Resolution

- 13.1 Best endeavours

CSR and the Carrier must use their best endeavours to amicably resolve any disputes or problems arising between them under this Agreement.

- 13.2 Procedure

Subject to Clause 13.1, in the event of a dispute, the Parties agree to follow the following procedure:

- (a) Where a dispute occurs it shall first be discussed between the Carrier and CSR
- (b) If that discussion does not resolve the dispute the Carrier and CSR shall involve the TWU delegate in the matter and by discussion the parties will attempt to resolve the dispute
- (c) If that discussion does not resolve the dispute then CSR shall discuss the matter with the relevant TWU official and the Carrier concerned and the delegate. The parties will emphasize the need to resolve the dispute in an amicable and professional manner.
- (d) If that discussion fails to resolve the dispute either party has the right to refer the matter to the Industrial Relations Commission of New South Wales.

13.3 Work to continue as normal

The Carrier undertakes to continue to perform its obligations under this Agreement pending completion of this dispute resolution procedure.

13.4 Other legal rights

The parties are governed by the provisions of the *Industrial Relations Act* 1996 (NSW) and such other laws as are applicable to the contractual relationship between the parties.

14. Non-Exclusive Appointment

14.1 CSR and other independent contractors

The Carrier is not an exclusive Carrier for the cartage of CSR's product and the Carrier acknowledges that CSR has entered into, or may enter into, agreements with other independent contractors relating to the cartage of its product and that CSR may use its own Vehicles for the purpose of cartage of its product.

14.2 Local Work

CSR will procure Cartage Services for delivery of Local Work as follows:

- (a) Loads will first be provided to the vehicles owned by CSR and driven by CSR employees;
- (b) When the CSR vehicles have been fully utilised the next loads will be provided to Carriers engaged on Cartage Contracts pursuant to this Agreement;
- (c) Any remaining loads will be offered to casual carriers engaged by CSR from time to time.

14.3 Absolute discretion of CSR

Notwithstanding Clause 14.2 of this Agreement, CSR may at all times determine in its absolute discretion the order in which loads are offered in order to ensure customer service and operational requirements are met, however CSR will use its best endeavours to meet those requirements by procuring Cartage Services for Local Work in accordance with the provisions of Clause 14.2. CSR will consult with the Carriers engaged under Cartage Contracts pursuant to this Agreement if it is anticipated that any discretion exercised by CSR in accordance with this Clause 14.3 will materially alter the provisions of Clause 14.2 relating to CSR's procurement of Cartage Services for delivery of Local Work.

14.4 Good faith

CSR will at all times act in good faith in the allocation of the work out of CSR's Sites. Allocation of Local Work in accordance with Clauses 14.2 and 14.3 will be made following consideration of all relevant factors including fleet configuration, Customer service requirements, utilisation of CSR owned vehicles, operational requirements, and opportunity for single drop full first loads each day (subject to availability) for CSR owned vehicles and Carriers engaged pursuant to this Agreement. CSR will use its reasonable endeavours to allocate work to the Carriers in a fair and equitable manner. If the Carrier is required at any Site pursuant to this Agreement, and the allocated load is not available (whether due to the act or omission of either CSR or its Customers), CSR will use its best endeavours to provide a suitable alternative load from that Site if available.

In addition to the undertakings provided in the first paragraph of this Clause 14.4, CSR will use its best endeavours to ensure that Carriers engaged pursuant to this Agreement on Local Work are allocated at least an average of 2.26 loads per vehicle per working day. The parties further agree to monitor the daily average loads with a view to working together to achieve a daily average of 2.5 loads of Local Work per vehicle per working day.

14.5 No guarantee

CSR does not guarantee to the Carrier that any minimum amount of Cartage Services will be provided to the Carrier pursuant to this Agreement nor does CSR guarantee the Carrier any minimum level of revenue.

Additional work

If there is a downturn in the work that CSR is able to provide the Carrier under this Agreement, CSR may offer the Carrier work other than under this Agreement on rates to be agreed between the Carrier and CSR. CSR is not obliged to offer and the Carrier is not obliged to accept such additional work.

15. Relationship of Parties

15.1 The Carrier is and at all times will remain an independent contractor and is not the legal representative, agent, joint venturer, partner or employee of CSR. The Carrier has no right or authority to assume or create any obligations or to make any representations or warranties on behalf of CSR.

15.2 The Carrier shall not have any lien over the goods carried for CSR or over any monies received on behalf of CSR.

16. Severability

The Carrier and CSR consider the obligations, restrictions and restraints in this Agreement to be reasonable in all the circumstances. The obligations, restrictions and restraints in this Agreement are separate, distinct and severable so that the enforceability of any obligation, restriction or restraint will not affect the enforceability of any other obligation, restriction or restraint.

17. Variation of Agreement

This Agreement can not be varied except in writing signed by the Parties and registered with the Industrial Relations Commission of New South Wales.

18. Governing Law

This Agreement is governed by the laws of New South Wales.

19. Entire Agreement

19.1 The Carrier acknowledges that before entering into this Agreement the Carrier has independently assessed the terms of this Agreement and has received independent legal advice about the rights and liabilities created by this Agreement.

19.2 This Agreement supersedes all prior agreements between the Parties, constitutes the entire agreement between the Parties and contains all of the representations, warranties, covenants and agreements of the Parties concerning the subject matter herein.

20. Notices

Any notice, consent or approval required or permitted to be given under this Agreement must be in writing and will be deemed to have been received by a Party at the destination set out below (or at such other destination as a Party may have specified in writing from time to time) if delivered, on the first business day following the day it is delivered to a Party; or, if sent by a recognised express courier, on the second business day after the day on which it is sent to a Party; or, if sent by facsimile transmission, on the first business day after transmission to the other Party provided that, in the case of notice by facsimile transmission a confirmation copy is to be sent the same day by post:

For the TWU -

Postal Address:	31 Cowper Street, Parramatta, NSW 2150
Telephone number:	(02) 9912 0700
Facsimile number:	(02) 9891 4953
And marked for the attention of:	The Secretary, TWU

For CSR -

Postal Address:	Lot 7, Cecil Road, Cecil Park NSW 2171
Telephone number:	(02) 9826 3900
Facsimile number:	(02) 9826 1237
And marked to the attention of:	Logistics Manager

21. Solicitor Certificate

- 21.1 It is a condition precedent to this Agreement that the Carrier obtain a Solicitor's certificate in the form set out in the Annexure 1 to this Agreement.
- 21.2 The Carrier agrees that the Solicitor's certificate is proof that before entering into the Cartage Contract pursuant to the terms of this Agreement:
- (a) the Carrier received independent legal advice about its rights and liabilities under this Agreement;
 - (b) the Carrier fully considered the terms of this Agreement and this Agreement sets out all the terms represented to it at and prior to the execution of this Agreement; and
 - (c) the Carrier independently assessed the terms of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

SIGNED for CSR BUILDING PRODUCTS LIMITED

CSR BUILDING PRODUCTS LIMITED (ABN 55 008 631 356) by its Attorney who state that at the date of their execution hereof have had no notice of the revocation of the Power of Attorney dated 5 December 2003 and Registered No. Book 4418 No. 245 under the authority of which they have executed this instrument.

.....
Attorney

.....
Attorney

SIGNED for and on behalf of THE TRANSPORT WORKERS UNION OF NSW by its duly authorized officer in the presence of::

SCHEDULES - AND ANNEXURES

SCHEDULE 1 - Key Performance Indicators

SCHEDULE 2 - Pro Forma Statement confirming Payments of Remuneration to Employees

SCHEDULE 3 - Rates

Part 1 - Cartage Rates

Part 2 - Variation of Rates

ANNEXURES:

1 Solicitor’s Certificate

2 Cartage Area

SCHEDULE 1

Key Performance Indicators

Key Performance Indicator	Target
1. Customer Service	1. No Customer Complaints due to actions of Carrier or its’ employees. 2. Proof of Delivery documentation is completed and returned to office by close of next business day following delivery. 3. Compliance with all agreed Customer Service Procedures and Directions. 4. DIFOT (Delivery In Full On Time) once product is dispatched from PGH yards
2. Carrier Availability	1. Carrier non availability (due to all factors within Carriers’ control including leave, equipment breakdown etc) less than 30 delivery days per annum. 2. Carrier performs loads (providing driving time legal restrictions will not be exceeded) as and when required for customer service - no artificial limitations to one or two deliveries on any particular day unless reasonable prior notice given
3. Safety	1. Agreed PGH yard and delivery SHE (Safety, Health & Environment) procedures are adhered to at all times 2. CSR PGH Load Restraint Guidelines are complied with at all times 3. No traffic accidents or incidents due to actions of Carrier or its’ employees 4. No public "road conduct or traffic" complaints due to actions of Carrier or its’ employees
4. Carrier Run Sheets	1. Carrier Run Sheets are legibly completed and returned to office by close of next business day following delivery.
5. Damages/Losses	1 No losses or damages due to actions of Carrier or its’ employees

SCHEDULE 2

Pro Forma Statement Confirming Payments of Remuneration to Employees

To: CSR PGH Bricks and Pavers, CSR Building Products Ltd, ABN 55 008 631 356 ("CSR")

1. This statement refers to the Agreement dated [insert date] between CSR and [insert name and ABN of carrier] ("Agreement").
2. [insert name of carrier] confirms that it has paid all Remuneration owing to its employees and contractors engaged in performing work under the Agreement [insert dates of period to which this statement relates].
3. [insert name of carrier] certifies that this is a true financial record confirming the above payments.

SIGNED by:

[Authorised officer]

[print name and position held]

Dated:

SCHEDULE 3 - Rates

Part 1 - Cartage Rates

SCHEDULE 3 – Rates
Part 1 – Cartage Rates

Rates Effective from 26 April 2005

Rates Exclusive of GST

Full Load	8,000	7,000	5,040	9,200	4,480	3,696	12,400	4,368	1,800	3,630
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Zone	Range kilometres	Extruded \$/1,000	Solids \$/1,000	Schooner \$/1,000	Tabs \$/1,000	Mini Blocks \$/1,000	Presto \$/1,000	Roman Splits \$/1,000	Kegs \$/1,000	Masonry Blocks \$/1,000	Ultra Barrier \$/1,000	Zone
L10	1-10	29.81	34.07	47.32	25.92	53.23	64.52	19.23	54.60	132.49	65.70	L10
L20	11-20	33.67	38.48	53.44	29.28	60.13	72.88	21.72	61.67	149.64	74.20	L20
L30	21-30	38.46	43.95	61.05	33.44	68.68	83.25	24.81	70.44	170.93	84.76	L30
L40	31-40	42.75	48.86	67.86	37.17	76.34	92.53	27.58	78.30	190.00	94.21	L40
L50	41-50	47.15	53.89	74.84	41.00	84.20	102.06	30.42	86.36	209.56	103.91	L50
L60	51-60	51.09	58.39	81.10	44.43	91.23	110.58	32.96	93.57	227.07	112.60	L60
L70	61-70	55.73	63.69	88.46	48.46	99.52	120.63	35.95	102.07	247.69	122.82	L70
L80	71-80	60.23	68.83	95.60	52.37	107.55	130.37	38.86	110.31	267.69	132.74	L80
IC100	81-100	53.60	61.26	85.08	46.61	95.71	116.02	34.58	98.17	238.22	118.13	IC100
IC125	101-125	58.14	66.45	92.29	50.56	103.82	125.84	37.51	106.48	258.40	128.13	IC125
IC150	126-150	65.34	74.67	103.71	56.82	116.68	141.43	42.15	119.67	290.40	144.00	IC150
IC175	151-175	65.34	74.67	103.71	56.82	116.68	141.43	42.15	119.67	290.40	144.00	IC175
IC200	176-200	69.12	78.99	109.71	60.10	123.43	149.61	44.59	126.59	307.20	152.33	IC200
IC225	201-225	73.45	83.94	116.59	63.87	131.16	158.98	47.39	134.52	326.44	161.87	IC225
IC250	226-250	78.61	89.84	124.78	68.36	140.38	170.15	50.72	143.97	349.38	173.25	IC250
IC275	251-275	83.58	95.52	132.67	72.68	149.25	180.91	53.92	153.08	371.47	184.20	IC275
IC300	276-300	88.95	101.66	141.19	77.35	158.84	192.53	57.39	162.91	395.33	196.03	IC300

Site relocation rate \$18.94 per 15 minutes

Drop Allowance \$9.00 per second and each subsequent drop of each load

Demurrage rate \$18.94 per 15 minutes

Minimum Drop Payment equivalent to 1,000 Extruded Bricks

SCHEDULE 3 Part 2 - Variation of Rates

The Remuneration Rates (excluding Drop Allowance which is fixed for the life of Cartage Contracts pursuant to this Agreement) will be varied on 1 July each year in accordance with the mechanism below. In the case that the variation calculation is delayed waiting for any index number to be published, any variation in the rates will be backdated to 1 July of the year in question.

The variation payable from 1 July 2005 will be reduced by 2.5% to reflect the inclusion of a negotiated 2.5% increase in the initial Rates payable under this Agreement, however this will not result in a reduction of the rates. In the event that the variation payable at 1 July 2005 is calculated to be less than 2.5%, the rates payable under this Agreement will be maintained at the initial rates until a rate review effective 1 July 2006.

Cost Component	% of Rate	Index	Base
Wages	38%	Enterprise Agreement between CSR Limited and Transport Workers Union of New South Wales for PGH Bricks & Pavers (NSW) - Grade 7 Weekly Wage Rate at 30 June immediately preceding each Rate Review	\$717.00
Fuel	12%	Average BP Diesel Card Price (for the preceding 12 months) less CSR Discount (5 c/L excl GST) and Diesel Energy Grant (18.5 c/L excl GST)	69.8 c/L
Capital - Vehicle including Trailer & Fork or Crane	11%	ABS CPI, Transportation Group, Motor Vehicles (at 31 March immediately preceding Rate Review)	101.9
Insurances	6%	ABS CPI, Miscellaneous Group, Insurance Services (at 31 March immediately preceding Rate Review)	242.7
Repairs & Maintenance	3%	ABS CPI, Transportation Group, Repairs & Servicing (at 31 March immediately preceding Rate Review)	139.5
70%			

The applicable percentage changes in each Cost Component will be multiplied by the above "% of Rate", and the results then totalled to arrive at the applicable rate adjustment

Rate changes at each 1 July will then occur by agreement, having regard to all of the factors in Clause 6 "Adjustment of Rates" in the Agreement

Fuel Cost Surcharge/Rebate

At the end of each Quarter (or part thereof) during the agreement (ie on 1 July, 1 October, 1 January & 1 April), the Carrier payments for the previous Quarter (excluding any Drop Allowance) will be adjusted for the actual price of Diesel compared to the Base price of diesel for the period under review.

Sample Calculations

Assumptions

In the case that Diesel price is higher than the Base Price for the period in question, say

Base Diesel Price 74.8 c/L

Carrier Payments (excluding Drop Allowance) during previous quarter \$30,000

Actual Average Diesel Price during previous quarter 80 c/L

Then

Surcharge Payable to Carrier = $\$30,000 \times 12\% \times (80 \text{ c/L} - 74.8 \text{ c/L}) / 74.8 \text{ c/L}$
 =\$250.27 payable by CSR to Carrier

In the case that Diesel price is lower than the Base Price for the period in question, say

Actual Average Diesel Price during previous quarter 70 c/L

Then

Rebate Payable by Carrier = $\$30,000 \times 12\% \times (74.8 \text{ c/L} - 70 \text{ c/L}) / 74.8 \text{ c/L}$
 =\$231.02 payable by Carrier to CSR

ANNEXURE 1

Solicitors Certificate

I, [insert name] of [insert firm], [insert address] hereby certify as follows:-

I am aware that [insert name of carrier] has been negotiating the terms of an agreement to provide Cartage Services to CSR Limited ("Agreement") and I have reviewed that Agreement;

I have advised [insert name of carrier] and its directors on the rights and obligations of [insert name of carrier] arising under the Agreement;

To the best of my knowledge and belief [insert name of carrier] and its directors have fully considered the terms of the Agreement;

To the best of my knowledge and belief the Agreement sets out all the terms represented to [insert name of carrier] and its directors at and prior to the execution of the Agreement; and

To the best of my knowledge and belief [insert name of carrier] and its directors have independently assessed the terms of this Agreement.

Dated this _____ day of _____ (insert year)

[Insert name], SOLICITOR

ANNEXURE 2

Cartage Area

Local Work means delivery of CSR's goods up to 80 kilometres from the Sydney plants at Cecil Park, Horsley Park, and Schofields

Inter-Centre Work means the delivery of CSR's goods to the Newcastle and Central Coast areas which are located beyond 80 kilometres from the plants at Cecil Park, Horsley Park, Maitland, and Schofields, but excluding CSR's goods sold into the area generally bounded by Swansea, Cessnock, Singleton, Raymond Terrace and Nelson Bay (including Newcastle) from the Cecil Park plant.