

**REGISTER OF  
CONTRACT AGREEMENTS**

**CONTRACT AGREEMENT NO:** CA01/1

**TITLE:** Toll Logistics Automotive Division - Westside Car Carrying

**I.R.C. NO:** 2000/3325

**DATE APPROVED/COMMENCEMENT:** 28 August 2000

**TERM:** 36 months

**NEW AGREEMENT OR  
VARIATION:** New

**GAZETTAL REFERENCE:**

**DATE TERMINATED:**

**NUMBER OF PAGES:** 12

**COVERAGE/DESCRIPTION OF**

**EMPLOYEES:** Applies to the following contract carriers in respect of Westside Car Carrying for local car carrying in Sydney: Barroice Pty Ltd, R&B Mackay P/L, DSJ P/L, Jarinda P/L, Dee Jay P/L and Extreme Car Carriers P/L

**PARTIES:** Toll Logistics Automotive Division -&- Barroice Pty Ltd, Cliffshield Pty, DSJ Pty Ltd, Dee Jay Pty Ltd, Extreme Pty Ltd, Jarina Pty Ltd



**AGREEMENT DETERMINING THE RIGHTS AND PRIVILAGES**

**OF PRINCIPAL CONTRACTOR**

**TOLL LOGISTICS  
AUTOMOTIVE DIVISION – WESTSIDE CAR CARRYING**

**AND CONTRACT CARRIERS**

OPER:

**THE STATE OF NEW SOUTH WALES**

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2006  
2003

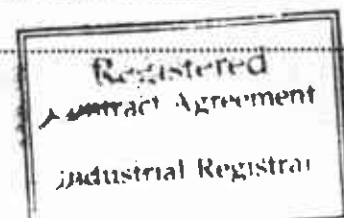
**PREAMBLE**

The following matters have been agreed to between Toll Logistics (Automotive Division, Westside Car Carrying) and the *Contract Carriers*.



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## 1.0 PARTIES BOUND

This agreement shall be binding on the *Contract Carriers*, and on Toll Transport Pty. Ltd., for the operations of Toll Logistics – Automotive Division in respect of Westside Car Carrying for local car carrying in Sydney NSW, who are required to perform work under this Agreement.

## 2.0 APPLICATION AND INCIDENCE

- (a) The industry and callings covered by this Agreement is in connection with the collection, handling, loading, unloading and transportation of motor vehicles by road.
- (b) The general terms and conditions of engagement of Contract Carriers covered by this Agreement shall be those prescribed by the Transport Industry Car Carrier (NSW) Contract Determination March 1997.
- (c) Provided that it is a term of this Agreement the provisions of this Agreement shall apply to the extent of any inconsistency with the provisions of the Transport Industry Car Carrier (NSW) Contract Determination March 1997.

## 3.0 DURATION OF THIS AGREEMENT

- a) This Agreement shall come into operation on the day approved by the Commission and remain in force for a period of three (3) years.
- b) The parties to this agreement shall adopt the rates of remuneration outlined in the Transport Industry Car Carrier (NSW) Contract Determination March 1997.
- c) Adjustments to remuneration rates shall be in line with the Transport Industry Car Carrier (NSW) Contract Determination March 1997.
- d) Any variation to this Agreement shall be subject to the ratification of the Industrial Relations Commission of NSW.



#### 4.0 STATUS OF OWNER DRIVER

The parties agree that Contract Carriers covered under this agreement must be incorporated.

The Contract Carrier is an Independent Contractor and shall not during the continuance of this Agreement hold himself/herself out as an employee of the Principal Contractor nor shall he/she at any time bind or purport to bind the Principal Contractor to any Agreement or Transaction nor pledge the Credit of the Principal Contractor may be in his/her possession or under his/her control.

The Contract Carrier is not a common carrier and shall be liable to the Principal Contractor only for loss or damage occurring as a result of the willful default or negligence of the Contract Carrier or his/her servants.

#### 5.0 LIEN

The Contract Carrier acknowledges that he/she has no lien on the freight carried or Toll equipment in their care pursuant to this Agreement.

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#### 6.0 GOODWILL

The Contract Carrier shall, in the event of termination of engagement be bound by the following:

- (a) All work and goodwill remains the property of the Principal Contractor and is not transferable under any circumstances.
- (b) The Principal Contractor and Contract Carrier expressly deny the existence of goodwill in any work performed by the Contract Carrier on behalf of the Principal Contractor.
- (c) The Contract Carrier shall not make any misrepresentations as to the existence of goodwill.
- (d) The Principal Contractor offers absolutely no guarantee of permanent, casual or any work to the Contract Carrier. The Contract Carrier shall indemnify the Principal Contractor against all claims made against the Principal Contractor that are based upon, or partially based upon, any representation referred to in (a) or (b) above.
- (e) There is no right given or implied that the Contract Carrier may sell or transfer his/her right to work with the Principal Contractor, or that at any time he will have claim to any goodwill or asset in terms of work carried out on behalf of the Principal Contractor or his/her ability to carry out the work.
- (f) Notwithstanding the above a Contract Carrier retains the right to sell his vehicle at the market value of that vehicle and the purchaser of the vehicle is permitted

to apply for a Contract Carrier agreement with the Principal Contractor's approval.

- (g) Where, subject to the sale of the contract carrier's vehicle above, or through the regular course of business, a change in the approved driver for the contract carrier's vehicle is required, the contract carrier must spend no less than two (2) full weeks in the vehicle with the new driver prior to the new driver commencing work.

## **7.0 PAYMENT OF REMUNERATION**

All Contract Carriers subject to the provisions of this Agreement shall have all remuneration paid weekly by electronic funds transfer to the mutually agreed financial institutions.

## **8.0 CONSUMPTION OF ALCOHOLIC BEVERAGES**

The Contract Carrier or its employee will refrain altogether from consuming alcoholic beverages in line with state and federal laws, prior to commencing any conduct for which he/she becomes responsible pursuant to this Agreement and until any loading/unloading and carriage of freight required under the Agreement is completed. The Contract Carrier agrees that failure to comply with the provisions of this Clause will render him/her personally liable to the Principal Contractor for any loss or damage suffered as a result of such failure and will result in the termination of this contract pursuant to Clause 10 of this Agreement.

## **9.0 NOTIFICATION OF INTERESTS**

The Contract Carrier shall notify the Principal Contractor of any proposed Action by persons holding encumbrances, liens or bills of sale affecting his/her vehicle.

## **10.0 TERMINATION OF ENGAGEMENT**

### **10.1 Termination by the Contract Carrier**

- a) Unless otherwise agreed the Contract Carrier shall give (14) fourteen days notice of Termination during which period the Principal Contractor may require the Contract Carrier to carry a learner with the Contract Carrier for familiarization.
- b) The Contract carrier shall return all Company Property upon termination prior to final payment being made.



## 10.2 Termination by the Principal Contractor

- a) The Principal Contractor may terminate a Contract Carrier by giving (14) days written notice to the Contract Carrier.
- b) In the event of serious misconduct by the Contract Carrier or a breach of his/her Responsibility by the Contract Carrier, and/or clause of this Agreement, the Principal Contractor may terminate a Contract Carrier immediately without notice.
- c) Notice of the Principal Contractors intention to cease trading: four (4) weeks notice
- d) Disclosure of confidential information; (Immediate termination)
- e) In the event of Principal Contractor changing to Principal Contractor owned vehicles four (4) weeks notice to be given and the principle of "last on first off" is to apply by vehicle size classification

## 11.0 WORK OUTSIDE THE PRINCIPAL CONTRACTOR

Both parties agree that the Contract Carrier shall not, without the prior written consent of the Principal Contractor, undertake any work during the course of engagement under this agreement for any person or entity who is:

- a) A competitor of the Principal Contractor or a related body; or
- b) In the reasonable opinion of the Principal Contractor, likely to become or intends to become a competitor of the Principal Contractor or a related body.

## 12.0 DRIVERS RUN SHEETS

During the course of this agreement, Contract Carrier may be required to enter delivery dockets and/or consignment notes into the Principal Contractor's computer system (utilized for the purpose of operating the business) for the purpose of generating a printed copy of the Daily Driver Run sheets:

- (a) Provided that the contract carrier has appropriate training in the operation of data input into the computer system as well as the operation of printing run sheets



## 13.0 INFORMATION CAPTURE

Under the terms of this Agreement contract Carrier shall be required to capture information about the daily operations as the load is being picked up or prior to reloading at the Chullora depot or other nominated sites subject to:

- (a) The necessary training has been provided by the Principal Contractor to perform this task accurately;
- (b) Contract Carrier will use their best endeavours, at all times, to perform this task accurately.

#### **14.0 TRAINING**

During the life of this Agreement, Contract Carriers will be required to undergo training in areas including, but not limited to, transport handling and storage of motor vehicles, transport handling and storage of dangerous goods, first aid, computer operations and data input, load securing and binding providing that:

- (a) Training Schedules are provided to ensure sufficient resources for the continuation of day to day operations;
- (b) Training may be conducted after hours and/or during scheduled business closures, such as over Christmas/New Year period, or as the market allows;
- (c) Training may be conducted on Saturdays at the Chullora depot, or another suitable site as determined by the Principal Contractor;
- (d) Varying training is provided to Contract Carrier to ensure the correct mix of skills to maintain and enhance customer service levels.

The Principal Contractor agrees to pay the cost associated with the training or course and the Contract Carrier agrees to contribute twenty (20) hours per annum of time for any necessary training. Should the Principal Contractor require the Contract Carrier to engage in any additional training the Principal Contractor will reimburse the Contract Carrier at the current labour wage rate – ordinary time relevant to vehicle classification.



#### **15.0 INDUCTION**

The Contract Carrier will be put through an induction programme upon engagement with a refresher course at regular intervals. This will be considered as part of training in accordance with Terms set out in Clause 14.0 Training.

#### **16.0 CONTRACT CARRIER AND QUALITY ASSURANCE MANUALS**

The Contract Carrier will comply at all times with the Policies and Procedures set out by the Principal Contractor. These procedures may be reviewed from time to time to reflect changes in the work environment. Training of Contract Carrier on procedural changes will be undertaken by Principal Contractor or nominated representatives. Procedures to be developed in consultation with Contract Carrier to suit operating requirements.



## 17.0 INSURANCE



### 17.1 Cover to be provided by Principal Contractor

#### 17.1.1 Automatic Goods Cover

The Principal Contractor agrees to provide automatic goods cover for all authorized vehicle cartage undertaken by the contract carriers under this agreement.

### 17.2 Cover to be provided by Contract Carriers

The rights and privileges of the Principal Contractor must be noted in policies held by the Contract Carriers under this agreement. All policies must meet the criteria set by the Principal Contractor and must remain current throughout the course of engagement by the Principal Contractor.

#### 17.2.1 Motor Vehicle Insurance

The Contract Carrier shall take out and ensure continuity of a Comprehensive Motor Vehicle policy, including:

- \$20,000,000 cover for third party property in respect of any one accident;
- Non owner trailer insurance (Toll's trailers) min \$35,000 or replacement value, whichever is greater (where applicable).

The rights and privileges of the Principal Contractor must be noted in the policy.

#### 17.2.2 Public Liability

The Contract Carrier shall take out and ensure continuity of a Public Liability Insurance Cover with a recognized insurer which cover shall provide indemnity mounting to not less than \$15,000,000 in respect of liability incurred as a result of any act or default of the Contract Carrier, his/her servants or agents.

The rights and privileges of the Principal Contractor must be noted in the policy.

#### 17.2.3 Worker's Compensation Insurance

The Contract Carrier shall take out and keep current a Worker's Compensation Insurance Policy providing Australia Wide Cover for any person who shall at any time is employed by the Contract Carrier. The cover provided must comply with the various Workers' Compensation legislation in Australian State and Territories. The Contract Carrier shall waive all rights to claims against the Principal Contractor resulting from personal injury to his/her employees.

The rights and privileges of the Principal Contractor must be noted in the policy.

#### 17.2.4 Personal Protection Insurance

The Contract Carrier shall take out and ensure continuity of Personal Protection Insurance. The policy is to ensure a capital sum payment in the event of permanent incapacity and, in the case of injury, incapacitation or illness, the payment of weekly sums for the period during which the Contract Carrier is unable to drive his/her vehicle sufficiently to meet all financial obligations in respect of the vehicle and the

need of the Contract Carrier to maintain a level of personal income. The Contract Carrier shall waive all rights to claims against the Principal Contractor resulting from personal injury to himself/herself.

The rights and privileges of the Principal Contractor must be noted in the policy.

### **17.3 Insurance Administration**

The Principal Contractor to hold a register of insurances, which will contain copies of all policies, held by the Contract Carrier.

Certificates of Currency to be provided six monthly, from the commencement of this agreement, or on the request of the Principal Contractor's representative.

The contract carrier must at all times comply with the specific requirements of the Principal Contractor, which may be varied in respect of Insurance at any time. In which case the contract carrier shall make necessary adjustments to comply.



## 18.0 GST

### 18.1 Tax Invoice

The Contract Carrier shall provide an invoice to the Principal Contractor in a format that complies with the GST Legislation.

### 18.2 Warranty

The Contract Carriers under this agreement shall provide the Principal Contractor with their ABN number no later than the 1<sup>st</sup> of July 2000.

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## 19.0 DISPUTES PROCEDURE

The parties acknowledge that this agreement is designed to place maximum emphasis on the peaceful settlement of all industrial disputes.

Procedures relating to Grievances of Individual Contract Carriers:

1. In the first instance a Contract Carrier or the elected representative should submit a request concerning any industrial issue to his or her immediate supervisor/foreperson.
2. If the matter cannot be resolved at this stage the following procedures shall be applied:
3. If the issue remains unresolved the supervisor and or the elected representative shall submit the issue to the appropriate senior management person.
4. If the issue remains unresolved the relevant union organization may have direct discussion with the appropriate senior management person and the employer's industry representative. Reasonable time limits must be allowed for discussion at each level of authority.
5. Should the matter remain unresolved there shall be an agreed cooling off period of a maximum 48 hours.
6. If after the cooling off period the dispute still exists after the above mentioned processes have been carried out, then the matter shall be referred to the New South Wales Industrial Relations Commission for consideration and or arbitration of the matter. The Commission's decision shall be accepted by all parties subject to the legal rights of appeal.

While these procedures are being followed, work shall continue as directed by the principal contractor.

## 20.0 REVIEW

The operation of this agreement shall be reviewed by the parties each six months during the first twelve months of the Agreement, and then annually thereafter.

## **21.0 RATES OF REMUNERATION**

The rates of remuneration applicable under this agreement shall be those outlined in the Transport Industry Car Carrier (NSW) Contract Determination March 1997, except for subclause (4) of clause 8 of part III 'Rates of Remuneration' of that determination shall not apply.

It is expressly agreed that notwithstanding anything in this agreement or that determination, the contract carrier and the principal contractor may determine by negotiation between them for the remuneration payable to a contract carrier for local work involving the carriage of a load of cars less than the carrying capacity of the vehicle.

The contract carrier shall not be obliged to undertake work under this subclause.

## **22.0 PRODUCTIVITY**

The parties to this agreement are committed to continuous improvement so as to improve efficiency, profitability and competitiveness of the business. To facilitate this KPI's and benchmarking will be established with the involvement of the Contract Carriers.

Areas for measure and continuous improvement would include:

- Minimization of downtime:
- Minimization of Damage rates

## **23.0 ADDITIONAL BENEFITS**

The principal contractor shall provide the contract carrier with a fuel card to allow the contract carrier to take advantage of a discounted rate, which reflects the buying power of the principal contractor.

Further, the principal contractor shall allow the contract carrier the benefit of its facilities for the purchase of tyres and repairs and maintenance.

This clause shall not be construed as to mean that the principal contractor shall incur the expense for the above-described items.

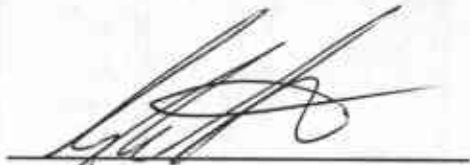
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24.0 SIGNATORY PAGE

Contract Carriers

Name	Signature	Date
Barroice Pty. Ltd (Tim Rebec)		7-7-00
R & B Mackay Pty. Ltd. (Ron Mackay)		7-7-2000
DSJ Pty. Ltd. (Don Mackay)		7-7-00
Jarinda Pty. Ltd. (Michael Kadry)		7-7-00
Dee Jay Pty Ltd. (David Harvey)		7-7-2000
Extreme Car Carriers P/L (Harry Parzakonis)		7-7-2000

On Behalf of Toll Logistics – Automotive Division:



**Perry Kritselas**  
National Manager Distribution Logistics & Planning

Date: 7-7-2000

