

**REGISTER OF
CONTRACT AGREEMENTS**

CONTRACT AGREEMENT NO: CA20/01

TITLE: Owens Transport Pty Ltd - TWU New South Wales Contract Carriers Agreement 2020

CASE NO: 2020/255705

DATE APPROVED/COMMENCED: 11 September 2020

TERM: 12 months

NEW AGREEMENT OR VARIATION: New

GAZETTAL REFERENCE: 23 October 2020

NUMBER OF PAGES: 11

COVERAGE/DESCRIPTION OF EMPLOYEES:

The agreement applies to all contract carriers employed by Owens Transport Pty Ltd located at 2 Coal Pier Road, Banksmeadow NSW 2019, who fall within the coverage of the Transport Industry - General Carriers Contract Determination 2017.

PARTIES:

Owens Transport Pty Ltd -&- The Transport Workers' Union of New South Wales

Owens Transport Pty Ltd –
TWU New South Wales Contract Carriers
Agreement 2020

OWENS



Terms of Agreement

1. Definitions

For the purposes of this Agreement the following definitions will apply

1. "Determination" shall mean the "Transport Industry - General Carriers Contract Determination 2017" and any variations from time to time.
2. "Rates of Pay" shall be the remuneration paid to Contract Carriers engaged by the Company pursuant to the current exemption granted by the Industrial Relations Commission pursuant to clause 21. Alternative Remuneration Arrangements of the Determination.
3. "Contract Carriers shall have the same meaning as ascribed to that term in Chapter 6 of the Industrial Relations Act 1996 (NSW)
4. "Contract of Carriage" shall have the same meaning as ascribed to that term in Chapter 6 of the Industrial Relations Act 1996 (NSW)
5. The "Company" shall mean "Owens Transport Pty Ltd" ABN 64 060 592 529.
6. The "Commission" shall mean the Industrial Relations Commission of New South Wales.
7. The Contract Carriers on attached Seniority list shall have the meaning attributed to preferred suppliers in section 4 Cl 6 of the International Standards Organization 9000 Series of Standards.
8. The "Union" shall mean the Transport Workers Union of New South Wales

2. Parties Bound

This Agreement will apply to:

- a) Owens Transport Pty Ltd ABN 64 060 592 529 and
- b) The Contract Carriers engaged by the Company to perform work at or from the Company's

container transport division operations currently located at Banksmeadow.

3. Operation of the Agreement and the Determination

The terms and conditions of the Determination will remain in force except where they are inconsistent with this Agreement, in which case this Agreement will prevail over the Determination.

The terms and conditions set out in this Agreement shall prevail over all existing and pre-existing customs, usages and practices.

4. Payments of Remuneration

In lieu of the provisions of Clause 12 (d) of the Determination, remuneration shall be paid so as to be available to the Contract Carriers no later than noon on the Friday of the second week following the close

of the pay period for which remuneration is payable, except when a public holiday falls within the two-week period the remuneration will be paid a day later, subject to:

- a) The Contract Carrier having submitted to the Company properly documented daily tax invoices; and
- b) Such tax invoices are submitted to the Company no later than the end of the day following the day to which the invoices relate; and
- c) The Contract Carrier has submitted tax invoices in a form as set out in the template detailed in Annexure I to this Agreement.

5. Insurances

- 5.1. Contract Carriers shall hold a current comprehensive motor insurance policy over the vehicle including cover for an amount of \$5,000,000 for third party property damage in respect of one accident. This insurance must be extended to cover trailing equipment that the contractor may tow from time to time, for accident (Trailer in Control insurance) up to the value of \$75,000.00. The company will be responsible to meet any cost above \$75,000.00.
- 5.2. Contract Carriers shall obtain and maintain a public liability insurance policy that covers Contract Carriers for an amount of \$20,000,000 in respect of any liability incurred by the Contract Carrier in the performance of work for the Company.
- 5.3. Contract Carriers shall obtain and maintain a current workers compensation policy, where they are a registered company.
- 5.4. Contract Carriers shall obtain and maintain a current superannuation policy in accordance with existing Federal Government legislation, where they are a registered company.
- 5.5. Contract Carriers shall produce for inspection by the Company a copy of all insurance policies required and evidence that full payment has been effected to the relevant insurance organization by the Contract Carrier under this agreement.
- 5.6. Where a Contract Carrier is unable to produce on request substantiation of insurance cover as required by this Agreement work shall not be allocated to the Contract Carrier until such documentation / substantiation is produced.
- 5.7. Where a Contract Carrier fails to produce the required Certificate/s of Insurance within 72 hours of a request to do so by the Company, The Company may terminate the Contract Agreement with the Carrier.
- 5.8. The Company shall obtain and maintain comprehensive insurance for all trailers and equipment owned by the Company. The company is responsible for insuring goods in transit (marine insurance) and any insurance costs pursuant to the cartage of goods.
- 5.9. In the event of an accident where damage is caused under circumstances where fault for the accident is attributed to the Contract Carrier, the Contract Carrier shall, if liable under common law be responsible to resolve the value of the claim. (3rd party property).
- 5.10. Pursuant to amendments to the relevant applicable workers compensation legislation in New South Wales (specifically section 175B of the Workers Compensation Act), each Contract Carrier shall:
 - a) Provide to the Company a declaration on a monthly or quarterly basis that the Contract Carrier has, and will continue to have paid any valid workers compensation insurances covering all its employees and contractors engaged or present in their business during the engagement period with the Company, its customers or agents; and

- b) Certify that if at any stage this statement may be rendered false, the Contract Carrier shall notify the company and cease to perform any work until the statement is corrected, the insurances are paid, or the certificate of currency is re-established; and

The Contract Carrier acknowledges that the matters set out in this sub-clause are obligations that are imposed under applicable legislation.

The Contract Carrier acknowledges that the Company may withhold payment and work until the matters set out in this sub-clause and the relevant applicable workers compensation legislation are complied with.

6. Contract Carriers Incorporation and Superannuation

- 6.1. Each new Contract Carrier (not on the seniority list as of 15th July 2003) is required to be an incorporated company entity, within the state of NSW prior to commencement, and must remain incorporated whilst engaged by the company. No company (incorporation) payments will be made to new contractors.
- 6.2. The Company may require the Contract Carrier to provide the Company with documentation proving the currency of its incorporation.
- 6.3. Those Contract Carriers who are incorporated must provide the Company with documentation proving this fact. These Contract Carriers must also show evidence that their company is paying their superannuation contributions.
- 6.4. The incorporated Contract Carrier shall provide the Company with documentary evidence on a quarterly basis (commencing from the date of this Agreement or post 30th September 2003) that it has paid superannuation entitlements under the applicable legislation for itself and for its employees.

7. Licenses

- 7.1. Contract Carriers shall at all times hold and shall produce on request for inspection by the Company, a current driver's license appropriately endorsed and issued in respect of a motor vehicle of the class of the Contract Carriers vehicle.
- 7.2. Contract Carriers shall immediately notify the Company if the license is suspended or cancelled.
- 7.3. Where a Contract Carrier requires additional license/s (including but not limited to a Dangerous Goods License) to undertake work for the company, the Contract Carrier will ensure that such licenses are current and will be produced on request for inspection by the Company.
- 7.4. The Contract Carrier shall not undertake work whenever a relevant license is suspended or cancelled and shall notify the Company immediately should suspension or cancellation of the license/s occur.

8. Painting of Vehicles / Making Good Vehicles

- 8.1. The Company may at its discretion, paint and/or sign write the Contract Carriers vehicle to the Company's specifications provided that:
 - a) The Company meets 50% of any costs associated with painting the vehicle to their specifications, any signwriting will be at the Company's cost;
 - b) The Contract Carrier agrees to have their vehicle sign written.
- 8.2. All Contract Carrier vehicles are to be presented for work in a clean and roadworthy manner. Contract Carriers vehicles must meet the following standard;
 - a) The vehicles must be washed on a regular cycle

- b) Accident/Rust damage to be rectified in a timely fashion.
- c) The vehicles must have current registration and be roadworthy

Contract Carriers whose vehicles do not meet the above standards will not be allocated work.

- 8.3. Subject otherwise to the provisions of Clause 5.9 (b) of the Determination, where a Contract Carrier ceases work for the Company, the Company's responsibilities will be limited to the removal of signage/decals. The Company will meet the cost associated with removal of signage from the vehicle and restoring paintwork.

9. Compliance with Fatigue Management

- 9.1. Contract Carriers and the Company will be responsible to comply with legislated driving and maximum attendance hours and the Company will not request Contract Carriers to work beyond these hours.
- 9.2. Contract carriers will also be responsible for taking rest / fatigue breaks as required under the relevant applicable legislation.

10. Conditions of Vehicles

- 10.1. The Company's rights under this Agreement are limited to the specification and enforcement of minimum standards in respect to reliability, suitability and presentation of vehicles used by Contract Carriers to undertake work for the Company.
- 10.2. The Contract Carrier shall make available a vehicle that meets the Company's expressed minimum standards in respect to the suitability of the vehicle to undertake work covered by the Contract of Carriage, the reliability of the vehicle (i.e. - Road worthiness) and the presentation of the vehicle.
- 10.3. Where, in the Company's opinion the Contract Carrier fails to provide the vehicle in such condition, the Company may give written notice to the Contract Carrier requesting that the vehicle be in a clean, presentable and roadworthy condition.
- 10.4. Once such notice has been given, the Contract Carrier will, within a period of not more than two (2) months from the date of the notice, rectify such problems as identified by the Company, or notify the Company, in writing within seven (7) days, of any objection to the assessment or requirements. Where agreement cannot be reached to the satisfaction of both parties, independent arbitration will be sought according to Clause 17, Disputes procedure. Notwithstanding this, the Company reserves the right not to allocate work to a Contract carrier as stated in clause 8.2.
- 10.5. Where a Contract Carrier fails to effect the necessary changes, the Company may terminate the Contract Agreement, giving one (1) months' notice in writing of its intention to do so.
- 10.6. The Company may not request that the Contract Carrier effect replacement of vehicle/s. Age of vehicle shall not be used as criteria in determining suitability, reliability or presentation in the absence of demonstrable failure of the Contract Carrier's vehicle to meet other standards/specifications with regard to these areas.

11. Contract Carriers to Undertake Work

- 11.1. Contract Carriers may provide assistance with the loading/unloading of freight containers and agree that this constitutes, in part, the Contract of Carriage. However, this assistance shall be limited to loading/unloading with, wherever possible, two additional laborers provided by the Customer (point of delivery or point of pickup) and shall be negotiated between the Company, Contract carrier and the Customer. A list of contract carriers who are happy to assist in loading / unloading will be established.

- 11.2. Further assistance with loading/unloading freight containers may only be provided where there is no safety hazard or health risk associated with this activity.
- 1 1.3. The Company will undertake to try to minimize delays at the point of pickup/delivery. It is noted that, in the majority of cases the company has no control over loading or unloading points.

12 Over Dimensions/Weight and Hazardous Containers

- 12.1. Contract Carriers shall not carry over dimension or overweight containers/loads unless they have the necessary permits/safety equipment and EPG's.
- 12.2. At all times the contract carrier must operate within the laws and legislation of local, state and Federal parliaments.

13. Rates of Remuneration

- 13.1. Rates of pay negotiated under this Agreement (Refer Annexure shall remain at least equal to those provided for under the Determination (Schedule D).
- 13.2. The current rates as specified in the Determination (General Carriers Contract Determination) (Schedule D) shall be used to calculate the equivalent remuneration under the determination.
- 13.3. For the purpose of conducting productivity analysis and costing, all work performed is on a job-by job basis. The start time for each job, is the arrival time at the first leg of the job (or requested start time, if the Contract Carrier is required to be early) and concludes with the completion of work at the final leg of the same job. For the avoidance of doubt, travel from and to the Contract Carriers residence or location other than the pick-up and delivery points will not be regarded as the starting or finishing time for any job.
- 13.4. The Company shall carry out a review of the difference between actual remuneration paid to Contract carriers and the equivalent Contract Determination rate at the end of each 2-month period. Contract carriers shall be reimbursed for any differences between the rate paid under this Agreement and the equivalent rate under the Determination within 14 days of the end of each 2-month period. For the exercise, the Company will utilize the start time from the first job, (including travel time between all subsequent jobs), travel to the finish time of the last job less 0.5 hour lunch break, as set out in the determination under Clause 9, plus 30 minutes travel time.
- 13.5. The parties agree to review the current rate structure by mutual consent after 6 months have elapsed from registration date. The company may also discuss box rates / agreements for certain tasks with drivers if it is in the interest of both parties to do so and agreed to by the yard committee. and agreed to by the yard committee. Any agreement will be added as an addendum to the agreed rate schedule.

14. Right of Work

- 14.1. This Agreement does not confer any right of work to the Contract Carriers or minimum allocation of work. The company can, and will offer any work it has available to it to the contract carrier, on the basis of seniority, or the roster system utilised, but cannot guarantee a start to every driver every day, nor minimum work hours when the driver does start.

15. Precedence for Allocation of Work

- 15.1. Contract Carriers shall be assigned, to an order of seniority (Contract Carriers Seniority List) agreed to by the Company, the Union and the Contract Carriers. Seniority will be based on Contract Carriers respective length of service with the Company and compliance with company incorporation as referred to within section four (4). Contract Carriers who join the

Company following the adoption of this Agreement shall be included in the Contract Carriers seniority List in an order that reflects their length of service with the Company. Contract Carriers who undergo a change in company name / status will retain seniority level held prior to any such change in status.

- 15.2. The Company may introduce a GPS system to enhance operational coordination and shall meet the cost of individual vehicle installation. Contract Carriers will be trained in all new technology being introduced prior to installation. The company is responsible for the installation, maintenance and insurance of the equipment. The contractor is responsible for all additional mounting costs, if the vehicle is changed within a 3-year period.
- 15.3. The Company may provide a suitable communication system to Contract Carriers vehicles at the Company's expense. The Contract carrier is responsible for all new fittings after this point. The Contract Carrier is responsible for the demounting and return of the radio if engagement ceases. The company is responsible for maintenance and insurance of the unit.
- 15.4. Contract Carriers who have entered into the head Contract of Carriage by way of purchasing a vehicle owned by a previous Contract Carrier, understand that they have not been required by the Company to make a payment to the previous Contract Carrier, as either a premium or fee of any type, nor has the previous Contract carrier been authorized by the Company to transfer any entitlement in connection with entry into the head Contract of Carriage with the company. Notwithstanding day-to-day operational requirements of the company, the new contract carrier acknowledges that allocation of work will be by longevity and position on the seniority list, and no levels of work or remuneration is implied or guaranteed. There is no goodwill or security of tenure with the company that is implied or guaranteed. The placement on the seniority list may, in fact result in no work being offered at all if market conditions so dictate. It is noted that the contractors currently practice a roster system in order to share the work volume, and allocation is made on this basis and not seniority. Whilst the contractors continue their joint agreement with this arrangement, the practice will continue.
- 15.5. Where the Company seeks to allocate work of a special nature, the Contract Carriers demonstrated suitability to meet the needs of the Contract of Carriage in, but not limited to, the following areas, are to be considered in the allocation of such work - Reliability and suitability of vehicle: Demonstrated skills of the Contract Carrier, Customer Relations, Commitment to Service, Administrative competence and Driving competence.
- 15.6. The Company shall take all steps to ensure the equitable distribution of work to Contract Carriers in accordance with the provisions set out in this Agreement, but does not guarantee, nor will commit to equalization of earnings.
- 15.7. If any circumstances arise where a reduction in overall fleet is deemed necessary through insufficient work, the Company will invite Contract Carriers to nominate for voluntary leaving. In the event that no Contract Carriers nominate for voluntary leaving, the future allocation of work (Contract of Carriage with Carriers) will be determined on a last on, first off basis subject to vehicle configuration requirements.
- 15.8. Subject to the Contract Carrier observing the obligations prescribed under Clause (7) of the Determination, at times when Contract of Carriage are not available to be undertaken by the Contract Carrier, the Company will not raise objections to the Contract Carrier undertaking work with his or her vehicle under a Contract of Carriage with another principal contractor so long as the Contract Carrier provides the Company with notice, where practicable, of when and what times the Contract Carrier will otherwise be engaged.
- 15.9. The Contract Carriers Seniority list referred to herein is set out as Annexure "B" hereto and shall be varied from time to time, subject to agreement being reached between the parties. Where

named carriers are constantly and systematically not available for work, the company shall investigate and determine if the contract carrier should remain on the list. This is to prevent contract carriers remaining on the list when they have, in fact withdrawn service from the company. Any contract carrier who does not make itself available for 2 continuous months without written explanation (accepted by the company) shall be deemed to have left, and his name removed from the seniority

- 15.10. All Contract Carriers included in the Seniority List shall be allocated work before casual or non-seniority list Carriers wherever practicable.

16. Termination

- 16.1. The provisions of Clause 13 of the Determination shall apply with respect to routine terminations of Contract Carriers occurring as a result of the normal and customary turnover of business and shall be otherwise subject to the right of the Company to maintain a sufficient, suitable vehicle/s to maintain its policy objectives and the requirements of clients of the Company.
- 16.2. For purposes of Clause 13 of the Determination, the Company will be entitled to regard the circumstances of a Contract Carrier not attending to undertake Contracts of Carriage for the Company over two successive months period without advising the Company the reason for such non — attendance as abandonment of Contracts of Carriage between the Contract Carrier and the Company together and will assume an intention not to resume and carry out further Contract of Carriage.
- 16.3. In the event the Company seeks, pursuant to the provisions of this Agreement, to reduce the number of fleet, prior to the leaving of any Contract Carrier the Company shall, subject to the degree to which other standards are met, first seek to reduce the fleet with respect to vehicles which are not actually owned and driven by such Contract Carriers with the exception of Company owned vehicles. Termination of such Contract Carriers will be in accordance with the relative seniority status of Contract Carriers and will proceed on a last on first off basis.

Where a reduction in fleet numbers occur, all payments of goodwill, redundancy or other payment will be made to the contractor on the basis of 3 weeks per year of service, capped at 13 weeks based on the TWU state award, grade 7. New contractors (not on the seniority list as of 15th July 2003) must have 2 years continuous service to qualify for this provision. Where there is a Redundancy contract determination for lorry-owner drivers applicable to drivers covered by the General Carriers determination then the company shall pay redundancy entitlements in accordance with the determination or the Owens agreement which ever has the greatest benefits to the drivers

17. Settlement of Disputes

- 17.1. Disputes between Contract Carriers and the Company shall be dealt with in accordance with the provisions set out in the Determination.
- 17.2. Specifically, the following process shall be followed by Contract Carriers in all situations where resolutions of disputes, problems or questions are required.
 - 17.2.1. wherever possible and practical, issues shall be addressed at the enterprise level to facilitate efficient and effective resolution.
 - 17.2.2. With respect to operational issues, differences should be directly discussed between involved parties in the first instance, following the process set out in the Company's operational procedural manuals. Contract Carriers have the right to have the Union delegate present at meetings with the Company aimed at resolving issues that arise

from matters of an operational nature. Where agreement/resolution is unable to be reached between parties at this level the matter is to be referred to the Site Committee reviewing operational procedures for mediation.

17.2.3. With respect to issues of a more formal nature, i.e. those arising from the application of the provisions of the Determination, or of the Contract Agreement, including but not limited to issues relating to payment of remuneration, the meeting between the Contract Carrier/s and management will take place in the presence of a Union yard delegate at the request of the Contract Carrier. The Company shall investigate the issue if necessary and will provide a response to the complaint/s within a period no more than 48 hours, or as soon as practical thereafter. Should the issue not be resolved at any of the above stages, the Complainant or Yard delegate may seek the advice and involvement of the Union in the process of achieving settlement. Should this be necessary, a meeting between the Complainant, Yard delegate, representative from the Company, will be sought where the parties will commit themselves to resolving the issue through consultation and discussion wherever possible.

17.2.4. Where parties are unable to reach agreement. The matter will be referred to the Commission for hearing and determination. The Commission's decision shall be adopted by the parties and be binding without equivocation.

17.2.5. In the event the Company wished to raise an issue with a Contract Carrier/s, it may require the Contract carrier/s attend a meeting at the Company's principal place of business in order to discuss such issue.

.1.Should the issue not be resolved at this point, the Contract Carrier may at his/her/its discretion request another Contract carrier (who shall be where possible a yard delegate) to be in attendance at a further meeting with a view to resolving the issue.

17.2.5.2. Where the issue is one which effects the operation of this Agreement, or otherwise affecting all or a number of the Contract Carriers, the issue shall be raised with the yard delegate for reference to the Union Branch Secretary.

17.3. Whilst any of the above processes are being undertaken, work shall continue as normal, without limitation. Except in instances where the issue involves termination of a Contract Carrier the status quo shall remain until a resolution is achieved. In instances of termination, the terminated Contract Carrier shall be suspended from being allocated work until a decision regarding reinstatement of Contract of Carriage, allocation of work shall resume as normal from the time of such decision,

without any further prejudice to the Contract Carrier. Where the company has been negligent in its decision after the dispute process, the contractor and company may negotiate a post gratias payment to the contractor, limited to \$500.00 per day to a maximum of 5 days.

17.4. Contract Carriers who have been issued with uniforms shall wear such uniforms whilst undertaking work for the Company. Such uniform shall be maintained cleaned and repaired by the Contract Carrier, subject only to fair wear and tear.

17.5. Uniforms shall not be worn whilst the Contract Carrier is not engaged in work specifically for the Company and shall be returned to the Company on the Contract Carrier ceasing to perform work for the Company.

18. Yard Advisory Committee

- 18.1. A Yard Advisory Committee, which shall include the Branch Secretary of the Union or his nominee and the senior site delegate, together with an equal number of management representatives, shall be formed to;
- 18.1.1. Ensure the correct application of this Agreement, particularly in light of the provisions of the Determination.
- 18.1.2. Further measures to be considered for implementation, consistent with commitment of the parties to bring about further structural efficiency, or with a view to modernizing this Agreement.
- 18.1.3. Determine a matter with respect to the operation of this Agreement. or the implementation of any provision or aspect thereof, which may then but put to a vote of the Contract Carriers and to the Company as a recommendation only and shall not be a "claim" as provided in Clause 14. If agreed to by all parties, without duress of any kind being exerted by one party on the other, the recommendation may be accepted by the Company and shall be adopted in the context and spirit of this Agreement PROVIDED THAT it does not have the effect of varying any provision of the Determination without it being first ratified by the Commission.

19. Declaration

- 19.1. The parties hereto declare that this Contract Agreement has been negotiated through a process of extensive and genuine consultation between the Company, the Contract Carriers and the Union. The terms and content hereof have been the subject of discussion between representatives of the respective parties, and with the Contract Carriers at yard meetings held for this purpose. All parties subscribing to this Contract Agreement, or affected by its coverage, do so with full knowledge of its content and intent, the effect of implementation of the provisions hereof, and the implication of approval by the Commission.
- 19.1.1. The parties further declare that this Contract Agreement is, in the opinion of the parties not contrary to public interest
- 19.1.2. is not unfair harsh or unconscionable to any person affected hereby. or any other relevant person;
- 19.1.3. was at no stage entered into under duress exerted by any party hereto; and
- 19.1.4. reflects the interests and desires of the parties hereto

20 Term of Contract Agreement

- 20.1. This Contract Agreement shall commence on and from the date of ratification by the Commission and shall continue in force for a period of twelve (12) months and thereafter until varied by the parties, or by changes to the Contract Determination, once ratified.
- 20.2. The Parties commit to enter negotiations to vary or replace this Agreement 3 months prior to any notification to terminate the Agreement.

The parties have signed hereto on the xx day of September xxxx

For and on behalf of
Owens Transport Pty Ltd
ABN 64 060 592 529
By Authority of the Board

Witness

For and on behalf of
Transport Workers Union of
New South Wales
(R. Olsen)

Witness.

By the Elected Representatives of the
Contract Carriers whose names and
Vehicle numbers are scheduled hereto

George Mans A99

Keith Stone L94