

(1548)

SERIAL B9502

**BORAL GST PROTOCOL (FACILITATION AND COMPLIANCE)
CONTRACT DETERMINATION**

Schedule of Consolidated Award Published on 1.12.00 and Subsequent Variations Incorporated

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DETERMINATION

Arrangement

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1. Purpose

- 1.1 Facilitation and Compliance — The purpose of this Contract Determination is to:
- (a) facilitate the orderly implementation of the GST as it applies to Boral and its Carriers; and
 - (b) promote compliance with Part VB and X1AA of the *Trade Practices Act 1974* and the *Price Exploitation Code (New South Wales) Act 1999*.

2. Transition

- 2.1 Review Opportunity — The parties to this Contract Determination acknowledge that this Contract Determination provides a review opportunity for Boral's Carriers to change the consideration paid to them by Boral because of the imposition of the GST.

3. GST

- 3.1 Payment — Boral. shall pay each Carrier the GST Amount.
- 3.2 Calculation — The GST Amount shall be calculated on the consideration as varied under this Contract Determination.
- 3.3 Payment Conditional — Boral's obligation to pay a GST Amount shall be conditional on compliance by a Carrier with this clause 6.

4. Passing On Savings

4.1 Fuel —

- (a) Before the fuel review date:
 - (i) all Carriers who are eligible shall register for the diesel fuel rebate; and
 - (ii) discussions shall take place fleet by fleet to determine the percentage amount consideration should be reduced (and the most appropriate way to apply this) for that fleet to pass on the savings from:
 - (A) the diesel fuel rebate; and
 - (B) any savings arising from the GST on account of fuel, to Boral.
- (b) The amount of reduction so determined in accordance with this subclause shall be:
 - (i) reduced to writing by Boral who shall provide a copy to the Union; and
 - (ii) deducted from a Carrier's consideration on and from the fuel date.
- (c) Despite paragraph (a) and (b) above, if a Carrier operating a vehicle or prime mover introduced into a fleet before 1 July 2000:
 - (i) is ineligible for the diesel fuel rebate; or
 - (ii) becomes ineligible for the diesel fuel rebate,they shall have their existing or pre diesel fuel rebate reduced (as the case may be) consideration maintained and discussions shall occur as to how this should be managed.

4.2 Other Savings —

- (a) Before the savings review date:
 - (i) discussions shall take place fleet by fleet to determine the percentage amount consideration should be reduced (and the most appropriate way to apply this) for that fleet to pass on any other savings arising from the GST such as R&M, tyres etc to Boral; and
 - (ii) discussions shall take place fleet by fleet to determine the percentage amount consideration should be increased (and the most appropriate way to apply this) for that fleet to have passed on to it any increases in administration costs arising from the GST.
- (b) The net amount determined from paragraph (a) (i) and (ii) above shall be:
 - (i) reduced to writing by Boral who shall provide a copy to the Union; and
 - (ii) deducted from or added to, as the case may be, a Carrier's consideration from the date of its determination and in any event no later than the savings date.

4.3 Savings Etc After 1 October 2000 — After 1 October 2000 the parties shall review, from time to time, whether any further savings or costs arise from the GST, the diesel fuel rebate or any amendment to the GST or diesel fuel rebate and discuss and endeavour to agree on how these might best be determined and implemented.

5. Disputes

- 5.1 Procedure — Should agreement not be reached as to the amount of any change to consideration or on any other issue that requires agreement it shall be determined in accordance with:
- (a) such procedure as is currently in use in a fleet;
 - (b) an alternative procedure as agreed to by the Carriers' in a fleet and Boral; or
 - (c) (if no procedure is currently in use and failing agreement in accordance with paragraph (b)) the procedure set out in the Transport Industry (GST Facilitation) Contract Determination.

6. Tax Invoice

- 6.1 Recipient Created Tax Invoices — All Carriers shall operate on the basis of a recipient created tax invoice and shall do all that is required of them to operate on such a basis.
- 6.2 Obtaining an Input Tax Credit — A Carrier shall do all things reasonably requested by Boral. to enable Boral. to obtain any input tax credit to which it is entitled.

7. Rise and Fall Formulae

7.1 GST Not Included —

All adjustments to consideration after 1 July 2000 whether based on a:

- (a) market review of costs; or
- (b) rise and fall formula,

shall be exclusive of GST where Carriers can claim an input tax credit for that cost in a market review or cost item in a rise and fall formula.

8. Exclusions

- 8.1 Brick and Masonry Carriers — Despite anything else in this Contract Determination, the implementation of the GST to the Brick/Masonry Carriers engaged by Boral Transport Limited shall be conducted in accordance with the terms of the agreement between those Carriers and Boral Transport Limited.
- 8.2 M5 East — The Carriers engaged by Boral on the M5 East project (that are regulated by the Transport Industry Excavated Materials Contract Determination) shall be excluded from this Contract Determination and the parties shall hold separate discussions in relation to this group to ensure compliance with the GST Legislation.

9. Area, Incidence and Duration

- 9.1 Application — Subject to clause 8, Exclusions, this Contract Determination shall apply to all contracts of carriage performed wholly within New South Wales by Carriers for Boral.
- 9.2 Variation — This Contract Determination shall:
- (a) operate as a variation to any other contract determination that otherwise would apply, to the extent of any inconsistency; and
 - (b) (to avoid any doubt) override any contract agreement that applies to Boral that does not deal with the subject matter of the GST.
- 9.3 Commencement and Term — This Determination shall commence on and from 28 June 2000 and shall remain in force for a period of one year.

10. Dictionary

10.1 Meaning of Terms Used — Words in the left-hand column of the dictionary have the meaning given by the right-hand column of the dictionary unless the context requires otherwise.

Term	Meaning
GST	The goods and service tax.
Fleet	A distinct group of Carriers such as the Tipper Haulier fleet or the Sydney Concrete Owner-Driver fleet etc.
Savings arising from GST	A reduction in the direct or indirect costs to a Carrier in providing a cartage service to Boral because of the abolition, modification or affect in any other way (for example because of the introduction or modification of a tax rebate or refund) of any tax (including without limitation wholesale sales tax but excluding income tax) following the introduction of the GST.
Boral	Boral Transport Limited, Boral Country (NSW) Pty Limited, Boral Resources (NSW) Pty and Blue Circle Southern Cement Limited trading as Blue Circle Packaging at Seven Hills their successors and assigns.
GST legislation	<ul style="list-style-type: none"> (a) The <i>A New Tax System (Goods and Services Tax) Act 1999</i>; and (b) Any Act that imposes GST; and (c) The <i>A New Tax System (Goods and Services Tax Transition) Act 1999</i>; and (d) The <i>Taxation Administration Act 1953</i>, so far as it relates to any Act covered by paragraphs (a) to (c); and (e) Any other Act, so far as it relates to any Act covered by paragraphs (a) to (d) (or to so much of that Act as is covered); and (f) Regulations under any Act, so far as they relate to any Act covered by paragraphs (a) to (e) (or to so much of that Act as is covered); and (g) Parts VB and XIAA of the <i>Trade Practices Act 1974</i>; and (h) The <i>Price Exploitation Code (New South Wales) Act 1999</i>

Consideration	The consideration paid by Boral to a Carrier however termed (rate, cartage rate etc) for performing cartage work.
Carrier	A carrier undertaking a contract of carriage for Boral as defined by Section 309 of the <i>Industrial Relations Act 1996</i> whether styled a lorry owner-driver, operator or haulier.
Diesel fuel rebate	The rebate available under the Diesel and Alternative Fuel Grants Scheme as varied from time to time.
Union	Transport Workers' Union of Australia, New South Wales Branch.
Discussions shall take place fleet by fleet	Discussisons held between Boral and the persons acting for a fleet (whether termed representative or delegate) and when requested by the Carrier's in a fleet an officer of the Union.
Fuel review date	1 July 2000 except for the Quarry LOD Fleet and the Blue Circle Packaging Seven Hills LODs which shall be 1 August 2000.
Fuel deduction date	1 July 2000 except for the Quarry LOD Fleet and the Blue Circle Packaging Seven Hills LODs which shall be 1 August 2000.
Savings review date	1 October 2000 except for the Sydney Concrete Fleet which shall be 31 December 2000.
Savings date	1 October 2000 except for the Sydney Concrete Fleet which shall be 1 February 2001.
Parties	The Union and Boral.
GST Amount	Any amount which is payable by a Carrier on account of GST as a consequence of any supply made to Boral under a contract of carriage but excluding any amount on account of a fine, penalty, interest or other amount for which a Carrier is liable, to the extent that the liability arises as a consequence of a default of the Carrier, a Carrier's employees, agents or any other persons acting for the Carrier.