

AS 4902—2000
(Incorporating Amendment No. 1)

AS 4902—2000

Australian Standard™

**General conditions of contract for
design and construct**



This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

The following are represented on Committee OB-003:

Association of Consulting Engineers Australia
Australian Chamber of Commerce and Industry
Australian Procurement and Construction Council
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Engineers, Australia
Institution of Professional Engineers, New Zealand
Law Council of Australia
Master Builders Australia
National Construction Council of the Australian Industry Group
Process Engineers and Constructors Association
Royal Australian Institute of Architects

Keeping Standards up-to-date

Standards are living documents which reflect progress in science, technology and systems. To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued. Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments which may have been published since the Standard was purchased.

Detailed information about Standards can be found by visiting the Standards Web Shop at www.standards.com.au and looking up the relevant Standard in the on-line catalogue.

Alternatively, the printed Catalogue provides information current at 1 January each year, and the monthly magazine, *The Global Standard*, has a full listing of revisions and amendments published each month.

Australian Standards™ and other products and services developed by Standards Australia are published and distributed under contract by SAI Global, which operates the Standards Web Shop.

We also welcome suggestions for improvement in our Standards, and especially encourage readers to notify us immediately of any apparent inaccuracies or ambiguities. Contact us via email at mail@standards.org.au, or write to the Chief Executive, Standards Australia, GPO Box 5420, Sydney, NSW 2001.

This Standard was issued in draft form for comment as DR 97528.

AS 4902—2000
(Incorporating Amendment No. 1)

Australian Standard™

General conditions of contract for design and construct

First published as AS 4300—1995.
Revised and redesignated AS 4902—2000.
Reissued incorporating Amendment No. 1 (March 2005).

COPYRIGHT

© Standards Australia

All rights are reserved. No part of this work may be reproduced or copied in any form or by any means, electronic or mechanical, including photocopying, without the written permission of the publisher.

Published by Standards Australia, GPO Box 5420, Sydney, NSW 2001, Australia

ISBN 0 7337 3524 X

PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

This Standard incorporates Amendment No. 1 (March 2005). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

This Standard is the result of a consensus among Australian and New Zealand representatives on the Joint Committee to produce it as an Australian Standard.

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

Subclauses 8.6 and 29.2, prefixed by *, are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part E or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating deletions in Annexure Part E.

WARNINGS

- (1) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUC) does not limit the liability of parties for special, indirect or consequential losses.

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 16A (Insurance of the Works), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

Parties wishing to limit their liability should seek insurance and legal advice before entering a contract under this Standard.

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) **The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.**
- (4) **Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.**
- (5) **Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.**

CONTENTS

Clause	Title	Page
1	INTERPRETATION AND CONSTRUCTION OF CONTRACT	6
2	NATURE OF CONTRACT.....	11
3	PROVISIONAL SUMS.....	12
4	SEPARABLE PORTIONS	12
5	SECURITY	13
6	EVIDENCE OF CONTRACT.....	13
7	SERVICE OF NOTICES.....	14
8	CONTRACT DOCUMENTS.....	14
9	ASSIGNMENT AND SUBCONTRACTING.....	15
10	INTELLECTUAL PROPERTY RIGHTS.....	17
11	LEGISLATIVE REQUIREMENTS.....	17
12	PROTECTION OF PEOPLE AND PROPERTY	18
13	URGENT PROTECTION	18
14	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE.....	18
15	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC	19
16A	INSURANCE OF THE WORKS	20
16B	PROFESSIONAL INDEMNITY INSURANCE.....	21
17	PUBLIC LIABILITY INSURANCE.....	21
18	INSURANCE OF EMPLOYEES.....	22
19	INSPECTION AND PROVISIONS OF INSURANCE POLICIES.....	22
20	SUPERINTENDENT	23
21	SUPERINTENDENT'S REPRESENTATIVE.....	23
22	CONTRACTOR'S REPRESENTATIVE	23
23	CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.....	24
24	SITE.....	24
25	LATENT CONDITIONS	24
26	SETTING OUT THE WORKS	25
27	CLEANING UP.....	26
28	MATERIALS, LABOUR AND CONSTRUCTION PLANT.....	26
29	QUALITY.....	26
30	EXAMINATION AND TESTING.....	27
31	WORKING HOURS.....	28
32	PROGRAMMING	28
33	SUSPENSION	29
34	TIME AND PROGRESS.....	29
35	DEFECTS LIABILITY	31
36	VARIATIONS.....	31
37	PAYMENT.....	32

	<i>Page</i>
38 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS	34
39 DEFAULT OR INSOLVENCY	35
40 TERMINATION BY FRUSTRATION.....	38
41 NOTIFICATION OF CLAIMS	39
42 DISPUTE RESOLUTION	39
43 WAIVER OF CONDITIONS.....	40
ANNEXURE PART A	41
ANNEXURE PART B—APPROVED FORM OF UNCONDITIONAL UNDERTAKING.....	52
ANNEXURE PART C—DEED OF NOVATION (SUBCLAUSE 9.2(C))	53
ANNEXURE PART D—DEED OF NOVATION (SUBCLAUSE 9.4).....	55
ANNEXURE PART E—DELETIONS, AMENDMENTS AND ADDITIONS	57
INDEX	58

STANDARDS AUSTRALIA

Australian Standard

General conditions of contract for design and construct

1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

- Item** means an *Item* in Annexure Part A;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
 - (b) those listed in *Item* 31;
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** has the meaning in clause 6;
- contract sum** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;
 - (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
 - (c) where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item* 10 as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

<i>date for practical completion</i>	means: <ul style="list-style-type: none"> (a) where <i>Item 7(a)</i> provides a date for <i>practical completion</i>, the date; (b) where <i>Item 7(b)</i> provides a period of time for <i>practical completion</i>, the last day of the period, <p>but if any <i>EOT</i> for <i>practical completion</i> is directed by the <i>Superintendent</i> or allowed in any arbitration or litigation, it means the date resulting therefrom;</p>
<i>date of acceptance of tender</i>	means the date which appears on the written notice of acceptance of the tender;
<i>date of practical completion</i>	means: <ul style="list-style-type: none"> (a) the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or (b) where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date;
<i>deed of guarantee, undertaking and substitution</i>	has the meaning in subclause 5.6;
<i>defects</i>	has the meaning in clause 35 and includes omissions;
<i>defects liability period</i>	has the meaning in clause 35;
<i>design documents</i>	means the drawings, specifications and other information, samples, models, patterns and the like required by the <i>Contract</i> and created (and including, where the context so requires, those to be created by the <i>Contractor</i>) for the construction of <i>the Works</i> ;
<i>direction</i>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
<i>dispute</i>	has the meaning in clause 42;
<i>EOT (from 'extension of time')</i>	has the meaning in subclause 34.3;
<i>excepted risk</i>	has the meaning in subclause 14.3;
<i>final certificate</i>	has the meaning in subclause 37.4;
<i>final payment</i>	has the meaning in clause 37;
<i>final payment claim</i>	means the final payment claim referred to in subclause 37.4;
<i>intellectual property right</i>	means any patent, registered design, trademark or name, copyright or other protected right;
<i>latent condition</i>	has the meaning in subclause 25.1;

- legislative requirement** includes:
- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
 - (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
 - (c) fees and charges payable in connection with the foregoing;

practical completion is that stage in the carrying out and completion of *WUC* when:

- (a) *the Works* are complete except for minor *defects*:
 - (i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
 - (ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of *the Works*;
- (b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach *practical completion* have been carried out and passed; and
- (c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;

preliminary design means the documents stated in *Item 11*;

prescribed notice has the meaning in subclause 41.1;

Principal means the Principal stated in *Item 1*;

Principal's project requirements means the *Principal's* written requirements for *the Works* described in the documents stated in *Item 10* which:

- (a) shall include the stated purpose for which *the Works* are intended;
- (b) may include the *Principal's* design, timing and cost objectives for *the Works*; and
- (c) where stated in *Item 10*, shall include a *preliminary design*;

program has the meaning in clause 32;

progress certificate has the meaning in subclause 37.2;

provisional sum has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;

public liability policy has the meaning in clause 17;

- qualifying cause of delay** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
 - (b) other than:
 - (i) a breach or omission by the *Contractor*;
 - (ii) industrial conditions or inclement weather occurring after the *date for practical completion*; and
 - (iii) stated in *Item 28*;
- schedule of rates** means any schedule included in the *Contract* which, in respect of any section or item of *work* to be carried out, shows the rate or respective rates of payment for the execution of that *work* and which may also include lump sums, *provisional sums*, other sums, quantities and prices;
- security** means:
- (a) cash;
 - (b) retention moneys;
 - (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
 - (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
 - (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
 - (f) other form approved by the party having the benefit of the security;
- selected subcontract work** has the meaning in subclause 9.3;
- selected subcontractor** has the meaning in subclause 9.3;
- separable portion** means a portion of the *Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;
- site** means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- subcontractor** in clauses 3 and 9 includes a *consultant*;
- Superintendent** means the person stated in *Item 5* as the *Superintendent* or other person from time to time appointed in writing by the *Principal* to be the *Superintendent* and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;
- Superintendent's Representative** means an individual appointed in writing by the *Superintendent* under clause 21;

- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;
- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;
- the Works** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;
- variation** has the meaning in clause 36;
- work** includes the provision of materials;
- WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial work, construction plant and temporary works,
- and like words have a corresponding meaning.

In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Superintendent* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 8*;
- (g) unless otherwise provided, prices are in the currency in *Item 9(a)* and payments shall be made in that currency at the place in *Item 9(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 8*; and

- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

2 Nature of Contract

2.1 Performance and payment

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract* and *directions* authorised by the *Contract*.

The *Principal* shall pay the *Contractor*:

- (a) for *work* for which the *Principal* accepted a lump sum, the lump sum; and
- (b) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item,

adjusted by any additions or deductions made pursuant to the *Contract*.

2.2 Contractor's warranties

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that:

- (a) the *Contractor*:
 - (i) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;
 - (ii) has examined any *preliminary design* included in the *Principal's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Principal's project requirements*;
 - (iii) shall carry out and complete the *Contractor's design obligations* to accord with the *Principal's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Principal's* consultants for any *work* the subject of a prior contract with the *Principal*; and
 - (iv) shall carry out and complete *WUC* in accordance with the *design documents* so that *the Works*, when completed, shall:
 - (A) be fit for their stated purpose; and
 - (B) comply with all the requirements of the *Contract*; and
- (b) subject to clause 9, the *consultants* identified in the *Contractor's* tender are suitably qualified and experienced.

2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

- (a) that design *work* (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;

- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Superintendent*; or
- (d) any *variation*.

2.4 Quantities

Quantities in a *schedule of rates* are estimated quantities only.

The *Superintendent* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the *schedule of rates*.

2.5 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUC*, the actual quantity of an item required to perform the *Contract* is greater or less than the quantity shown in the *schedule of rates*:

- (a) the *Principal* accepted a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *Principal* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 12*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

If such a *schedule of rates* omits an item which should have been included, the item shall be a deemed *variation*.

3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the *Superintendent*, and the difference shall be added to or deducted from the *contract sum*.

Where any part of such *work* or item is carried out or supplied by a *subcontractor*, the *Superintendent* shall allow the amount payable by the *Contractor* to the *subcontractor* for the *work* or item, disregarding:

- (a) any damages payable by the *Contractor* to the *subcontractor* or vice versa; and
- (b) any deduction of cash discount for prompt payment,

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 13* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*.

4 Separable portions

Separable portions may be directed by the *Superintendent*, who shall clearly identify for each, the:

- (a) portion of the *Works*;
- (b) *date for practical completion*; and
- (c) respective amounts for *security*, bonus, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

5 Security

5.1 Provision

Security shall be provided in accordance with *Item 14* or *15*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

5.2 Recourse

Security shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

5.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 14(e)*) shall be reduced by the percentage or amount in *Item 14(f)* or *15(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Principal's* entitlement to *security* in *Item 14(e)* shall cease 14 days after incorporation into *the Works* of the plant and materials for which that *security* was provided.

A party's entitlement otherwise to *security* shall cease 14 days after *final certificate*.

Upon a party's entitlement to *security* ceasing, that party shall release and return forthwith the *security* to the other party.

5.5 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of *security* (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the party providing them until the *Principal* or the *Contractor* is entitled to receive them.

Interest earned on *security* not required to be held in trust shall belong to the party holding that *security*.

5.6 Deed of guarantee, undertaking and substitution

Where:

- (a) a party is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction); and
- (b) a form of *deed of guarantee, undertaking and substitution* was included in the tender documents,

that party shall, within 14 days after receiving a written request from the other party, provide such *deed of guarantee, undertaking and substitution* duly executed and enforceable.

6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal

instrument of agreement, the *Principal* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

Within 14 days after receiving them, the *Principal* shall execute both copies, have them stamped as necessary and send one copy to the *Contractor*.

The *Superintendent* may extend the time under this clause by written notice to the parties.

7 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
 - (i) actual receipt;
 - (ii) confirmation of correct transmission of fax; or
 - (iii) 3 days after posting.

8 Contract documents

8.1 Discrepancies

Figured shall prevail over scaled dimensions in a discrepancy. Otherwise, if either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of carrying out *WUC*, that party shall give the *Superintendent* written notice of it. The *Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

8.2 Principal-supplied documents

The *Principal* shall supply to the *Contractor* the documents and number of copies thereof, both stated in *Item 16*.

They shall:

- (a) remain the *Principal's* property and be returned to the *Principal* on written demand; and
- (b) not be used, copied nor reproduced for any purpose other than *WUC*.

8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies at the times or stages stated in *Item 17*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Superintendent*.

If the *Contractor* submits a document to the *Superintendent*, then except where the *Contract* otherwise provides:

- (a) the *Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's direction* about that document, the *Superintendent* shall give, within the time stated in *Item 18*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's project requirements*.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Works*.

8.4 Availability

The *Contractor* shall keep available to the *Superintendent* and the *Principal*:

- (a) on *site*, one complete set of documents affecting *WUC* and supplied by a party or the *Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUC* off *site*, a set of the documents affecting that part.

8.5 Confidential information

The parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the *Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

* 8.6 Media

The *Contractor* shall not disclose any information concerning the project for distribution through any communications media without the *Principal's* prior written approval (which shall not be unreasonably withheld). The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

9 Assignment and subcontracting

9.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

* See Preface

9.2 Subcontracting generally

The *Contractor* shall engage and retain the consultants identified in the *Contractor's* tender.

The *Contractor* shall not without the *Superintendent's* prior written approval (which shall not be unreasonably withheld):

- (a) subcontract or allow a *subcontractor* to subcontract any *work* described in *Item 19*; or
- (b) allow a *subcontractor* to assign a subcontract or any payment or any other right, benefit or interest thereunder.

With a request for approval, the *Contractor* shall give the *Superintendent* written particulars of the *work* to be subcontracted and the name and address of the proposed *subcontractor*. The *Contractor* shall give the *Superintendent* other information which the *Superintendent* reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of the *Contractor's* request for approval, the *Superintendent* shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- (a) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
- (b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
- (c) provision that if the *Contract* is terminated and upon the *subcontractor* being paid the sum certified by the *Superintendent* as owing to the *subcontractor*, the *Contractor* and the *subcontractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Contractor* hereby irrevocably appoints the *Superintendent* to be the *Contractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Contractor* accordingly; and

- (d) where the *subcontractor* is a *consultant*, provision that the *subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 24(c)* and *24(d)*.

9.3 Selected subcontract work

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular *work*, the *Contractor* shall subcontract that *work* to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

If no subcontractor on the *Principal's* list will subcontract to carry out the *selected subcontract work*, the *Contractor* shall provide a list for the written approval of the *Superintendent*.

9.4 Novation

This subclause applies only where the *Principal's project requirements* include a *preliminary design* or the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor*

stated in *Item 20* for the particular part of the *preliminary design* or *selected subcontract work*.

9.5 Contractor's responsibility

Except where the *Contract* otherwise provides, the *Contractor* shall be liable to the *Principal* for the acts, defaults and omissions of *subcontractors* (including *selected subcontractors*) and employees and agents of *subcontractors* as if they were those of the *Contractor*.

Approval to subcontract shall not relieve the *Contractor* from any liability or obligation under the *Contract*.

10 Intellectual property rights

10.1 Warranties and indemnities

The *Principal* warrants that, unless otherwise provided in the *Contract*, the *Principal's project requirements*, design, materials, documents and methods of working, each specified in the *Contract* or provided or directed by the *Principal* or the *Superintendent* shall not infringe any *intellectual property right*.

The *Contractor* warrants that any other design, materials, documents and methods of working, each provided by the *Contractor*, shall not infringe any *intellectual property right*.

Each party shall indemnify the other against such respective infringements.

10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

Alternative 1

The *Contractor* grants to the *Principal* an irrevocable licence to use the *design documents* for *WUC*. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, *the Works* and the copying of the documents for such purposes.

Alternative 2

Copyright and property in the *design documents* (and, as between the *Principal* and the *Contractor*, any part of the *preliminary design* produced under a prior contract between the *Principal* and a *Principal's* consultant novated under subclause 9.4) hereby vest in the *Principal*, and the *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for *WUC*. Such vesting shall not extend to components of the design which have been developed by the *Contractor* for general use in the *Contractor's work* and have not been specially developed for incorporation in the *design documents*.

The *Contractor* shall do everything necessary to perfect such vesting.

The *Contractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUC*.

11 Legislative requirements

11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 22(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

The *Contractor*, upon finding that a *legislative requirement* is at variance with the *Contract* or the *Principal's project requirements*, shall promptly give the *Superintendent* written notice thereof.

11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
 - (i) to the *Principal's project requirements*;
 - (ii) to *the Works*;
 - (iii) to so much of *WUC* as is identified in *Item 22(b)*;
 - (iv) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
 - (v) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

12 Protection of people and property

Insofar as compliance with the *Contract* permits, the *Contractor* shall:

- (a) take measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and
- (c) prevent nuisance and unreasonable noise and disturbance.

If the *Contractor* damages property, the *Contractor* shall promptly rectify the damage and pay any compensation which the law requires the *Contractor* to pay.

If the *Contractor* fails to comply with an obligation under this clause, the *Principal*, after the *Superintendent* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Superintendent* as moneys due from the *Contractor* to the *Principal*.

13 Urgent protection

If urgent action is necessary to protect *WUC*, other property or people and the *Contractor* fails to take the action, in addition to any other remedies of the *Principal*, the *Superintendent* may take the necessary action. If the action was action which the *Contractor* should have taken at the *Contractor's* cost, the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

If time permits, the *Superintendent* shall give the *Contractor* prior written notice of the intention to take action pursuant to this clause.

14 Care of the work and reinstatement of damage

14.1 Care of WUC

Except as provided in subclause 14.3, the *Contractor* shall be responsible for care of:

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- (b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with clauses 29, 30 and 35.

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by *subcontractors* for carrying out *WUC*.

14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUC* during the period of the *Contractor's* care, the *Contractor* shall at its cost, rectify such loss or damage.

In the event of loss or damage being caused by any of the *excepted risks* (whether or not in combination with other risks), the *Contractor* shall to the extent directed by the *Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

14.3 Excepted risks

The *excepted risks* causing loss or damage, for which the *Principal* is liable, are:

- (a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its *subcontractors* or either's employees or agents;
- (e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); and
- (f) defects in such part of the design of *WUC*, including the *preliminary design* provided by the *Principal*, as is not warranted under clause 2.

15 Damage to persons and property other than WUC

15.1 Indemnity by Contractor

Insofar as this subclause applies to property, it applies to property other than *WUC*.

The *Contractor* shall indemnify the *Principal* against:

- (a) loss of or damage to the *Principal's* property; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the

Principal or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (d) claims in respect of the *Principal's* right to have *WUC* carried out.

15.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 15.1.

16A Insurance of the Works

The Alternative in *Item 23(a)* applies.

Alternative 1: Contractor to insure

Before commencing *WUC*, the *Contractor* shall insure all the things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 14.2 and things in storage off *site* and in transit to the *site* but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to *the Works*;
- (d) damages for delay in completing or for the failure to complete *the Works*;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause;
- (f) loss or damage resulting from the *excepted risks* referred to in paragraphs (b) and (c) of subclause 14.3.

The insurance cover shall be for an amount not less than the aggregate of the:

- (a) *contract sum*;
- (b) provision in *Item 23(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 23(c)* for *consultants' fees* and *Principal's consultants' fees*;
- (d) value in *Item 23(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 23(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties, *consultants* and *subcontractors* whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and

in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

The insurance shall be maintained until the *Contractor* ceases to be responsible under subclause 14.1 for the care of anything.

Alternative 2: Principal to insure

Before the *date of acceptance of tender*, the *Principal* shall insure *WUC* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

16B Professional indemnity insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(b)*.

The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 24(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 24(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 24(d)*.

17 Public liability insurance

The Alternative in *Item 25(a)* applies.

Alternative 1: Contractor to insure

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties,
 of the parties, the *Superintendent*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 25(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

Alternative 2: Principal to insure

Before the *date of acceptance of tender*, the *Principal* shall effect in relation to *WUC*, a *public liability policy* in the terms of the policy included in the tender documents and

nominating or stating the insurer. The *Principal* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

18 Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Principal's* statutory liability to the *Contractor's* employees.

The *Contractor* shall ensure that all *consultants* and *subcontractors* have similarly insured their employees.

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

19.2 Failure to produce proof of insurance

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

19.3 Notices from or to insurer

The party insuring under clause 16A or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *consultant* or a *subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Superintendent*, the *consultant* and the *subcontractor*; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *subcontractors* in respect of their operations similarly inform the parties.

19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16A:

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Principal* to the *Contractor*, if the *Contractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent*, and that the *Superintendent* fulfils all aspects of the role and functions reasonably and in good faith.

Except where the *Contract* otherwise provides, the *Superintendent* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Superintendent* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Superintendent* does so.

21 Superintendent's Representative

The *Superintendent* may from time to time appoint individuals to exercise delegated *Superintendent's* functions, provided that:

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
 - (i) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
 - (ii) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge (including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

The *Contractor* shall forthwith give the *Superintendent* written notice of the representative's name and any subsequent changes.

If the *Superintendent* makes a reasonable objection to the appointment of a representative, the *Contractor* shall terminate the appointment and appoint another representative.

23 Contractor's employees and subcontractors

The *Superintendent* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Superintendent's* opinion, is incompetent, negligent or guilty of misconduct.

24 Site

24.1 Access and possession

Before the expiry of the time stated in *Item 26(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 26(b)*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC* and shall exclude camping, residential purposes and any purpose not connected with *WUC*, unless approved by the *Superintendent*.

24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose. The *Contractor* shall permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

The *Contractor* shall at all reasonable times give the *Superintendent* access to *WUC*.

The *Principal* shall ensure that none of the persons referred to in this subclause impedes the *Contractor*.

24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Immediately upon the discovery of these things the *Contractor* shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the *Superintendent* and added to the *contract sum*.

25 Latent conditions

25.1 Scope

Latent conditions are physical conditions on the *site* and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of the *Contractor's* tender if the *Contractor* had inspected:

- (a) all written information made available by the *Principal* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, give the *Superintendent* written notice of the general nature thereof.

If required by the *Superintendent* promptly after receiving that notice, the *Contractor* shall, as soon as practicable, give the *Superintendent* a written statement of:

- (a) the *latent condition* encountered and the respects in which it differs materially;
- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

25.3 Deemed variation

The effect of the *latent condition* shall be a deemed *variation*, priced having no regard to additional cost incurred more than 28 days before the date on which the *Contractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Contractor's* other costs for each compliance with subclause 25.2.

26 Setting out the Works

26.1 Setting out

The *Principal* shall ensure that the *Superintendent* gives the *Contractor* the data, *survey marks* and like information necessary for the *Contractor* to set out *the Works*, together with those *survey marks* specified in the *Contract*. Thereupon the *Contractor* shall set out *the Works* in accordance with the *Contract*.

26.2 Errors in setting out

The *Contractor* shall rectify every error in the position, level, dimensions or alignment of any *WUC* after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the error was caused by incorrect data, *survey marks* or information given by the *Superintendent*, the cost incurred by the *Contractor* in rectifying the error shall be assessed by the *Superintendent* and added to the *contract sum*.

26.3 Care of survey marks

The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Superintendent*.

The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Superintendent* and unless the *Superintendent* within 3 days directs otherwise.

If the disturbance was caused by a person referred to in subclause 24.2 other than the *Contractor*, the cost incurred by the *Contractor* in reinstating the *survey mark* shall be assessed by the *Superintendent* and added to the *contract sum*.

27 Cleaning up

The *Contractor* shall keep the *site* and *WUC* clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the *date of practical completion*, the *Contractor* shall remove *temporary works* and *construction plant*. The *Superintendent* may extend the time to enable the *Contractor* to perform remaining obligations.

If the *Contractor* fails to comply with the preceding obligations in this clause, the *Superintendent* may direct the *Contractor* to rectify the non-compliance and the time for rectification.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* carried out by others,

the *Principal* may have that *work* so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall supply everything necessary for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the *Superintendent* may direct the *Contractor* to:

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Principal* and persons authorised by the *Principal*.

The *Superintendent* may give the *Contractor* a written *direction* not to remove materials or *construction plant* from the *site*. Thereafter the *Contractor* shall not remove them without the *Superintendent's* prior written approval (which shall not be unreasonably withheld).

29 Quality

29.1 Quality of material and work

Unless otherwise provided, the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship.

* 29.2 Quality assurance

If the *Contract* elsewhere requires further quality assurance, the *Contractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor*, *consultants* and *subcontractors* so as to enable monitoring and quality auditing.

* See Preface

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Contractor's* other obligations under the *Contract*.

29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, reconstruct, replace or correct the *work*; and
- (d) not deliver it to the *site*.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Principal* intends to have the subject *work* rectified by others,

the *Principal* may have that *work* so rectified and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Principal*.

29.4 Acceptance of defective work

Instead of a *direction* pursuant to subclause 29.3, the *Superintendent* may direct the *Contractor* that the *Principal* elects to accept the subject *work*, whereupon there shall be a deemed *variation*.

29.5 Timing

The *Superintendent* may give a *direction* pursuant to this clause at any time before the expiry of the last *defects liability period*.

30 Examination and testing

30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

30.2 Covering up

The *Superintendent* may direct that any part of *WUC* shall not be covered up or made inaccessible without the *Superintendent's* prior written *direction*.

30.3 Who conducts

Tests shall be conducted as provided elsewhere in the *Contract* or by the *Superintendent* or a person (which may include the *Contractor*) nominated by the *Superintendent*.

30.4 Notice

The *Superintendent* or the *Contractor* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

30.5 Delay

Without prejudice to any other right, if the *Contractor* or the *Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

30.6 Completion and results

On completion of the *tests*, the *Contractor* shall make good *WUC* so that it fully complies with the *Contract*.

Results of *tests* shall be promptly made available by each party to the other and to the *Superintendent*.

30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

31 Working hours

If the working hours and working days on the *site* are not stated elsewhere in the *Contract*, they shall be as notified by the *Contractor* to the *Superintendent* before commencement of work on *site*. They shall not be varied without the *Superintendent's* prior written approval, except when, in the interests of safety of persons or property, the *Contractor* finds it necessary to carry out *WUC* otherwise, whereupon the *Contractor* shall give the *Superintendent* written notice of those circumstances as early as possible.

32 Programming

The *Superintendent* shall give to the *Contractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 27*.

The *Contractor* shall give the *Superintendent* reasonable advance notice of when the *Contractor* needs other information, materials, documents or instructions from the *Superintendent* or the *Principal*.

The *Principal* and the *Superintendent* shall not be obliged to give any information, materials, documents or instructions earlier than the *Principal* or the *Superintendent*, as the case may be, should reasonably have anticipated at the *date of acceptance of tender*.

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons.

A *program* is a written statement showing the dates by which, or the times within which, the various stages or portions of *WUC* are to be carried out or completed. It shall be deemed a *Contract* document.

The *Superintendent* may direct the *Contractor* to give the *Superintendent* a *program* within the time and in the form directed.

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

33 Suspension

33.1 Superintendent's suspension

The *Superintendent* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Superintendent* thinks fit, if the *Superintendent* is of the opinion that it is necessary:

- (a) because of an act, default or omission of:
 - (i) the *Superintendent*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
 - (ii) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

33.2 Contractor's suspension

If the *Contractor* wishes to suspend the carrying out of the whole or part of *WUC*, otherwise than pursuant to subclause 39.9, the *Contractor* shall obtain the *Superintendent's* prior written approval. The *Superintendent* may approve the suspension and may impose conditions of approval.

33.3 Recommencement

As soon as the *Superintendent* becomes aware that the reason for any suspension no longer exists, the *Superintendent* shall direct the *Contractor* to recommence suspended *WUC* as soon as reasonably practicable.

The *Contractor* may recommence *WUC* suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the *Superintendent*.

33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

34 Time and progress

34.1 Progress

The *Contractor* shall ensure that *WUC* reaches *practical completion* by the *date for practical completion*.

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly give the *Superintendent* and the other party written notice of that cause and the estimated delay.

34.3 Claim

The *Contractor* shall be entitled to such extension of time for carrying out *WUC* (including reaching *practical completion*) as the *Superintendent* assesses ('*EOT*'), if:

- (a) the *Contractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Contractor* shall claim an *EOT* for such delay by promptly giving the *Superintendent* a written claim evidencing the facts of that delay.

34.4 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Superintendent* shall apportion the resulting delay to *WUC* according to the respective causes' contribution.

In assessing each *EOT* the *Superintendent* shall disregard questions of whether:

- (a) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Contractor* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT*, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed. If the *Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Superintendent* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

34.6 Practical completion

The *Contractor* shall give the *Superintendent* at least 14 days written notice of the date upon which the *Contractor* anticipates that *practical completion* will be reached.

When the *Contractor* is of the opinion that *practical completion* has been reached, the *Contractor* shall in writing request the *Superintendent* to issue a *certificate of practical completion*. Within 14 days after receiving the request, the *Superintendent* shall give the *Contractor* and the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

If the *Superintendent* is of the opinion that *practical completion* has been reached, the *Superintendent* may issue a *certificate of practical completion* even though no request has been made.

34.7 Liquidated damages

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 29* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Principal* taking *WUC* out of the hands of the *Contractor*.

If an *EOT* is directed after the *Contractor* has paid or the *Principal* has set off liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 30(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 30(b)* amount.

34.9 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Superintendent* a claim for delay damages pursuant to subclause 41.1, damages certified by the *Superintendent* under subclause 41.3 shall be due and payable to the *Contractor*.

35 Defects liability

The *defects liability period* stated in *Item 32* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible.

As soon as possible after the *date of practical completion*, the *Contractor* shall rectify all *defects* existing at the *date of practical completion*.

During the *defects liability period*, the *Superintendent* may give the *Contractor* a *direction* to rectify a *defect* which:

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 32*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Principal* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Principal* may have. The cost thereby incurred shall be certified by the *Superintendent* as moneys due and payable to the *Principal*.

36 Variations

36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed in writing.

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and

extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Principal*.

36.2 Proposed variations

The *Superintendent* may give the *Contractor* written notice of a proposed *variation*.

The *Contractor* shall as soon as practicable after receiving such notice, notify the *Superintendent* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including all warranties and time-related costs, if any) of the proposed *variation*.

The *Superintendent* may direct the *Contractor* to give a detailed quotation for the proposed *variation* supported by measurements or other evidence of cost.

The *Contractor's* costs for each compliance with this subclause shall be certified by the *Superintendent* as moneys due to the *Contractor*.

36.3 Variations for convenience of Contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

36.4 Pricing

The *Superintendent* shall, as soon as possible, price each *variation* using the following order of precedence:

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

37 Payment

37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 33*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

37.2 Certificates

The *Superintendent* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'); and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 33*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Superintendent* does not issue the *progress certificate* within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Principal* shall within 7 days after receiving both such certificates, or within 21 days after the *Superintendent* receives the progress claim, pay to the *Contractor* the balance of the *progress certificate* after setting off such of the certificate in paragraph (b) as the *Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice thereof.

Neither a *progress certificate* nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than *final payment* shall be payment on account only.

37.3 Unfixed plant and materials

The *Principal* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 34* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Principal*.

Upon payment to the *Contractor* and the release of any additional *security* in paragraph (a), the subject plant and materials shall be the unencumbered property of the *Principal*.

37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within 7 days after the debtor receives the *final certificate*.

The *final certificate* shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for:

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in *the Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

37.5 Interest

Interest in *Item 35* shall be due and payable after the date of default in payment.

37.6 Other moneys due

The *Principal* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Principal* pursuant to the *Contract*.

38 Payment of workers, consultants and subcontractors

38.1 Workers, consultants and subcontractors

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

- (a) workers of the *Contractor* and of the *subcontractors*;
- (b) *consultants*; and
- (c) *subcontractors*,

in respect of *WUC* the subject of that claim.

If the *Contractor* is unable to give such documentary evidence, the *Contractor* shall give other documentary evidence of the moneys so due and payable to workers, *consultants* and *subcontractors*.

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

38.2 Withholding payment

Subject to the next paragraph, the *Principal* may withhold moneys certified due and payable in respect of the progress claim until the *Contractor* complies with subclause 38.1.

The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *consultants* and *subcontractors*.

38.3 Direct payment

Before *final payment*, the *Principal*, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker, *consultant* or *subcontractor* where:

- (a) permitted by law;

- (b) given a court order in favour of the worker, *consultant* or *subcontractor*; or
- (c) requested in writing by the *Contractor*.

Such payment and a payment made to a worker, *consultant* or *subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Principal's* obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

39 Default or insolvency

39.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by hand or by registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) perform properly the *Contractor's design obligations*;
 - (ii) provide *security*;
 - (iii) provide evidence of insurance;
 - (iv) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
 - (v) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
- (d) where there is no *program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

39.4 Principal's rights

If the *Contractor* fails to show reasonable cause by the stated date and time, the *Principal* may by written notice to the *Contractor*:

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

39.5 Take out

The *Principal* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
 - (i) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
 - (ii) contract with such of the *consultants* and *subcontractors*; and
 - (iii) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Principal* to facilitate completion of *WUC* taken out.

If the *Principal* takes possession of *construction plant*, *design documents* or other things, the *Principal* shall maintain them and, subject to subclause 39.6, on completion of the *work* taken out, shall return such of them as are surplus.

The *Superintendent* shall keep records of the cost of completing the *work* taken out.

39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Principal* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide *security*;
 - (ii) produce evidence of insurance;
 - (iii) rectify inadequate *Contractor's* access to the *site* if that failure continues for longer than the time stated in *Item 36(a)*;
 - (iv) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 36(b)*; or
 - (v) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and
- (e) the place at which cause must be shown.

39.9 Contractor's rights

If the *Principal* fails to show reasonable cause by the stated date and time, the *Contractor* may, by written notice to the *Principal*, suspend the whole or any part of *WUC*.

The *Contractor* shall remove the suspension if the *Principal* remedies the breach.

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Principal* fails:

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

39.10 Termination

If the *Contract* is terminated pursuant to subclause 39.4(b) or 39.9, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or

- (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (vii) a mortgagee of any of its property takes possession of that property,
 then, where the other party is:
 - (A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
 - (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Principal* shall pay the *Contractor*:
 - (i) the amount due to the *Contractor* evidenced by all unpaid certificates;
 - (ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
 - (iii) the costs reasonably incurred:
 - (A) removing *temporary works* and *construction plant*;
 - (B) returning to their place of engagement the *Contractor*, *consultants*, *subcontractors* and their respective employees engaged in *WUC* at the date of frustration; and
 - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

41 Notification of claims

41.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the *Superintendent* the *prescribed notice* or a notice of *dispute* under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the *Contract* shall, inter alia, entitle the other party to damages for breach of the *Contract* but shall neither bar nor invalidate the claim.

41.3 Superintendent's decision

If within 28 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 56 days of receipt of the *prescribed notice* the *Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

42 Dispute resolution

42.1 Notice of dispute

If a difference or dispute (together called a '*dispute*') between the parties arises in connection with the subject matter of the *Contract*, including a *dispute* concerning:

- (a) a *Superintendent's direction*; or
- (b) a claim:
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment or other quantum meruit; or
 - (iv) for rectification or frustration,or like claim available under the law governing the *Contract*,

then either party shall, by hand or by registered post, give the other and the *Superintendent* a written notice of *dispute* adequately identifying and providing details of the *dispute*.

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the *Contract*.

42.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer at least once to resolve the *dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

42.3 Arbitration

If within a further 14 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in *Item 37(a)*. The arbitration shall be conducted in accordance with the rules in *Item 37(b)*.

42.4 Summary relief

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

43 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the terms of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

**ANNEXURE to the Australian Standard
General Conditions of Contract for
Design and Construct**

Part A

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

Item

1 *Principal*
(clause 1)

ACN ABN

2 *Principal's address*
.....

Phone Fax

3 *Contractor*
(clause 1)

ACN ABN

4 *Contractor's address*
.....

Phone Fax

5 *Superintendent*
(clause 1)

ACN ABN

6 *Superintendent's address*
.....

Phone Fax

† 7	(a) <i>Date for practical completion</i> (clause 1)	
	OR	
	(b) Period of time for <i>practical completion</i> (clause 1)	
8	Governing law (clause 1(h))	If nothing stated, that of the jurisdiction where the <i>site</i> is located
9	(a) Currency (clause 1(g))	If nothing stated, that of the jurisdiction where the <i>site</i> is located
	(b) Place for payments (clause 1(g))	If nothing stated, the <i>Principal's</i> address
	(c) Place of business of bank (clause 1(d))	If nothing stated, the place nearest to where the <i>site</i> is located
10	The <i>Principal's project requirements</i> are described in the following documents (clause 1)	1 <i>Preliminary design</i> (if included in <i>Item 11</i>) 2 3 4 5
11	<i>Preliminary design</i> (clause 1)	(a) <i>A preliminary design</i> * is included * is not included in the <i>Principal's project requirements</i> . If neither deleted, a <i>preliminary design</i> is not included (b) The <i>preliminary design</i> documents are: 1 2 3 4 5
12	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5)	Upper Limit Lower Limit

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A
* Delete one

- 13 *Provisional sum, percentage for profit and attendance (clause 3)* %
- † 14 *Contractor's security*
- (a) Form (clause 5)
- (b) Amount or maximum percentage of *contract sum* (clause 5)
If nothing stated, 5% of the *contract sum*
- (c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) % , until the limit in *Item 14(b)*
If nothing stated, 10% , until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) (clause 5) within days after *date of acceptance of tender*
If nothing stated, 28 days
- (e) Additional security for unfixed plant and materials (subclauses 5.4 and 37.3) \$
- (f) *Contractor's security* upon *certificate of practical completion* is reduced by (subclause 5.4) % of amount held
If nothing stated, 50% of amount held
- † 15 *Principal's security*
- (a) Form (clause 5)
- (b) Amount or maximum percentage of *contract sum* (clause 5)
If nothing stated, nil
- (c) Time for provision (clause 5) within days after *date of acceptance of tender*
If nothing stated, 28 days
- (d) *Principal's security* upon *certificate of practical completion* is reduced by (subclause 5.4) % of amount held
If nothing stated, 50% of amount held

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

16	<i>Principal-supplied documents</i> (subclause 8.2)	Document	No. of copies
		1 <i>Principal's project requirements</i>	.....
		2 .....	.....
		3 .....	.....
		4 .....	.....
		5 .....	.....
			If nothing stated, 5 copies

17 Documents, numbers of copies, and the times or stages at which they are to be supplied by the *Contractor* (subclause 8.3)

	Document	No. of copies	Time/stage
1
2
3
4
5

18 Time for *Superintendent's direction* about documents (subclause 8.3) days
If nothing stated, 14 days

19	Subcontracting (subclause 9.2)	<i>Work by consultants</i>	<i>Work by others</i>
	
	
	
	

20 Novation (subclause 9.4) *Subcontractor or selected subcontractor, as the case may be* Particular part of the *preliminary design or selected subcontract work, as the case may be*

.....

.....

.....

.....

.....

.....

.....

.....

21 *Intellectual property rights granted to the Principal, the Alternative applying (subclause 10.2)* If nothing stated, Alternative 1 applies

22 *Legislative requirements*

(a) Those excepted (subclause 11.1)

(b) Identified *WUC* (subclause 11.2(a)(iii))

23 Insurance of *the Works* (clause 16A)

(a) Alternative applying
 If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Provision for demolition and removal of debris
 \$.....

OR

..... % of the *contract sum*

(c) Provision for *consultants' fees* and *Principal's consultants' fees*
 \$.....

OR

..... % of the *contract sum*

(d) Value of materials or things to be supplied by the *Principal* \$

(e) Additional amount or percentage \$

OR

..... % of the total of (a) to (d) in clause 16A

24 Professional indemnity insurance (clause 16B and subclause 9.2(d))

(a) Levels of cover of Contractor's professional indemnity insurance shall be not less than \$
If nothing stated, \$5 000 000

(b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the *final certificate*
If nothing stated, 6 years

(c) Categories of <i>consultants</i> and levels of cover of <i>consultants'</i> professional indemnity insurance	Category	Levels of cover
.....	\$
.....	\$
.....	\$
.....	\$
		If nothing stated, \$1 000 000

(d) Period for which each *consultant's* professional indemnity insurance shall be maintained after issue of the *final certificate*
If nothing stated, 6 years

25 Public liability insurance (clause 17)

(a) Alternative applying
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Amount per occurrence shall be not less than \$
If nothing stated, \$10 000 000

- 26 (a) Time for giving access (subclause 24.1) within days of *date of acceptance of tender*
If nothing stated, 14 days
- (b) Time for giving possession (subclause 24.1) within days of *date of acceptance of tender*
If nothing stated, 14 days

27	The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Contractor</i> (clause 32)	Documents or instructions	Times/Periods
		1 .....	.....
		2 .....	.....
		3 .....	.....
		4 .....	.....
		5 .....	.....

28 *Qualifying causes of delay*, causes of delay for which *EOTs* will not be granted (paragraph (b)(iii) of clause 1 and subclause 34.3)

.....

.....

.....

† 29 Liquidated damages, rate (subclause 34.7)

..... per day \$ per day

† 30 Bonus for early *practical completion* (subclause 34.8)

(a) Rate

..... per day \$ per day

(b) Limit

..... \$

OR

..... % of *contract sum*

If nothing stated, there is no waiver

† 31 Other *compensable causes* (paragraph (b) of clause 1 and subclause 34.9)

.....

.....

.....

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A

32 Defects Liability period
(clause 35) If nothing stated, 12 months

33 Progress Claims
(subclause 37.1)
(a) Times for progress claims day of each month for WUC
done to the day of that month

OR

(b) Stages of WUC for progress
claims
.....
.....
.....
.....
.....

34 Unfixed plant and materials for which
payment claims may be
made
(subclause 37.3)

35 Interest rate on overdue payments % per annum
(subclause 37.5) If nothing stated, 18% per annum

36 (a) Time for Principal to rectify days
inadequate access
(subclause 39.7(a)(iii)) If nothing stated, 14 days

(b) Time for Principal to rectify days
inadequate possession
(subclause 39.7(a)(iv)) If nothing stated, 14 days

37 Arbitration
(subclause 42.3)
(a) Person to nominate an
arbitrator
.....

A1 | If no-one stated, the President of the Institute of Arbitrators &
Mediators Australia

(b) Rules for arbitration

.....
.....
.....
.....
.....

If nothing stated:

(a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;

OR

(b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 37(c)*

(c) Appointing Authority under UNCITRAL Arbitration Rules

.....
If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

A1

Part A

Separable Portions

- This section should be completed only if the *Contract* provides for *separable portions*.
- Complete separate pages for each *separable portion*, which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

Separable portion
(clause 1)

No.

Description of *separable portion*
(clause 1)

.....
.....
.....

Item

7 (a) *Date for practical completion*
(clause 1)

.....

OR

(b) *Period of time for practical completion*
(clause 1)

.....

14 *Contractor's security*

(a) Form
(clause 5)

.....

(b) Amount or maximum percentage value of this *separable portion*
(clause 5)

.....
If nothing stated, 5% of value of this *separable portion*

(c) If retention moneys, percentage of each *progress certificate* applicable to this *separable portion*
(clause 5 and subclause 37.2)

.....%, until the limit in *Item 14(b)*
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) Time for provision (except for retention moneys)
(clause 5)

within days after *date of acceptance of tender*
If nothing stated, 28 days

(e) Additional *security* for unfixed plant and materials
(subclauses 5.4 and 37.3)

.....
..... \$

(f) *Contractor's security* upon *certificate of practical completion* is reduced by
(subclause 5.4)

.....% of amount held
If nothing stated, 50% of amount held

- 15 *Principal's security*
 - (a) Form
(clause 5)
 - (b) Amount or maximum
percentage of value of this *separable portion*
(clause 5) If nothing stated, nil
 - (c) Time for provision days after *date of acceptance of tender*
(clause 5) If nothing stated, 28 days
 - (d) *Principal's security* upon *certificate* % of amount held
of practical completion is reduced If nothing stated, 50% of amount held
by
(subclause 5.4)

29 Liquidated damages, rate
(subclause 34.7) per day \$ per day

30 Bonus for early *practical completion*
(subclause 34.8)

(a) Rate
..... per day \$ per day

(b) Limit
..... \$

OR
..... % of value of this *separable portion*
If nothing stated, there is no waiver

31 Other *compensable causes*
(paragraph (b) of clause 1 and
subclause 34.9)
.....
.....

**Annexure to the Australian Standard
General Conditions of Contract for
Design and Construct**

Part B

- This form may also be used where the *Principal* is required to provide an unconditional undertaking, by substituting *Principal* for *Contractor* and vice versa, wherever occurring.

Approved form of unconditional undertaking

(clause 1 – security)

At the request of

ACN..... ABN (the *Contractor*) and in consideration of

ACN..... ABN (the *Principal*) accepting this undertaking

in respect of the *Contract* for

..... (the *Project*)

ACN..... ABN (the *Financial Institution*) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a maximum aggregate sum of (\$)

The undertaking is to continue until notification has been received from the *Principal* that the sum is no longer required by the *Principal* or until this undertaking is returned to the *Financial Institution* or until payment to the *Principal* by the *Financial Institution* of the whole of the sum or such part as the *Principal* may require.

Should the *Financial Institution* be notified in writing, purporting to be signed by for and on behalf of the *Principal* that the *Principal* desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the *Financial Institution* will make the payment or payments to the *Principal* forthwith without reference to the *Contractor* and notwithstanding any notice given by the *Contractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Principal* the sum of (\$)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at this day of 20.....

**Annexure to the Australian Standard
General Conditions of Contract for
Design and Construct**

Part C

Deed of novation

(subclause 9.2(c))

This Deed made the day of 20
between (the *Principal*)
of ACN ABN
and (the *Contractor*)
of ACN ABN
and (the *Subcontractor*)
of ACN ABN
and (the *Incoming Contractor*)
of ACN ABN
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Superintendent* as owing under the prior contract described in the Schedule hereto:
 - (a) the prior contract shall be discharged;
 - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
 - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
 - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
 - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
 - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
 - (a) the *Principal* and the *Subcontractor* in connection with the *Superintendent's* certification of the sum owing under the prior contract; or
 - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 8* of the *Contract* between the *Principal* and *Contractor*.

Schedule

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *Contractor*
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *Subcontractor*
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *Incoming Contractor*
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

**Annexure to the Australian Standard
General Conditions of Contract for
Design and Construct**

Part D

Note: Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

Deed of novation

(subclause 9.4)

This Deed made this day of 20
between (the *outgoing party*)
of ACN ABN
and (the *incoming party*)
of ACN ABN
and (the *continuing party*)
of ACN ABN
witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
 - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
 - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
 - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

Schedule

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party*
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *incoming party*
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *continuing party*
was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

† INDEX

<i>Clause</i>	<i>Clause</i>		
Acceleration.....	34.4(b)	interest.....	37.5
Acceptance (see Approval)		liquidated damages.....	34.7
Acceptance of tender		minerals, fossils and relics.....	24.3
date of, defined.....	1	omitted items.....	2.5
formal instrument of agreement.....	6	on completion of work taken out of the	
security—time for.....	5.1, <i>Items</i> 14(d), 15(c)	hands of the Contractor.....	39.6
Access (see also possession of site)		pricing variations.....	36.4
during defects liability period.....	35	protection of people and property.....	12
for Principal and others.....	24.2	provisional sums.....	3
for testing.....	30.1	quantities.....	2.5
Accident (see also Insurance, Urgent protection and		set-offs by the Principal.....	37.2, 37.6
Protection of persons and property)		suspension by Contractor.....	39.9
reinstatement of damage.....	14.2	urgent protection.....	13
to employees.....	18	Agreement	
to third parties.....	15, 17	Contract in absence of formal instrument.....	6
to WUC.....	14, 16A	formal instrument of.....	6
Accord and satisfaction.....	37.4	interpretation of.....	1, 8.1
Actions		rectification when dispute.....	42.1
arbitration.....	42	Alignments (see Survey mark)	
indemnification by Contractor.....	10, 15.1	Alternative clauses.....	10.2, 16A, 17
indemnification by Principal.....	10, 15.2	Ambiguity in documents.....	8.1
Acts, (of Parliament) (see Legislative requirements)		Appliances (see Construction plant)	
Additions and/or deductions		Approval	
adjustment generally.....	2.1	effect of certificates.....	37.2
care of survey marks.....	26.3	examination and testing.....	30
changes in legislative requirements.....	11.2	extension of time.....	34.4, 34.5
contract sum definition, excluded in.....	1	of documents.....	8.3
discrepancies in documents.....	8.1	of form of security.....	1
error in setting out.....	26.2	of insurance policies.....	16A, 17
generally.....	2.1	of media releases.....	8.6
legislative requirements.....	11.2	of municipal and statutory authorities	
minerals, fossils and relics.....	24.3	(see Legislative requirement)	
order of work.....	32	of subcontracting.....	9.2
pricing variations generally.....	36.4	of variations of convenience.....	36.3
programming.....	32	to suspension by Contractor.....	33.2
provisional sums.....	3	working days.....	31
suspension.....	33.4	working hours.....	31
variations.....	36.4	Approved form of unconditional undertaking	
Address for service (see also Service).....	7	security.....	1
change of.....	7	form of.....	Annexure Part B
Contractor.....	7, <i>Item</i> 4	Arbitration	
Principal.....	7, <i>Item</i> 2	agreement to arbitrate.....	42.2
Superintendent.....	7, <i>Item</i> 6	ambit of dispute.....	42.1
Adjustment (for)		conference.....	42.2
actual quantities.....	2.5	nomination of arbitrator.....	42.3, <i>Item</i> 37(a)
bonus.....	34.8	rules of.....	42.3, <i>Item</i> 37(b)
cost of suspension.....	33.4	Assessment (see Superintendent, assessments by)	
cost of tests.....	30.7	Assignment	
defective material and work.....	29.3	of Contract.....	9.1
delay damages.....	34.9	of subcontract.....	9.2(a)
directions on order of work.....	32	by subcontractor.....	9.2(b)
errors in documents.....	8.1	Asterisk clauses.....	8.6, 29.2
errors in setting out.....	26.2	Australasian Dispute Centre.....	<i>Item</i> 37(a), (c)
fees and charges.....	11.2		

† References to *Items* are to *Items* in Annexure Part A

<i>Clause</i>	<i>Clause</i>
Authorisation (see Direction)	valuation of 37.2, 41.3
Awards (see Legislative requirements)	Clause headings—effect 1(c)
Bank guarantee (see Unconditional undertaking)	Cleaning up 27
Bank—place of business 1, <i>Item</i> 9(c)	Commencement of WUC
Bankruptcy	generally 16A, 16B, 17, 18, 19.1
of Contractor 39.11	insurance, proof of 19.1, 24.1
of Principal 39.11	possession of site 24.1
Basis of payment 2.1	production of policies before 19.1
Bench mark (see Survey mark)	Communications between parties 1(e)
Bonus	Compensable cause
for early practical completion 34.8, <i>Item</i> 30(a)	defined 1
limit of 34.8, <i>Item</i> 30(b)	delay damages for 34.9
rate of 34.8, <i>Item</i> 30(a)	others listed <i>Item</i> 31
waiver of part of bonus 34.8, <i>Item</i> 30(b)	Completion
where separable portions 4(c)	by Principal on default 39.4, 39.5, 39.6
Breach of contract	final certificate 37.4
claims for 41	practical (see Practical completion)
default of the Contractor 39.2	Compliance
default of the Principal 39.7	with legislative requirements 11.1
preservation of other rights 39.1	with Superintendent's interpretation 8.1
repudiation 39.10	Concurrent delay 34.4
substantial breaches 39.2, 39.7	Conditions, waiver of 43
By-laws (see Legislative requirements)	Confidential information
Calendar days 1(a)	agreement as to 8.5
Care of WUC	generally 8.5
cleaning up 27	Construction of Contract 1, 8.1
Contractor's obligations for 14.1	Construction plant
excepted risks 14.3	care of 14.1
generally 14.1	Contractor to supply 28
reinstatement of loss or damage 14.2	defined 1
urgent protection of 13	insurance of 16A
Certificate(s) (see also Direction and Payment)	not to be removed 28
effect of 37.2	removal of 27, 40
final certificate 37.4	use by Principal 39.5, 39.6
of cost to complete on default by Contractor 39.6	WUC includes 1
of municipal and statutory authorities	Consultants
(see Legislative requirements)	defined 1
practical completion 34.6	engagement of 9.2
progress certificate 37.2	insurance of WUC, included in 16A
Certificate of Practical Completion	notices to and from insurer 19.3
defined 1	novation of 2.2(a)(iii), 2.3(b), 9.4
issue of 34.6	professional indemnity
meaning of 34.6	insurance 16B, <i>Items</i> 24(c), (d)
non-issue of 34.6	proof of payment of 38
request for 34.6	public liability insurance 17
Claims (see also Adjustment)	suspension because of 33.1(a)
arbitration of 42.3	workers compensation policy 18
compensation to third party 12	Consultant fees
failure to notify, effect 41.2	in contract works policy 16A, <i>Item</i> 23(c)
for damages 41.1, 42.1	Contingency sum (see Provisional sum)
for EOT for practical completion 34.3	Contract
for final payment 37.4	assignment 9.1
for progress payment 37.1, <i>Item</i> 33	breach of (see Breach of Contract)
indemnity by Contractor 10.1, 15.1	construction of 1
indemnity by Principal 10.1, 15.2	defined 1
notice of dispute 41.1, 41.3, 42.1	disputes under 42
notice of potential claims on	documents 8
insurance policies 19.4	evidence of 6
notification of 41	formal instrument of 6
settlement of claims under policy	frustration of 40, 42.1
of insurance 19.5	governing law of 1(h), <i>Item</i> 8
settlement of disputes 42	
Superintendent's decision on 41.3	

<i>Clause</i>	<i>Clause</i>
interpretation of..... 1	liability for..... 9.5
nature of..... 2	payment of..... 38
rectification of..... 42.1	removal of, from site..... 23
subcontracting..... 9.2	Contractor's representative..... 22
termination—effect of..... 39.10	Contractor's responsibility (see also Contractor and Care of WUC)
termination of	for employees (see Contractor's employees)
by Contractor..... 34.9, 39.11	for payment of workers and subcontractors..... 38
by Principal..... 34.4, 39.11	for selected subcontractors..... 9.5
work under the (WUC)..... 1	for subcontractors..... 9.5
Contract documents..... 8	to carry out WUC..... 2.1
ambiguities in..... 8.1	Contributory negligence
construction of..... 8.1	indemnity as to..... 15.1
discrepancies in..... 8.1	reduction of liability for..... 15.1
inconsistencies in..... 8.1	Copyright (see Intellectual property right)
interpretation of..... 8.1	Corporation (also see Person)..... 1(a), 5.6, 39.11(d)
Contract sum	Corporations Law..... 5.6, 38.3
defined..... 1	Cost objective
insurance of WUC..... 16A	defined in Principal's project requirements..... 1
Contract works insurance	Cost(s) (see also Adjustment)
amount of cover of..... 16A, <i>Item</i> 23	added to contract sum..... 24.3, 26.2, 26.3
Contractor controlled..... 16A Alt 1	completion of work taken out
exclusions in..... 16A	of the hands of the Contractor..... 39.6
in joint names..... 16A	complying with legislative requirements..... 11.2
length of cover..... 16A	examination and testing..... 30.7
policy..... 16A	latent conditions..... 25.3
Principal controlled..... 16A Alt 2	protection of person, etc..... 12
Contractor	provisional sums..... 3
access to site by..... 24.1	reinstatement..... 14.2
address of..... <i>Item</i> 4	set-offs by Principal..... 37.6
appointment of representative..... 22	setting out..... 26.3
default by..... 39.2	urgent protection..... 13
defined..... 1	variations..... 36.2, 36.4
design obligations defined..... 1	Covering up of WUC..... 30.2
design, property in..... 10.2	Cross liability clause..... 19.6
licence to use design documents..... 10.2	Currency..... 1(g), <i>Item</i> 9(a)
named..... <i>Item</i> 3	Damage (see also care of the Works and Insurance)
possession of site by..... 24.1	prevention of..... 12
professional indemnity	protection of property, etc..... 12
insurance..... 16B, <i>Item</i> 24(a), (b)	reinstatement of..... 14.2
rights of..... 34.9, 39.11	to persons and property other than WUC..... 15.1
security by..... 5, <i>Item</i> 14	to WUC..... 14.1
service on..... 7	urgent protection..... 13
to insure..... 16A Alt 1, 16B, 17 Alt 1, 18	Damages (see also Adjustment and Claims)
use of site by..... 24.1	delay damages..... 34.9
warranties..... 2.2	for breach of the Contract..... 39.1
warranties unaffected..... 2.3	for delay by Contractor..... 34.7, <i>Item</i> 29
Contractor-supplied documents	for delay due to compensable cause..... 34.9
approval of..... 8.3(b)	liquidated..... 34.7, <i>Item</i> 29
availability of..... 8.4	on insolvency..... 39.11
checking of..... 8.3(a)	on termination of the Contract..... 39.10
copies of..... 8.3	Date
rejection of..... 8.3(c)	for practical completion..... 1, <i>Item</i> 7, 34.7, 34.8
responsibility for..... 8.3	of acceptance of tender..... 1
submission of..... 8.3	of practical completion..... 1, 34.6, 34.7, 34.8, 35
suitability of..... 8.3(c)	Date of acceptance of tender
supply of..... 8.3	defined..... 1
Contractor's all risk insurance	Date for practical completion
(see Contract works insurance)	bonus..... 34.8
Contractor's design obligations	defined..... 1, <i>Item</i> 7
defined..... 1	effect of proposed variation on..... 36.2(a)
warranties, as to..... 2.2	
warranties unaffected..... 2.3	
Contractor's employees	
control of..... 23	
death or injury..... 18	
insurance of..... 18	

<i>Clause</i>	<i>Clause</i>
liquidated damages 34.7	suspension of payment on 39.4
period of time for 1, <i>Item</i> 7	when the Principal takes work out of hands of Contractor 39.5, 39.6
Date of practical completion	Default of subcontractor 9.5
defects liability period 35	Default or insolvency
defined 1	by Contractor 39.2, 39.11
generally 34.6	by Principal 39.7, 39.11
liquidated damages 34.7	generally 39
Days	preservation of other rights 39.1
mean calendar days 1(a)	substantial breaches 39.2, 39.7
working 31	show cause notices 39.3, 39.8
Debt due to the Principal 12, 13, 27, 29.3, 34.7, 35, 37.6, 39.6	Defective work
Decision (see also Direction)	acceptance of 29.4
Deed of guarantee, undertaking and substitution	correction of 29.3
defined 1	cost of rectification 29.3
provision of 5.6	demolition of 29.3
requirement for 5.6	examination and testing of 30
Deed of novation 9.4	generally 29.3
Deemed variation	includes material 29.3
as to acceptance of defective work 29.4	not to delivery 29.3
for latent condition 25.3	quality assurance 29.2
omission in schedule of rates 2.5	reconstruction of 29.3
on adjustment of quantities 2.5	removal of 29.3
reinstatement of damage 14.2	replacement of 29.3
Default by Principal	testing of 30
Contractor's rights on 39.9	time of notice of 29.5
Contractor's show cause notice 39.8	Defects
generally 39.7	costs of rectification 29.3, 35
in making due payment 39.7(a)	defined 1
in providing evidence of insurance 39.7(a)	direction to rectify 35
in providing security 39.7(a)	examination and testing for 30
in rectifying inadequate access 39.7(a), <i>Item</i> 36(a)	in design—excepted risk 14.3(f)
in rectifying inadequate possession 39.7(a), <i>Item</i> 36(b)	in work 29.3, 29.4, 35
on termination 39.10	length of liability period 35, <i>Item</i> 32
rights of the Contractor 39.1, 39.7, 39.8, 39.9	material and work 29.3, 29.4, 35
Superintendent not issuing certificate of practical completion 39.7(b)	minor, practical completion 1
show cause on 39.7, 39.8	remediating 29.3, 35
Default by Contractor	removal and replacement 29.3
adjustment of costs on 39.6	times for rectification 35
assessment of cost to complete on 39.6	Defects liability period
failing to comply with a direction of the Superintendent 39.2(a)	defined 1
failing to maintain program 39.2(c)	duration of 35, <i>Item</i> 32
failing to proceed with due expedition and without delay 39.2(d)	generally 35, <i>Item</i> 32
failing to properly perform design obligations 39.2(a)	Definitions (generally) 1
failing to provide evidence of insurance 39.2(a)	dispute 42.1
failing to use materials or standards of workmanship 39.2(a)	Delay
in providing documentary evidence 39.2(e)	concurrent 34.4
in providing security 39.2(a)	construction program 32, 39.2(c)
may use plant and materials on 39.5	damages 4(c), 34.9
on termination 39.10	further delay 34.3
possession of plant and materials 39.5	in giving possession 24.1
procedure on 39.2–39.6	notice of 34.2
records of cost to complete 39.5	overlapping 34.4
retention of plant and materials 39.6	rate of progress 34.1
rights of the Principal 39.1–39.6, 39.9	Delay damages
show cause notice to 39.3	certified by Superintendent 34.9
substantial breach by 39.2	claim for 34.9
substantial departure from construction program 39.2(c)	due and payable 34.9
	for compensable cause 34.9
	other compensable causes 1, 34.9, <i>Item</i> 31
	where separable portions 4(c)
	Deletion of clauses, etc.—effect 1(i)
	Deletions, amendments and additions (generally) 1(i), Annexure Part E

<i>Clause</i>	<i>Clause</i>
Demand (see also Direction)	dimensions 8.1
Demolition and removal of debris in Contract works policy.....16A(b), <i>Item</i> 23(b)	Dispute (see Dispute resolution)
Deposit (see Security)	Dispute resolution
Design	after final certificate..... 37.4(d)
defects in—excepted risk 14.3(f)	ambit of.....42.1
intellectual property rights in.....10	arbitration.....42.3
objectives, defined in Principal's project requirements 1	conference .....42.2
procurement methods explained..... Preface	continue performance of Contract.....42.1
stated purpose.....2.2	dispute defined 1, 42.1
warranties, as to.....2.2	includes difference .....42.1
warranties, as to by Principal..... 10.1	meaning of dispute..... 1, 42.1
warranties unaffected.....2.3	notice of dispute .....37.4(d), 41.1, 42.1
Design and Construct	summary relief.....42.4
explained Preface	Documents
Design, Development and Construct	ambiguities in 8.1
explained Preface	approval of the Superintendent..... 8.3
Design documents	availability of 8.4
ambiguities in.....8.1	confidential information 8.5
defined 1	construction of..... 8.1
direction not to copy .....8.2	Contractor-supplied..... 8.3
discrepancies in .....8.1	discrepancies in 8.1
included in Contractor's design obligations 1	evidencing Contract 6
inconsistencies in.....8.1	generally 8
licence to use.....10.2	inconsistencies in..... 8.1
novation.....9.4	interpretation of..... 8.1
ownership of 10.2	Principal-supplied 8.2
variation to, affect of .....8.3	property in..... 8.2, 8.3
warranties, as to.....2.2	results of tests.....30.6
warranties unaffected .....2.3(c)	service of..... 7
Design, Novate and Construct	Due (see Moneys due)
explained Preface	Due and owing (see Moneys due and owing)
Design objectives	Due and payable (see Moneys due and payable)
defined in Principal's project requirements..... 1	Emergency work..... 13
Determination (see also Direction)	Employees
defined in direction..... 1	control of..... 23
disputes.....42	insurance of..... 17(c), 18
interpretation of discrepancy .....8.1	of Contractor (see Contractor's employees)
pricing of variation .....36.4	of subcontractor 23
value of work 37.2	responsibility for..... 9.5
Determination of Contract (see Termination of Contract)	English language 1(e)
Dimensions	EOT (extension of time)
figured .....8.1	application for .....34.3
scaled 8.1	assessment of..... 34.4, 34.5
Direct payment to subcontractor 38.3	claim for.....34.3
Direction (see also Approval)	deemed assessment.....34.5
construction program .....32	defined..... 1
covering up of work .....30.2	failure to apply for, effect.....41.2
defective materials or work .....29.3, 29.4	grant of .....34.5
defined 1	in event of further delay .....34.3
dispute as to .....42.1(a)	partial grant of.....34.5
examination and testing.....30	qualifying cause of delay 1, 34.3
oral, to be confirmed in writing .....20	refusal of.....34.5
order of work.....32	time for applying for .....34.3
notice of tests .....30.4	Superintendent may direct .....34.5
relating to Contractor's employees.....23	Equipment to be provided by Contractor
relating to subcontractors .....23	(see Construction plant)..... 28
suspension of WUC .....33.1	Errors
written .....20	Contract documents..... 8.1
Discrepancies	in schedule of rates 2.5
Contract documents .....8.1	setting out .....26.2
	Escrow
	security transferred in..... 5.1

<i>Clause</i>	<i>Clause</i>		
Examination and testing.....	30	notice of dispute when.....	42.1(b)
Excepted risk		payment on.....	40
defined	1	release and return of security	40
meaning	14.3	termination by.....	40
Explanation (see also Direction)		Gender includes every gender.....	1(d)
Extension of time (see EOT)		Governing law	1, <i>Item 8</i>
Failure of Contractor (see also Delay and Default by Contractor)		Guarantee, etc., deed of.....	5.6
to arrange urgent protection.....	13	Headings of clauses	1(c)
to lodge security	5.1, 39.2(a)	Hours of work	31
to make claims.....	41.2	Incompetence of employees, etc.....	23
to produce proof of insurance	19.2, 39.2(a)	Indemnity	
to show cause	39.3	by Contractor.....	10.1, 15.1
Failure of Principal (see also Default of Principal)		by Principal	10.1, 15.2
to give access	39.7(a)	care of work	14
to give possession of Site	39.7(a)	damage to persons and property	15
to insure.....	19.2, 39.2(a)	infringement of intellectual	
to make payment.....	37.5, 39.7(a)	property rights	10.1
Faulty work (see Defective material or work)		Information to be supplied	
Fees and charges (see Legislative requirements)		advance notice	32
Figured dimensions	8.1	by Principal	32
Final certificate		confidential information	8.5
accord and satisfaction	37.4	Contract documents.....	8
defined	1	examination of information made available	
effect of	37.4	for tendering.....	25.1(a)
final payment claim for	37.4	examination of information relevant to	
generally	37.4	risks, contingencies, etc.....	25.1(b)
meaning	37.4	for setting out the Works	26.1
release of security.....	5.4	latent conditions.....	25
Final payment (see also Final certificate)		particulars of materials and plant.....	28(a)
defined	1	results of tests.....	30.6
meaning	37	to media	8.6
Final payment claim		working hours and days	31
defined	1	Injury to persons	
endorsement of.....	37.4	generally	12
includes all claims	37.4	indemnity by Contractor	15.1
meaning	1, 37.4	insurance	17, 18
payment on account, excepted	37.2	measures to prevent.....	12
prescribed notice, excluded	41.1	Insolvency	
time for.....	37.4	bankruptcy.....	39.11(c)
Financial institution		Contractor's rights on.....	39.11(B)
form of unconditional		deed of arrangement.....	39.11(d)
undertaking by	Annexure Part B	generally	39.11
security provided by.....	1	meeting of creditors	39.11(d)
Finding of minerals, fossils and relics.....	24.3	mortgagee in possession	39.11(d)
Fitness for stated purpose		Principal's rights on	39.11(A)
to be stated in Principal's project		voluntary winding up.....	39.11(d)
requirements (definition).....	1	when corporation	39.11(d)
warranty, as to	2.2(a)(ii)	when exercisable.....	39.11
warranty as to preliminary design	2.2(a)(ii)	when individual	39.11(c)
Float	34.4(a)	Inspection	
Formal instrument of agreement		access for testing.....	30.1
execution of	6	access to Principal and others	24.2
generally	6	insurance policies.....	19.1
stamping of	6	testing	30.1
Form of unconditional undertaking	Annexure Part B	Institute of Arbitrators & Mediators Australia	
Fossils	24.3	rules of.....	<i>Item 37(b)</i>
Frustration		Instruction (see also Direction)	
generally	40	Insurance	
		cross-liability.....	19.6
		failure to provide proof of.....	19.2, 39.2(a), 39.7(a)
		inspection of policies	19.1
		notice of potential claims.....	19.4

<i>Clause</i>	<i>Clause</i>		
notices to and from insurer	19.3	for subcontractors	9.5
of employees	18	Licences (see Legislative requirements)	
of the Works	16A, <i>Item 23</i>	Limits of accuracy in schedule of rates	2.5(b), <i>Item 12</i>
professional indemnity	16B, <i>Item 24</i>	Liquidated damages	
proof of insurance	19.1	certifying of	34.7
provisions of policies	19.3	rate of	34.7, <i>Item 29</i>
public liability	17	repayment of	34.7
settlement of claims	19.5	separable portions	4(c)
workers' compensation	18	Litigation	42.4
Intellectual property rights		Local authorities	11
Contractor's warranty as to	10	Loss or damage to WUC	
defined	1	care of WUC	14.1
design documents	10.2	excepted risks	14.3
indemnity as to	10	generally	14
licence in	10.2	protection	12, 13
ownership of	10.2	reinstatement	14.2
Principal's warranty as to	10	urgent protection	13
Interpretation of Contract documents	1, 8.1	Lump sum	2.1
Interest		Making good (see also Reinstatement)	14.2, 29.3, 35
on security	5.5	Materials (see also Work)	
overdue payments	37.5, <i>Item 35</i>	acceptance of defective	29.4
rate of	37.5, <i>Item 35</i>	defective	29.3, 29.4
Issue of		examination and testing of	30
certificate of practical completion	34.6	failure to use proper materials	39.2(a)
final certificate	37.4	manufacture and supply of	28
payment certificate	37.2	not to remove from site	28
<i>Item</i>		particulars of	28
defined	1	possession on default	39.5
Labour		provision of by Contractor	28
provision by Contractor	28	quality of	29.1
Language of Contract	1(e)	supply of	28
Latent conditions		testing of	30
costs of	25.3	unfixed	37.3
deemed variation on	25.3	upon frustration of Contract	40
defined	1	use of new materials	29.1
meaning	25.1	Measurement	
notification of	25.2	generally	37.2
scope of	25.1	of quantities	1(f)
Law		Media releases	8.6
compliance with legislative requirements	11.1	Minor defects	
Corporations	5.6, 38.3	practical completion, in definition of	1
governing the Contract	1(h), <i>Item 8</i>	remedying	29.3, 35
Legislative requirements		Misconduct of employee	23
change in Principal's project requirements	11.2(a)(i)	Monetary sum (see Provisional sum)	
changes in	11.2	Moneys due	
changes to WUC	11.2(a)(iii)	claim for	37.1
changes to the Works	11.2(a)(ii)	cleaning up costs	27
compliance with	11.1	cost of proposed variation	36.2
cost of	11.2(c)	cost of protection	12
defined	1	cost of urgent protection	13
excepted	11.1, <i>Item 22(a)</i>	moneys certified due to Principal	37.2(b)
fees and charges	1, 11.2(a)	on frustration	40(b)
identified WUC	11.2, <i>Item 22(b)</i>	other moneys due	37.6
payment to subcontractor under	38.3	progress certificate	37.2(a)
payment to worker under	38.3	progress claim	37.1
provision of services	11.2(a)	Moneys due and owing	
satisfaction of	11.1, <i>Item 22(a)</i>	to Principal otherwise	37.6
time of effect of	11.2(b)	Moneys due and payable	
variance in	11.1	bonus	34.8
Level mark (see Survey mark)		claims generally	41.3
Liability of the Contractor			
for care of WUC	14		
for compliance with legislative requirements	11		
for selected subcontractors	9.5		

<i>Clause</i>	<i>Clause</i>
cost of defect rectification	35
costs of suspension on breach	39.9
delay damages	34.9
final certificate	37.4
interest	37.5
liquidated damages	34.7
on work taken out of the hands of Contractor	39.6
substantial breach	39.7(a)
to workers and subcontractors	38.2
unpaid insurance premium	19.2
Nature of Contract	2
Negligence of employee	23
Nominated subcontractor (see Novation)	9.3, 9.4
Notice (see also Direction, Notice of dispute)	
for testing	30.4
for urgent protection	13
from or to insurer	19.3
of availability of site	24.1
of claim for EOT	34.3
of claims generally	41
of default by the Contractor	39.3
of default by the Principal	39.8
of delay	34.2
of discovery of minerals, fossils or relics	24.3
of dispute	42.1
of errors in setting out	26.2
of latent conditions	25.2
of names of persons entitled to access	24.2
of potential insurance claims	19.4
of working hours	31
oral or written	20
prescribed	41.1
service of	7
statutory authorities	11.2
to suspend work	33.1
Notice of dispute	
arbitration	42.3
concerning claims	41.1, 41.3
conference following	42.2
generally	42
how served	42.1
includes difference	42.1
when final certificate	37.4(d)
Notification of claims (see also Claims)	
failure to comply	41.2
generally	41
notice of dispute concerning	41.1, 41.3
prescribed notice	41.1
Superintendent's decision on	41.3
Novation	
acceptance of	2.2(a)(iii)
consultant	9.4, Item 20
deed of	9.4
Deeds of	Annexure Parts C and D
of Principal's consultants	2.2(a)(iii)
selected subcontractor	9.4, Item 20
subcontractor	9.2(c), 9.4, Item 20
warranties unaffected by	2.3(b)
Omissions (see also Defects and Minor defects)	
at final certificate	37.4(b)
schedule of rates	2.5
Opening up for examination and testing	30.1
Oral direction	20
Order (see also Direction)	
Order of work	32
Orders (see Legislative requirements)	
Ordinances (see Legislative requirements)	
Ordinary working days	31
Ordinary working hours	31
Other moneys due	37.6
Overlapping delays	34.4
Ownership of documents	
supplied by Contractor	8.3
supplied by Principal	8.2
Patent (see Intellectual property right)	
Payment(s) (see also Adjustments)	
adjustment for errors in schedule of rates	2.5
adjustment for fees to statutory authorities	11.2
and performance	2.1
basis of	2.1
bonus	34.8
calculated by rates	2.1
calculation of	37.2
certificates	37.2
claims for	37.1
currency of	1(g), Item 9(a)
deductions	37.2
default by Principal	39.7(a)
delay damages	34.9
during arbitration	42.1
for defective materials and work	29.3, 35
for progress certificates	37.2
for unfixed plant and materials	37.3
insurance premiums, proof of	19.2
interest on overdue	37.5
liquidated damages	34.7
not evidence of satisfactory WUC	37.2
of balance after set off	37.2
of security and retention moneys	5.1
of workers and subcontractors	38
on completion by Principal	39.6
on final certificate	37.4
payment certificate	37.2
payment on account	37.2
place for	1(g), Item 9(b)
provisional sums	3
retention moneys	5.1, Item 14(c)
set-offs by Principal	37.2, 37.6
suspension of by Principal	39.4
to consultants	38
to subcontractors	38
to workers	38
urgent protection	13
within 7 days of certificate	37.2
within 21 days of claim	37.2
withholding by Principal	38.2
Payment to workers, consultants and subcontractors	
direct payment to	38.3
documentary evidence of	38.1
Principal may withhold payment	38.2
where required by law	38.3
withholding of payment	38.2
Performance and payment	2.1
Permission (see also Direction)	
Permits (see Legislative requirements)	

<i>Clause</i>	<i>Clause</i>		
Person, meaning	1(a)	timing objectives	1
Persons		warranties, as to	2.2
death of	15.1	warranties, as to by Principal	10.1
indemnity by Principal	15.2	Principal-supplied documents	
injury to	15.1	availability of	8.2
insurance of	17, 18	copies of	8.2, <i>Item 16</i>
protection of	12	copying of	8.2
suspension, to protect	33.1	number of	8.2
urgent protection of	13	property in	8.2
Place for payment	1(g), <i>Item 9(b)</i>	supply of	8.2, <i>Item 16</i>
Place of business of bank (security)	1, <i>Item 9(c)</i>	Proclamation (see Legislative requirements)	
Plant (see Construction plant)	1, 28, 39.5, 39.6	Profit and overheads/attendance	
Plant and materials		in pricing variations	36.4
security for unfixed	5.4, 37.3, <i>Item 14(e)</i>	on provisional sums	3
unfixed	37.3, <i>Item 34</i>	Program	
Possession of site (see also Access)	24.1	defined	1
Practical completion		departure from	32
certificate of	34.6	direction as to	32
date for	1, 34.1, 34.6, 34.7	failing to adhere to	39.2(c)
date of	1, 34.6, 34.7	meaning of	32
defined	1	proposed variation, effect on	36.2(a)
early practical completion	34.8	Programming (see Program)	
EOT for	34.3	Progress certificate	
request for certificate of	34.6	deemed	37.2
separable portions	4	defined	1
Preliminary design		issue of	37.2
copyright and ownership of design	10.2	meaning	1, 37.2
defined	1	not evidence WUC is satisfactory	37.2
details of	<i>Item 11</i>	on account only	37.2
included in Contractor's design obligations	1	Progress claims	
novation	9.4	early	37.1
warranties, as to	2.2(a)(ii)	generally	37.1
warranties unaffected	2.3(a)	time for	37.1, <i>Item 33</i>
Prescribed notice		Progress, failure to maintain	39.2(c), 39.2(d)
defined	1	Prompt payment discount	3(b)
meaning	1, 41.1	Proper law of Contract	1(h), <i>Item 8</i>
Pricing		Property	
variations	36.4	damage to	12
Prime cost item (see Provisional sum)		indemnity as to	15
Principal		insurance of	17
address of	<i>Item 2</i>	loss of	15.1
certificate to	37.2(b)	protection of	12
consultants, novation of	2.2(a)(iii), 9.4	unavoidable damage to	15.1(b)
default of	39.7	Protected right (see Intellectual property right)	
defined	1	Protection	
dispute with Contractor	42.1	of persons and property	12
licence to use design documents	10.2	of WUC	14
named	<i>Item 1</i>	suspension due to	33.1
ownership of design documents	10.2	urgent	13
project requirements defined	1	Provisional sum	3
rights of	39.2, 39.3, 39.4, 39.5	defined	1
security by	5, <i>Item 15</i>	included in contract sum	1
set off by	37.2	included in schedule of rates	1
Principal's project requirements		meaning	1, 3
change in legislative requirements	11.2(a)(i)	percentage for profit and attendance	3, <i>Item 13</i>
cost objectives	1	Public authorities	5.5, 11
defined	1, <i>Item 10</i>	Public liability policy	
design objectives	1	alternative applying	17, <i>Item 25(a)</i>
details of	<i>Item 10</i>	amount of	17, <i>Item 25(b)</i>
inconsistency, etc. in	8.1	defined	1
novation	9.4	meaning	1, 17
preliminary design included	<i>Item 11</i>		
stated purpose of	1, 2.2(a)(iv)		

<i>Clause</i>	<i>Clause</i>
Qualifying cause of delay	Requirements of legislation 11.1
defined 1	Responsibility
excludes those in Item 28	of Contractor for subcontractors 9.5
EOT for 34.3	for performance 2.1
further delay due to 34.3	Retention moneys (see Security)
Quality 29	Risks
Quality assurance 29.2	excepted 1, 14.3
Quality of materials and work	Royalties (see Intellectual property rights)
defective materials and work 29.3	Schedule of prices
examination and testing of 30	included in definition of schedule of rates 1
generally 29.1	variations priced by 36.4(c)
Quality system 29.2	Schedule of rates
Quantities	defined 1
errors in 2.5	generally 2.4, 2.5
estimated only 2.4	limits of accuracy in 2.5(b), <i>Item 12</i>
generally 2.4, 2.5	omitted items in 2.5
omitted items 2.5	payment by 2.1
Rates (see also Schedule of rates)	quantities in 2.4
adjustment of 2.5	variations priced by 36.4(c)
limits of accuracy 2.5(b), <i>Item 12</i>	Security (includes Retention moneys)
payment of 2.1	change of 5.3
provisional sums 3	Contractor's <i>Item 14</i>
valuation of variations 36.4(c)	defined 1
Receiver 39.11	form of 5.1
Reference mark (see also Survey marks)	generally 5
defined 1	includes retention moneys 1
survey mark, included in 1, 26.1	interest earned on 5.5
Registered design (see Intellectual property right)	Principal's <i>Item 15</i>
Regulations (see Legislative requirements)	provision of 5.1, <i>Items 14, 15</i>
Reinstatement of damage	purpose of 5.1
excepted risks 14.3	recourse to 5.2
generally 14.2	reduction of 5.4, <i>Items 14, 15</i>
Rejection (see also Direction)	release of 5.4
Rejection of materials or work 29.3	return of 5.4
Relation-back day	substitution of 5.3
concerning direct payment to workers and	time of lodgement of 5.1, <i>Items 14, 15</i>
subcontractors 38.3	trust 5.5
Release of security 5.4	unfixed plant and materials 5.4, 37.3(a), <i>Item 14(e)</i>
Remedial work	upon frustration of the Contract 40(c)
generally 29.3, 35	Selected subcontract work
included in definition of WUC 1	defined 1
Removal of	meaning 1, 9.3
construction plant 28	Selected subcontractor
materials 28	defined 1
Contractor's employees and subcontractors 23	meaning 1, 9.3
Repairs, urgent (see Urgent protection) 13	Separable portion(s) 4, Annexure Part A
Replacement (see Reinstatement)	date for practical completion 4(b)
Replacement of defective	defects liability period 35
materials or work 29.3	defined 1
Representative of	directed by Superintendent 4
Contractor 22	liquidated damages 4(c)
Superintendent 21	security in 4(c)
Repudiation of Contract	Service
parties rights on 39.1, 39.10	by fax 7(b)(ii)
Request (see also Direction)	by hand 39.2, 39.7, 42.1
Requirement (see also Direction)	by post 7(b)(iii)
	by registered post 39.2, 39.7, 42.1
	by the Contractor on the Principal 39.7
	by the Principal on the Contractor 39.2
	from or to the insurer 19.3
	notification of latent conditions 25.2
	of appointment of Superintendent 1
	of appointment of Superintendent's
	Representative 21

<i>Clause</i>	<i>Clause</i>
of claims to the Superintendent..... 41.1	Superintendent (see also Directions)
of finding of minerals, fossils and relics..... 24.3	address of..... <i>Item 6</i>
of notice of dispute..... 42.1	appointment of..... 20
of notice(s) (see also Notices)..... 7	appointment of Superintendent's representative..... 21
of potential (insurance) claims..... 19.4	assessments by..... 3, 8.1, 11.2, 14.2, 24.3, 26.2, 26.3, 32, 33.4, 34.5, 39.6, 39.9, 41.3
of taking the work out of the hands of Contractor..... 39.4	certifications by..... 12, 13, 19.2, 19.5, 27, 29.3, 34.7, 34.8, 34.9, 35, 36.2, 37.2, 37.4, 39.6, 39.9, 40(a), 41.3
of terminating the Contract..... 39.4, 39.9	defined..... 1
personal service..... 7	directions of..... 20
Set-off	generally..... 20
by Principal..... 37.2, 37.6	includes Superintendent's Representative..... 1
election by Principal..... 37.2	named..... <i>Item 5</i>
generally..... 37.2, 37.6	notice to in relation to dispute..... 42.1
Setting out the Works	obligations of..... 20
care of..... 26.3	pricing by (deemed variation, etc.)..... 2.5, 3, 14.2, 25.3, 36.4
disturbance to..... 26.3	to confirm oral direction..... 20
errors in..... 26.2	valuations by..... 4
generally..... 26	Superintendent's Representative..... 1
survey marks for..... 26.1	appointment of..... 21
Settlement	defined..... 1
arbitration..... 42.2	functions of..... 21
notice of dispute..... 42.1	notice of appointment of..... 21(c)
of disputes..... 42.1	objection to appointment of..... 21(d)
Signal (see Survey mark)	termination of appointment of..... 21(c)
Site	Survey mark
access to by Contractor..... 24.1, <i>Item 26(a)</i>	care of..... 26.3
access to by Principal, etc..... 24.2	defined..... 1
access to by Superintendent..... 24.2	errors in..... 26.2
cleaning up..... 27	supply of..... 26.1
commencement of work on..... 24.1	Survey peg (see Survey mark)
defined..... 1	Suspension
delay in making available..... 24.1	by the Contractor..... 33.2, 39.9
generally..... 24	by the Superintendent..... 33.1
latent conditions on..... 25	cost of..... 33.4, 39.9
materials, delivery to..... 24.1	due to acts, etc. of Contractor..... 33.1(a)
minerals, fossils, relics, etc. on..... 24.3	due to acts, etc. of Principal..... 33.1(a)
possession of..... 24.1, <i>Item 26(b)</i>	effect of..... 33.4
substantial breach in giving access of..... 39.7(a), <i>Item 36(a)</i>	end of..... 33.3
substantial breach in giving possession of..... 39.7(a), <i>Item 36(b)</i>	protection or safety..... 33.1(b)
Stated purpose	generally..... 33
in Principal's project requirements..... 1	to comply with court order..... 33.1(c)
warranty, as to..... 2.2(a)(iv)	Suspension of payment by Principal..... 38.2, 39.4
Statutory requirements (see Legislative requirements)	Taking over of work by Principal..... 39.5
Subclause headings—effect..... 1(c)	Temporary works
Subcontract work	care of..... 14.1
generally..... 9	defined..... 1
requiring approval..... 9.2, <i>Item 19</i>	insurance of..... 16A
Subcontractor	removal of..... 27
approval of..... 9.2, <i>Item 19</i>	Tender (see Acceptance of tender)
Contractor's responsibility for..... 9.5	date of acceptance, defined..... 1
defined..... 1	Termination of the Contract (see Default, Frustration)
includes consultant..... 1	by frustration..... 40
novation of..... 9.2(c), 9.4, <i>Item 20</i>	by the Contractor..... 39.9, 39.10
removal of..... 23	by the Principal..... 39.4, 39.10
selected..... 9.3, 9.4, <i>Item 20</i>	insolvency..... 39.11
terms of approval..... 9.2	rights of parties on..... 39.10
when Contract frustrated..... 40(b)	Test
Subcontractor's employees	completion of..... 30.6
control of..... 9.5, 23	costs of..... 30.7
insurance of..... 18	covering up of work..... 30.2
responsibility for..... 9.5	defined..... 1
Substantial breaches..... 39.2, 39.7	delay in testing..... 30.5

<i>Clause</i>	<i>Clause</i>
notice of..... 30.4	Unpaid moneys..... 38.3
procedure if delayed..... 30.5	Urgent protection..... 13
results of..... 30.6	Urgent relief..... 42.4
Superintendent may direct..... 30.1	Valuation
who conducts..... 30.3	of final payment claims 37.4
Tests (see definition of Practical completion)	of progress payment claims..... 37.2
Third party insurance	pricing of variations 36.4
(see Public liability insurance)..... 17	Variation
Time (see also EOT)	character and extent of 36.1
acceleration of work..... 34.4(b)	cost of complying..... 36.2
construction program 32	cost of proposed..... 36.2
Contractor's float 34.4(a)	deductions—valuing..... 36.4
defects liability period 35, <i>Item</i> 32	deemed..... 2.5, 14.2, 25.3, 29.4
delay damages 34.9	defined 1
for access to site 24.1, <i>Item</i> 26(a)	directing of..... 36.1
for approval of Contractor's	direction by Superintendent 36.1
drawings 8.3(c), <i>Item</i> 18	estimate for..... 36.2
for arbitration 42.2	for convenience of Contractor 36.3
for carrying of work..... 32	generally 36
for claiming EOT..... 34.3	meaning..... 1, 36.1
for cleaning up 27	measurements 36.2
for completing WUC..... 34.1	notice of proposed..... 36.2
for doing any act..... 1(b)	order of precedence in pricing..... 36.4
for effecting insurance 16A, 16B, 17, 18	pricing of..... 36.4
for executing formal instrument of agreement..... 6	proposed..... 36.2
for final payment 37.4	quotation for..... 36.2
for granting an EOT..... 34.5	scope of..... 36.1
for lodging security..... 5.1, <i>Items</i> 14, 15	valuation of 36.4
for making claims 41	Wages
for notice of latent condition 25.2	of workers 38
for notice of tests 30.4	Waiver of conditions
for notice to show cause 39.3, 39.8	generally 43
for notification of claims 41	in writing..... 43
for possession of Site 24.1, <i>Item</i> 26(b)	Warranties
for practical completion 34.1, <i>Item</i> 7	Contractor's..... 2.2
for progress claims..... 37.1, <i>Item</i> 33	proposed variation, effect on..... 36.2
for progress payments 37.2	unaffected..... 2.3
for release of security or retention..... 5.4	variation, effect on 2.3(d), 36.1, 36.2
for service of notices..... 7	Winding up 39.11
for Superintendent to confirm oral direction 20	Words—singular includes plural and vice versa 1(d)
for Superintendent's direction	Work (includes Materials)
about documents..... 8.3, <i>Item</i> 18	acceptance of defective work 29.4
for supply of construction program 32	care of 14.1
for supply of Contractor's documents..... 8.3, <i>Item</i> 17	deemed variation as to defective work 29.4
for supply of Principal's documents 32, <i>Item</i> 27	defective..... 29.3
for testing..... 30.1	defined 1
for urgent protection 13	examination and testing of..... 30
suspension of work 33.1	not complying with the Contract 29.3
to rectify inadequate access 39.7(a), <i>Item</i> 36(a)	order of work..... 32
to rectify inadequate possession..... 39.7(a), <i>Item</i> 36(b)	outside working hours 31
Timing objective	progress of..... 34
defined in Principal's project requirements..... 1	quality of..... 29.1
Trademark or name (see Intellectual property right)	remedial 29.3, 35
Unconditional undertaking (see Security)	subcontracting 9.2, <i>Item</i> 19
approved form Annexure Part B	suspension of..... 33
UNCITRAL Rules <i>Items</i> 37(b), (c)	testing of 30
Unfixed plant and materials	times for work 32
additional security for 37.3(a), <i>Item</i> 14(e)	under the Contract, defined (WUC) 1
generally 37.3, <i>Item</i> 34	variations (see Variations)..... 36
labelled 37.3(b)	Work under the Contract (see WUC)
payment for..... 37.3	Workers' compensation..... 18
Principal's liability for..... 37.3	Workers, payment of..... 38
security for..... 5.4, 37.3, <i>Item</i> 14(e)	
stored and protected..... 37.3(b)	
unencumbered property of Principal..... 37.3	

	<i>Clause</i>
Working days.....	31
Working hours	31
Works (see also care of WUC)	
defined	1
design of, warranties	2.2
design, timing and cost objectives in	
Principal's project requirements	1
insurance of.....	16A
setting out of.....	26
stated purpose in Principal's project requirements.....	1
WUC (work under the Contract)	
acceleration of.....	34.4(b)
care of	14.1
damage to property other than.....	15
defined	1
delay to	34.2, 34.3
excepted risks.....	14.3
insurance of.....	16A
insurance of property other than.....	17
novation relating to	9.4, <i>Item</i> 20
order and time of carrying out	32
programming of.....	32
progress of	34.1
recommencement of.....	33.3
reinstatement of.....	14.2
suspension of.....	33, 39.9
urgent protection of	13

Clause

AMENDMENT CONTROL SHEET**AS 4902—2000**

Amendment No. 1 (2005)

REVISED TEXT

SUMMARY: This Amendment applies to Clause 37 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

NOTES

Standards Australia

Standards Australia is an independent company, limited by guarantee, which prepares and publishes most of the voluntary technical and commercial standards used in Australia. These standards are developed through an open process of consultation and consensus, in which all interested parties are invited to participate. Through a Memorandum of Understanding with the Commonwealth government, Standards Australia is recognized as Australia's peak national standards body. For further information on Standards Australia visit us at

www.standards.org.au

Australian Standards

Australian Standards are prepared by committees of experts from industry, governments, consumers and other relevant sectors. The requirements or recommendations contained in published Standards are a consensus of the views of representative interests and also take account of comments received from other sources. They reflect the latest scientific and industry experience. Australian Standards are kept under continuous review after publication and are updated regularly to take account of changing technology.

International Involvement

Standards Australia is responsible for ensuring that the Australian viewpoint is considered in the formulation of international Standards and that the latest international experience is incorporated in national Standards. This role is vital in assisting local industry to compete in international markets. Standards Australia represents Australia at both ISO (The International Organization for Standardization) and the International Electrotechnical Commission (IEC).

Electronic Standards

All Australian Standards are available in electronic editions, either downloaded individually from our web site, or via On-Line and DVD subscription services. For more information phone 1300 65 46 46 or visit Standards Web Shop at

www.standards.com.au



GPO Box 5420 Sydney NSW 2001

Administration Phone (02) 8206 6000 Fax (02) 8206 6001 Email mail@standards.com.au

Customer Service Phone 1300 65 46 46 Fax 1300 65 49 49 Email sales@standards.com.au

Internet www.standards.org.au

ISBN 0 7337 3524 X

Printed in Australia