

AS 2987—1987
with
AS 2988—1987
(Incorporating Amendment Nos 1 and 2)

Australian Standard[®]

**GENERAL CONDITIONS OF
CONTRACT FOR THE SUPPLY
OF EQUIPMENT WITH OR
WITHOUT INSTALLATION
(AS 2987—1987)**

together with

**FORM OF FORMAL INSTRUMENT OF
AGREEMENT (AS 2988—1987)**

This Australian Standard was prepared by Committee OB/2, Conditions of Contract for Supply and Erection of Equipment. It was approved on behalf of the Council of the Standards Association of Australia on 30 July 1987 and published on 5 October 1987.

The following interests are represented on Committee OB/2:

Australian Electrical and Electronic Manufacturers Association
Australian Federation of Construction Contractors
Australian Institute of Purchasing and Supply Management
Australian Mining Industry Council
Building Industry Specialist Contractors Organization of Australia
Institution of Engineers, Australia
Master Builders Federation of Australia
Metal Trades Industry Association of Australia
National Construction Council
Public Works Department, New South Wales
Queensland Electricity Commission
State Electricity Commission of Victoria
Sydney County Council

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These Standards were issued in draft form for comment as DR 86113 and DR 86114.

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PREFACE

These two Standards (bound together) were prepared by the Association's Committee on Conditions of Contract.

AS 2987 is an amalgamation of and supersedes both AS CZ20—1970 and AS CZ21—1973.*

AS 2988 supersedes AS CZ24—1970.*

AS CZ20—1970 was bound together with AS CZ23—1970, AS CZ24—1970 and AS CZ25—1970.* Likewise AS CZ21—1973 was bound together with those three Standards. With the publication of AS 2987 and AS 2988 both AS CZ23 and AS CZ25 are withdrawn.

In the preparation of these Standards account was taken of AS 2124, AS 2125 and AS 2127† with a view to adopting a uniform approach to all standard conditions of contract prepared by the Association.

This Standard incorporates Amendment No. 1 (February 1988) and Amendment No. 2 (October 2000). The changes required by the Amendments are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

A2

WARNING

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.

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- * AS CZ20—1970 Conditions of Contract for the Supply of Electrical and Mechanical Equipment, Plant and Machinery Without Erection.
 - AS CZ21—1973 Conditions of Contract for the Supply and Erection of Electrical and Mechanical Equipment.
 - AS CZ23—1970 Conditions of Tendering and Form of Tender for the Supply of Electrical and Mechanical Equipment, Plant and Machinery.
 - AS CZ24—1970 Form of Formal Instrument of Agreement.
 - AS CZ25—1970 Payment Certificate.
 - † AS 2124 General Conditions of Contract.
 - AS 2125 General Conditions of Tendering and Form of Tender
 - AS 2127 Form of Formal Instrument of Agreement

The Association's Committee responsible for preparation of these Standards has proposed production of a companion set of comparatively simpler conditions to cater to the needs of smaller supply only transactions. Work on this project has already begun.

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STANDARDS ASSOCIATION OF AUSTRALIA

Australian Standard**GENERAL CONDITIONS OF CONTRACT FOR THE
SUPPLY OF EQUIPMENT WITH OR WITHOUT INSTALLATION**

NOTE: Clauses prefixed by an asterisk can be omitted without making consequential amendments.

1 CONSTRUCTION OF CONTRACT

The Contract shall be governed by and construed with reference to the laws for the time being in force in the State or Territory named in the Annexure.

Unless otherwise provided, prices are in Australian currency and payments shall be made in Australian currency at the place named in the Annexure.

Communications between the Purchaser, the Engineer and the Contractor shall be in the English language.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the Weights and Measures (National Standards) Act 1960 as amended from time to time.

The interpretations of:

Date of Delivery;
Date for Practical Completion;
Practical Completion,

and Clauses 5.7, 16.1, 21, 22, 23 and 24 shall apply separately to each Separable Portion and references therein to the Equipment and to work under the Contract shall mean so much of the Equipment and the work under the Contract as is comprised in the relevant Separable Portion.

If the Contract does not make provision for the amount of security, retention moneys or liquidated damages applicable to a Separable Portion, the respective amount applicable shall be such proportion of the security, retention moneys or liquidated damages applicable to the whole of the work under the Contract as the value of the Separable Portion bears to the value of the whole of the work under the Contract.

Where provisions in the General Conditions of Contract are expressed to be alternatives and the Contract fails to state which alternative applies, the first alternative shall apply.

2 INTERPRETATION

In the Contract, except where the context otherwise requires—

‘Constructional Plant’ means appliances and things used on or in the vicinity of the Site in the execution of the work under the Contract but not forming part of the Equipment;

‘Contract Sum’ means:

- (a) where the Purchaser accepted a lump sum, the lump sum;
- (b) where the Purchaser accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Schedule of Rates;
- (c) where the Purchaser accepted a lump sum and rates, the aggregate of the sums referred to the 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 execute the work under the Contract;

‘Date for Delivery’ means:

- (a) where the Annexure provides a date for Delivery, the date;
- (b) where the Annexure provides a period of time for Delivery, the last day of the period;

but if an extension of time for Delivery is granted by the Engineer under Clause 22, it means the date resulting from the extension of time;

‘Date for Practical completion’ means:

- (a) where the Annexure provides a date for Practical Completion, the date;
- (b) where the Annexure provides a period of time for Practical Completion, the last day of the period;

but if an extension of time for Practical Completion is granted by the Engineer under Clause 22, it means the date resulting from the extension of time;

‘Date of Acceptance of Tender’ means the date which appears on the notice in writing of acceptance of the Contractor’s tender;

‘day’ means calendar day;

‘Drawings’ means the drawings referred to in the Contract and any modification of such drawings notified to the Contractor by the Engineer and includes such other drawings as may from time to time be supplied to the Contractor by the Engineer, or the use of which has been permitted by the Engineer, for the purposes of the Contract;

‘Engineer’ means the person named in the Annexure as the Engineer or other person from time to time appointed in writing by the Purchaser to be the Engineer and notified as such in writing to the Contractor by the Purchaser and, so far as concerns the functions exercisable by an Engineer’s Representative, includes an Engineer’s Representative;

‘Engineer’s Representative’ means a person appointed in writing by the Engineer under Clause 18;

‘Equipment’ means the goods to be supplied by the Contractor under the Contract which are to be handed over to the Purchaser or a person designated by the Purchaser;

‘person’ includes a firm or body corporate or unincorporated as well as an individual;

‘Practical Completion’ is the stage in the execution of work under the Contract when—

- (a) the Equipment is installed and the Contractor has completed all the work except for minor omissions or minor defects which do not prevent the Equipment from being reasonably capable of being used for its intended purpose;
- (b) the tests which are required by the Contract to be carried out and passed before the issue of the Certificate of Acceptance have been carried out and passed; and
- (c) documents and other information required under the Contract which, in the opinion of the Engineer, are essential for the use, operation and maintenance of the Equipment have been supplied;

‘provisional sum’ includes monetary sum, contingency sum and prime cost item;

‘Purchaser’ means the Purchaser stated in the Annexure;

‘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;

‘Separable Portion’ means a portion of the work under the Contract described in the Contract as a Separable Portion or made a separable portion under Clause 21.4;

‘Site’ means the lands and places to be made available and any other lands and places made available to the Contractor by the Purchaser for the purpose of the Contract;

‘Specification’ means the Specification for work to be carried out as existing at the Date of Acceptance of Tender and any modification of such Specification thereafter directed or the use of which has been permitted by the Engineer pursuant to powers in that behalf contained in the Contract;

‘Temporary Works’ means works used in the execution of the work under the Contract but not forming part of the Equipment;

‘tender’ means, where there is no tender, the Contractor’s offer and then ‘the date of closing of tenders’ means the date of Contractor’s offer or quotation;

‘work under the Contract’ means the work which the Contractor is or may be required to execute or provide under the Contract and includes the Equipment, services, variations, remedial work, Constructional Plant and Temporary Works.

The clause headings and sub-clause headings in the General Conditions of Contract shall not form part of the General Conditions of Contract and shall not be used in the interpretation of the Contract.

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.

3 NATURE OF CONTRACT

3.1 Performance and Payment

The Contractor shall execute and complete the work under the Contract.

The Purchaser shall pay the Contractor:

- for work for which the Purchaser accepted a lump sum, the lump sum;
- for work for which the Purchaser accepted rates, the sum ascertained by multiplying the measured quantity of each section of the work actually carried out under the Contract by the rate accepted by the Purchaser for the section or item;

adjusted by any additions or deductions pursuant to the Contract.

3.2 Quantities

Quantities in a Schedule of Rates are estimated quantities only.

An order shall not be required to be given by the Engineer 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.

Where otherwise than by reason of a direction of the Engineer under Clause 20.1, 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) where the Purchaser accepted a lump sum for the item, the difference shall be valued under Clause 20.2;
- (b) where the Purchaser accepted a rate for the item, the rate shall apply to greater or lesser quantities within the limits of accuracy stated in the Annexure and quantities outside the limits shall be valued under Clause 20.2.

3.3 Omitted Items

If a Schedule of Rates is in error in that it omits an item which should have been included, the item shall be valued under Clause 20.2.

4 MATERIALS AND WORK

The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any other requirement, the Contractor shall use suitable new materials.

5 SECURITY AND RETENTION MONEYS

5.1 Purpose

Security and retention moneys are for the purpose of ensuring the due and proper performance of the Contract.

5.2 Provision of Security

If it is provided in the Annexure that a party shall provide security then the party shall provide security in the amount stated in the Annexure and in accordance with this clause.

5.3 Form of Security

The security shall be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, interest bearing deposit in a trading bank carrying on business in Australia, an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by the party having the benefit of the security.

The party having the benefit of the security shall have a discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution or insurance company giving it or other form of security offered. The form of unconditional undertaking attached to these General Conditions is approved.

If the security is not transferable by delivery it shall be accompanied by an executed transfer. The costs and expenses (including all stamp duty or other taxes) of and incidental to the transfer and retransfer shall be borne by the party providing the security.

5.4 Time for Lodgement of Security

Security shall be lodged within 28 days of the Date of Acceptance of Tender. Failure to lodge security within that period shall be a substantial breach of the Contract within the meaning of Clause 30.

5.5 Conversion of Security

A party shall not convert into money security that does not consist of money until the party becomes entitled to exercise a right under the Contract in respect of the security. The party shall not be liable for any loss occasioned by the conversion pursuant to the Contract.

***5.6 Substitution of Security for Retention Moneys**

The Contractor shall be at liberty at any time to provide in lieu of retention moneys additional security in any of the forms permitted by Clause 5.3. To the extent that additional security is provided the Purchaser shall not deduct retention moneys and shall forthwith release retention moneys.

***5.7 Reduction of Security and Retention Moneys**

Upon issue of the Certificate of Acceptance, the Purchaser's entitlement to security and retention moneys shall be reduced to the percentage thereof stated in the Annexure or, if no percentage is stated, by one-half.

If in the opinion of the Engineer it is reasonable to further reduce retention moneys or security, the Purchaser's entitlement shall be reduced to the amount which the Engineer determines to be reasonable.

The Purchaser shall release security and retention moneys in excess of the entitlement.

5.8 Release of Security

If the Purchaser has provided security, then when the Contractor has been paid all moneys due to the Contractor under the Contract or a Separable Portion the Contractor shall account to the Purchaser for security lodged by the Purchaser in respect of the Contract or the Separable Portion, as the case may be.

If the Contractor has provided security then the Purchaser shall release it when required by Clause 28.

5.9 Interest on Security and Retention Moneys

Alternative 1

The party holding retention moneys or cash security shall own any interest earned on the retention moneys or security.

Alternative 2

A party holding security which is in cash or is converted to cash or retention moneys shall forthwith deposit them in an interest bearing account in a bank. That party shall nominate the bank and the type of account. The account must be in the joint names of the Purchaser and the Contractor and must be one from which moneys can only be drawn with the signatures of two persons, one appointed by each of the Purchaser and the Contractor. The moneys shall be held in trust until the Purchaser or the Contractor is entitled to receive them.

Upon the Purchaser or the Contractor becoming entitled to receive any moneys, including interest in the account, the other party shall have the appointee sign the document necessary to withdraw the money and shall give the document to the other party.

6 EVIDENCE OF CONTRACT

6.1 Contract in Absence of Formal Instrument of Agreement

Until a Formal Instrument of Agreement is executed by the parties, the agreement in writing between the parties for the execution of the work under the Contract, including documents or parts of documents to which reference may properly be made to ascertain the rights and obligations of the parties, shall evidence the Contract.

6.2 Formal Instrument of Agreement

If the conditions of tendering require that a Formal Instrument of Agreement be executed—

- (a) Within 28 days after the Date of Acceptance of Tender the Purchaser shall prepare in duplicate a Formal Instrument of Agreement and request the Contractor to execute it;
- (b) Within 28 days after being requested in writing by the Purchaser so to do the Contractor shall execute both copies of the Formal Instrument of Agreement in the manner directed in writing by the Purchaser and return them to the Purchaser;
- (c) Within 28 days after receipt from the Contractor of the two copies of the Formal Instrument of Agreement duly executed by the Contractor the Purchaser shall execute both copies, have them stamped (unless they are exempt from duty) and forward one copy to the Contractor.

The Engineer may extend the periods.

7 SERVICE OF NOTICES

A notice shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of the person last communicated by the person to the person giving the notice, whichever is the earlier.

The Purchaser, the Contractor and the Engineer shall each notify the others of a change of address.

8 CONTRACT DOCUMENTS

8.1 Discrepancies

The several documents forming the Contract are to be taken as mutually explanatory of one other. The Contractor shall notify the Engineer of any ambiguity or discrepancy discovered by the Contractor. In the event of an ambiguity or discrepancy being discovered and brought to the attention of the Engineer, the Engineer shall direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.

If the direction causes the Contractor to incur more or less expenditure than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 20.2.

8.2 Dimensions

Where any discrepancy exists between figured and scaled dimensions, figured dimensions shall prevail.

8.3 Supply of Documents by Purchaser and Engineer

The Purchaser shall supply to the Contractor the number of copies stated in the Annexure, or if no number is stated then 5 copies of the Drawings, Specification and other documents required by the Contract to be supplied to the Contractor by the Purchaser.

Documents supplied to the Contractor shall remain the property of the Purchaser and shall be returned by the Contractor to the Purchaser on demand in writing. The documents shall not, without the prior written approval of the Purchaser, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

8.4 Supply of Documents by Contractor

If the Contract requires the Contractor to supply documents, the Contractor shall supply the number of copies stated in the Annexure, or if no number is stated then 5 copies.

If the Contract provides that the Contractor must obtain the Engineer's approval to the use of the documents supplied by the Contractor then—

- (a) The Engineer shall not be bound to check the documents for errors, omissions or compliance with the requirements of the Contract;
- (b) Notwithstanding the provisions of Clause 18, the Engineer's approval shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the requirements of the Contract;
- (c) Within the time stated in the Annexure (or if no time is stated then within 21 days) after receipt of the documents the Engineer shall advise the Contractor in writing that the documents are suitable or are not suitable;
- (d) If the Engineer advises the Contractor that the documents are not suitable, the Engineer shall with the notice state why the documents are not suitable and the Contractor shall submit new or amended documents;
- (e) The Engineer shall not reject documents which are in accordance with the requirements of the Contract.

Copies of documents supplied by the Contractor shall be the property of the Purchaser but shall not be used or copied otherwise than for use, maintenance or alternation of the Equipment.

8.5 Availability of Documents

During the manufacture, assembly or erection of any significant part of the work under the Contract a legible set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the places of manufacture, assembly and erection and shall be available for reference by the Purchaser, the Engineer and any person nominated in writing by either of them.

8.6 Confidential Information

Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Contractor or the Purchaser and marked or otherwise identified as confidential shall be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party to the Contract.

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 the expiry of the Contract.

9 ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

Neither party shall, without the prior written approval of the other and except on such terms and conditions as are determined in writing by the other, assign the Contract or any payment thereunder.

9.2 Subcontracting

The Contractor shall not without the written approval of the Engineer, which approval shall not be unreasonably withheld, subcontract or allow a subcontractor to assign or subcontract work described in the Annexure.

With a request for approval, the Contractor shall provide to the Engineer particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor.

The Contractor shall provide to the Engineer other information which the Engineer reasonably requests, including the proposed subcontract documents without prices.

Within 14 days after a request by the Contractor for approval the Engineer shall advise the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
- provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Purchaser.

9.3 Contractor's Responsibility

Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract. Except where the Contract otherwise provides, the Contractor shall be liable to the Purchaser for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor.

10 DESIGNATED, SELECTED AND NOMINATED SUBCONTRACTORS

10.1 Definitions

If the Contract provides that certain work or the supply of certain items shall be subcontracted to a Designated, Selected or Nominated Subcontractor, the work or the supply of the items is 'Designated Subcontract Work', 'Selected Subcontract Work' or 'Nominated Subcontract Work', and:

'Designated Subcontractor' means a subcontractor named in the Contract or chosen jointly by the Contractor and the Purchaser or the Engineer on the Purchaser's behalf and may include persons with whom the Purchaser has entered a contract before this Contract on terms that the prior contract will be assigned by the Purchaser to the Contractor;

'Selected Subcontractor' means a subcontractor selected by the Contractor from a list of subcontractors approved for Selected Subcontract Work;

'Nominated Subcontractor' means a subcontractor to whom the Contractor is directed by the Engineer to subcontract Nominated Subcontract Work.

10.2 Designated Subcontract

If the Contract includes Designated Subcontract Work, the Contractor shall subcontract the Designated Subcontract Work to the Designated Subcontractor.

If the Contract provides that the Purchaser may assign to the Contractor a prior contract between the Purchaser and a Designated Subcontractor, the Contractor shall accept the assignment and, unless the Contract otherwise provides, the Contractor shall give the Purchaser credit for payments made by the Purchaser to the Designated Subcontractor in respect of the Designated Subcontract Work.

If the Contract does not name a Designated Subcontractor and the Contractor and the Purchaser cannot agree upon a Designated Subcontractor or the Designated Subcontractor refuses to subcontract with the Contractor, the Designated Subcontract Work shall be regarded as Nominated Subcontract Work and the Engineer shall nominate a Nominated Subcontractor.

10.3 Selected Subcontract

If the Contract includes Selected Subcontract Work the Contractor shall subcontract the Selected Subcontract Work to a Selected Subcontractor.

If the Contract does not include a list of approved subcontractors, the Contractor shall provide a list for the approval of the Engineer. The Engineer shall not unreasonably refuse to approve of any subcontractor on the list.

If the Engineer does not approve of any subcontractor on the list provided by the Contractor or if no subcontractor on the list included in the Contract or provided by the Contractor will subcontract to perform the Selected Subcontract work, the Selected Subcontract Work shall be regarded as Nominated Subcontract Work and the Engineer shall nominate a Nominated Subcontractor.

10.4 Nominated Subcontract

If the Contract includes Nominated Subcontract Work, at such time as is necessary to avoid delay to the Contractor the Engineer shall direct the Contractor to subcontract the Nominated Subcontract Work to a Nominated Subcontractor.

The Contractor shall ensure that the provisions of the subcontract are severally set out in the subcontract documents, so that the subcontract is fully expressed and complete in itself and includes provisions—

- (a) that in respect of the Nominated Subcontract Work the Nominated Subcontractor will undertake towards the Contractor obligations and liabilities which will enable the Contractor to discharge the Contractor's obligations and liabilities to the Purchaser under the terms of the Contract;
- (b) that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any failure by the Nominated Subcontractor to perform such obligations or fulfil such liabilities;
- (c) that the Nominated Subcontractor will indemnify the Contractor against loss resulting from any negligence by the Nominated Subcontractor and the Nominated Subcontractor's servants and agents and against any misuse by them of any Constructional Plant or Temporary Works provided by the Contractor for the purposes of the Contract;
- (d) that the Nominated Subcontractor will lodge security in a form provided by Clause 5.3 and that security and retention moneys shall be calculated on the same scale and on the same basis respectively as apply in the Contract between the Purchaser and the Contractor;
- (e) equivalent to those in Clause 30.

The Contractor shall not be obliged to subcontract with a Nominated Subcontractor against whom the Contractor raises reasonable objection.

Provided that the Contractor's program or proposed program is reasonable, 'reasonable objection' includes the ground that the Nominated Subcontractor will not be able to or refuses to contract to carry out the Nominated Subcontract Work in the sequence and at the times shown in the program.

If the Contractor declines to enter into a subcontract with the Nominated Subcontractor on the ground that the Nominated Subcontractor refuses to enter into a subcontract containing provisions in paragraphs (a) to (e) of Clause 10.4 the Engineer shall nominate another Nominated Subcontractor or direct the Contractor to enter into a subcontract with the Nominated Subcontractor on such other terms as the Engineer specifies. In the latter event:

- (i) the Contractor shall not be bound to discharge obligations and liabilities under the Contract to the extent that the subcontract terms so specified by the Engineer are inconsistent with the discharge;
- (ii) if the Contractor suffers loss arising out of the refusal of the Nominated Subcontractor to accept such provisions the Purchaser shall pay to the Contractor the amount of loss which the Contractor could not reasonably avoid.

The Contractor shall not be required to enter a subcontract on terms which, bearing in mind the provisions of sub-paragraphs (i) and (ii), are unreasonable.

10.5 Provisions applying generally to Designated, Selected and Nominated Subcontract Work

If the Contractor is required by Clause 10 to enter a subcontract, the Contractor shall proceed promptly to do so and shall notify the Engineer in writing as soon as the subcontract has been entered.

With the consent of the Contractor, the Engineer may direct the Contractor to perform Designated, Selected or Nominated Subcontract Work.

If the Contractor is to be responsible to the Purchaser for the design or suitability of Designated, Selected or Nominated Subcontract Work, as distinct from the quality or workmanship, the responsibility shall be expressly stated in the Contract and the Contractor's liability for the design or suitability of the Designated, Selected or Nominated Subcontract Work shall only be that which is expressly stated in the Contract.

***10.6 Direct Payment of Designated or Nominated Subcontractors**

In respect of Designated or Nominated Subcontract Work performed by a Designated or Nominated Subcontractor the Purchaser on behalf of the Contractor shall make payment directly to the Designated or Nominated Subcontractor. If the Contractor requests the Purchaser in writing not to make a payment to the Designated or Nominated Subcontractor, the Purchaser shall withhold payment but under no circumstances including bankruptcy or winding up of the Contractor, shall payment be made to the Contractor.

The Purchaser as stakeholder shall hold retention moneys and security provided by a Designated or Nominated Subcontractor and shall disburse or apply the retention moneys or security as jointly requested by the Contractor and the subcontractor or in accordance with the decision of an arbitrator or court.

10.7 Termination of Designated and Nominated Subcontracts

The Contractor shall not unreasonably terminate a subcontract for Designated or Nominated Subcontract Work and as early as possible the Contractor shall notify the Engineer of the Contractor's intention to terminate and the reasons. If a Designated or Nominated Subcontractor repudiates or abandons the subcontract or it is terminated, the Contractor shall forthwith notify the Engineer in writing and the Engineer shall proceed under Clause 10.4 to nominate a Nominated Subcontractor to complete the subcontract work and Clause 11(b) shall apply.

11 PROVISIONAL SUMS

A provisional sum included in the Contract shall not itself be payable by the purchaser but—

- (a) where at the direction of the Engineer the work or item to which the provisional sum relates is performed or supplied by the Contractor, the work or item shall be valued under Clause 20.2;
- (b) where at the direction of the Engineer the work or item to which the provisional sum relates is performed or supplied by a subcontractor to the Contractor the Purchaser shall pay the Contractor the amount payable to the subcontractor for the work or item, disregarding any damages payable by the Contractor to the subcontractor or vice versa, plus the amount or percentage thereon for profit and attendance stated in the Annexure or elsewhere in the Contract.

The amount payable to a subcontractor for materials or goods is to be taken to be the nett cost to the Contractor (disregarding any deduction of cash discount for prompt payment).

12 LATENT CONDITIONS

12.1 Definition

Clause 12 shall apply only if the Contractor is required to perform work at the Site.

Latent Conditions are—

- (a) physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions, which should reasonably have been anticipated by the Contractor at the time of the Contractor's tender if the Contractor had—
 - (i) examined all information made available in writing by the Purchaser to the Contractor for the purpose of tendering; and
 - (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
 - (iii) inspected the site and its surroundings; and
- (b) any other conditions which the Contract specifies to be Latent Conditions.

12.2 Notification

If during the execution of the work under the Contract, the Contractor becomes aware of a Latent Condition the Contractor shall, forthwith and where possible before the physical conditions are disturbed, give written notice thereof to the Engineer.

If required by the Engineer, the Contractor shall provide to the Engineer a statement in writing specifying—

- (a) the physical conditions encountered and in what respects they differ materially;
- (b) the additional work and additional resources which the Contractor estimates to be necessary to deal with the physical conditions;
- (c) the time the Contractor anticipates will be required to deal with the physical conditions and the expected delay in achieving Practical Completion;
- (d) the Contractor's estimate of the cost of the measures necessary to deal with the physical conditions; and
- (e) other details reasonably required by the Engineer.