

Australian Standard[®]

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

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The following interests are represented on Committee OB/3:

Australian Chamber of Commerce and Industry
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Professional Engineers New Zealand
Law Council of Australia
Master Builders Australia
National Construction Council/MTIA
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AS 4300—1995
(Incorporating Amendment No. 1)

Australian Standard[®]

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

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PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee on General Conditions of Contract, and issued as an Australian Standard.

This Standard incorporates Amendment No. 1 (October 2000). 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 covers the following types of project procurement methods—

- (a) Design and Construct Contract.
- (b) Design Development and Construct Contract.
- (c) Design, Novate and Construct Contract.

If the project procurement method chosen by the Principal is:

- (i) *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 of any subcontractors (including consultants).
- (ii) *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.
- (iii) *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 24 stating which subcontractors (including consultants) or Selected Subcontractors are to be novated to the Contractor.

This Standard is part of the suite of contracts based on AS 2124—1992 *General conditions of contract*.

AS 4301—1995 *General conditions of tendering and tender form for design and construct contract* and AS 4302—1995 *Form of formal instrument of agreement for design and construct contract* should be used with this Contract.

WARNINGS:

- 1 **Users of this Australian Standard are warned that Clause 17 (Damage to persons and property) does not limit the liability of parties for special, indirect or consequential losses.**

This unlimited liability overrides any limitations or exclusions permitted under Insurance Clauses 18 (Insurance of the work under the Contract) and 19 (Public liability insurance).

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

- 2 **Where the Principal effects insurance policies under Clause 18 or 19, copies of such policies should be made available to tenderers at the time of tender.**
- 3 **For the purposes of Clause 30.2, the inclusion of Quality Assurance requirements in a Contract will require detailed clauses in the Contract which have regard to the Quality Standard selected for the work.**

- 4 **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 give consideration to whether that design should form part of the Preliminary Design.**
- 5 **Clauses which are prefixed by a dagger symbol (†) require the parties to indicate in the Annexure whether the particular Clause is applicable or not applicable. If words in an Annexure item are prefixed with a dagger symbol (†), the parties are required to delete the words which do not apply, as appropriate. Note Clause 1 which provides that if no deletion is made, the particular Clause applies.**
- 6 **Items in Annexure Part A which are marked with a hash symbol (#) indicate that these items are to be deleted where the Contract provides for Separable Portions. If so, the items marked with a hash symbol (#) are to be deleted in Annexure Part A and that part of Annexure Part A entitled Separable Portion is to be completed for each Separable Portion.**
- 7 **Clauses which are prefixed by an asterisk symbol (*) may be omitted without making consequential amendments to these General Conditions of Contract.**

A1

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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STANDARDS AUSTRALIA

Australian Standard
General conditions of contract for
design and construct**1 CONSTRUCTION OF CONTRACT**

The law governing the Contract, its interpretation and any agreement to arbitrate is the law of the State or Territory stated in Annexure Part A item applicable to Clause 1, or if the State or Territory is not stated, the law of the State or Territory where the Site is located.

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

Communications between the Principal, the Superintendent 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 National Measurement Act 1960, as amended from time to time.

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

If in the Annexure item relevant to a Clause prefixed with a dagger symbol (†), neither of the expressions † Applicable, † Not Applicable are deleted, the Clause shall apply.

If pursuant to Annexure Part B to these General Conditions of Contract, Clauses or parts of Clauses in these General Conditions are deleted from the Contract, this Contract shall be read and construed as though the Clause or part of the Clause has been deleted whether or not that particular Clause or part of the Clause has been struck from these General Conditions.

2 INTERPRETATION

In the Contract, except where the context otherwise requires—

‘Certificate of Practical Completion’ means the certificate referred to in Clause 42.3;

‘Constructional Plant’ means appliances and things used in the execution of the work under the Contract but not forming part of the Works;

‘Consultant’ means any person engaged by the Contractor to perform consultancy services in connection with the work under the Contract and includes any consultant of the Principal whose prior contract is novated to the Contractor under Clause 10;

‘Contract’ means the agreement between the Principal and the Contractor;

‘Contract Sum’ means—

- (a) where the Principal accepted a lump sum, the lump sum;
- (b) where the Principal accepted rates, the sum ascertained by calculating the products of the rates and 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 execute the work under the Contract;	
‘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 Annexure Part A as describing the Principal’s Project Requirements include a Preliminary Design, developing the Preliminary Design;	5
‘Contractor’s Program’ is referred to in Clause 33.2;	
‘Date for Practical Completion’ means—	10
(a) where Annexure Part A provides a date for Practical Completion, the date; or	
(b) where Annexure Part A provides a period of time for Practical Completion, the last day of the period,	15
but if any extension of time for Practical Completion is granted by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom;	
‘Date of Acceptance of Tender’ means the date which appears on the notice in writing of acceptance of the tender;	20
‘Date of Practical Completion’ means—	
(a) the date certified by the Superintendent in a Certificate of Practical Completion to be the date upon which Practical Completion was reached; or	25
(b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date;	30
‘day’ means calendar day;	
‘Daywork’ means work referred to in Clause 41;	
‘Defects Liability Period’ means the period or periods referred to in Clause 37;	35
‘Design Documents’ means the drawings, specifications and other information, samples, models, patterns and the like required by the Contract and created (and including, where the context so requires, those to be created by the Contractor) for the construction of the Works;	40
‘direction’ includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;	45
‘Excepted Risk’ means any of the risks referred to in Clause 16.3;	
‘Final Certificate’ means a certificate issued by the Superintendent to the Principal and to the Contractor pursuant to Clause 42.6;	50
‘Final Payment Claim’ means the final payment claim referred to in Clause 42;	
‘Latent Condition’ means any of the conditions referred to in Clause 12.1;	
‘Legislative Requirements’ includes—	55
(a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Contract or any part thereof is being carried out;	60
(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Contract; and	
(c) fees and charges payable in connection with the foregoing;	65
‘month’ means calendar month;	
‘person’ includes a firm or body corporate or unincorporate or an individual;	70

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

- (a) the Works are complete except for minor omissions and 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) 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 opinion of the Superintendent, are essential for the use, operation and maintenance of the Works, have been supplied;

‘Preliminary Design’ means any preliminary design of the Works included in the documents stated in Annexure Part A as describing the Principal’s Project Requirements;

‘Principal’ means the Principal stated in Annexure Part A;

‘Principal’s Project Requirements’ means the written summary or outline of the Principal’s requirements for the Works described in the documents stated in Annexure Part A and—

- (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 Annexure Part A, shall include a Preliminary Design;

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

‘public liability policy’ means a policy of insurance taken out pursuant to Clause 19;

‘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;

‘Selected Subcontract Work’ means that work or the supply of those items subcontracted to a Selected Subcontractor pursuant to Clause 9.4;

‘Selected Subcontractor’ means a subcontractor carrying out Selected Subcontract Work;

‘Separable Portion’ means a portion of the work under the Contract described in the Contract as a Separable Portion or which the Superintendent has determined pursuant to Clause 35.4 shall be a Separable Portion;

‘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 9, 10 and 11(b) includes Consultant;

‘Superintendent’ means the person stated in Annexure Part A 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 a person appointed by the Superintendent pursuant to Clause 24;

‘survey mark’ in Clause 28, means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Contract;

‘Temporary Works’ means works used in the execution of the work under the Contract but not forming part of the Works; 5

‘test’ in Clause 31, includes examine and measure;

‘work under the Contract’ means the work which the Contractor is or may be required to execute under the Contract and includes the Contractor’s Design Obligations, variations, remedial work, Constructional Plant and Temporary Works; 10

‘Works’ means the whole of the work to be executed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal. 15

The clause headings and sub-clause headings in these General Conditions of Contract shall not form part of these General Conditions of Contract and shall not be used in the interpretation of the Contract. 20

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. 25

If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a Saturday, Sunday or Statutory or Public Holiday, then the time for giving the notice, issuing the certificate, making the payment or doing the other act shall be deemed to be on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday. 30

3 NATURE OF CONTRACT 35

3.1 Performance and Payment

The Contractor shall execute and complete the work under the Contract in accordance with the requirements of the Contract. 40

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 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, 45

adjusted by any additions or deductions made pursuant to the Contract. 50

3.2 Quantities

Quantities in a Schedule of Rates are estimated quantities only.

A direction shall not be required to be given by the Superintendent 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. 55

3.3 Adjustment for Actual Quantities—Schedule of Rates 60

Where otherwise than by reason of a direction of the Superintendent to vary the work under the Contract, 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 Principal accepted a lump sum for the item, the difference shall be valued under Clause 40.5 as if it were varied work directed by the Superintendent as a variation; and 65

- (b) where the Principal accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy are stated in Annexure Part A the rate shall apply to the greater or lesser quantities within the limits and quantities outside the limits shall be valued under Clause 40.5 as if they were varied work directed by the Superintendent as a variation.

If a Schedule of Rates omits an item which should have been included, the item shall be valued under Clause 40.5 as if it was extra work directed by the Superintendent as a variation.

4 WARRANTIES

4.1 Contractor's Warranties

Without limiting the generality of Clause 3.1, the Contractor warrants to the Principal that the Contractor—

- (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of the work under the Contract;
- (b) subject to Clause 9, shall engage and retain the Consultants identified in the Contractor's tender and who are suitably qualified and experienced;
- (c) has examined and carefully checked 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;
- (d) shall execute and complete the Contractor's Design Obligations and produce the Design Documents to accord with the Principal's Project Requirements and, if Clause 10 applies, accept the novation and retain the Consultants for any work the subject of a prior contract with the Principal; and
- (e) shall execute and complete the work under the Contract in accordance with the Design Documents so that the Works, when completed, shall—
- (i) be fit for their stated purpose; and
- (ii) comply with all the requirements of the Contract and all Legislative Requirements.

4.2 Warranties Unaffected

The Contractor acknowledges that the warranties in Clause 4.1 and the Contractor's Design Obligations shall 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 consultant of the Principal under Clause 10 and thereafter has retained that consultant in connection with the work under the Contract;
- (c) any receipt or review of, or comment or direction on, the Design Documents by the Superintendent; and
- (d) any variation under Clause 40.

5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

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

5.2 Provision of Security

If it is provided in Annexure Part A that a party shall provide security then the party shall provide security in the amount stated in Annexure Part A and in accordance with Clause 5.

5

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.

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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 unconditional undertaking in the form of Annexure Part C is approved.

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

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5.4 Time for Provision of Security

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Security shall be provided within 28 days of the Date of Acceptance of Tender.

5.5 Retention Moneys

Any retention shall be in accordance with Clause 42.1 and Item 15 of Annexure Part A.

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5.6 Conversion of Security and Recourse to Retention Moneys

A party may have recourse to security, retention moneys or both and may convert into money security that does not consist of money where—

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- (a) the party has become entitled to exercise a right under the Contract in respect of the security, retention moneys or both;
- (b) the party has given the other party notice in writing for the period stated in Annexure Part A or, if no period is stated, 5 days, of the party's intention to have recourse to the security, retention moneys or both; and
- (c) the period stated in Annexure Part A or, if no period is stated, 5 days, has or have elapsed since the notice was given.

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5.7 Substitution of Security for Retention Moneys

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

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* 5.8 Reduction of Security and Retention Moneys

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Upon the issue of the Certificate of Practical Completion, the Principal's entitlement to security and retention moneys shall be reduced to the percentage thereof stated in Annexure Part A or, if no percentage is stated, to 50 per cent thereof.

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Upon the issue of the Certificate of Practical Completion, the Contractor's entitlement to security shall be reduced to the percentage thereof stated in Annexure Part A or, if no percentage is stated, to 50 per cent thereof.

If at any time after Practical Completion the Superintendent is of the opinion that it is reasonable to further reduce the Principal's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Superintendent determines to be reasonable.

The Principal shall release security and retention moneys in excess of the entitlement within 14 days of the entitlement being so reduced.

The Contractor shall release security in excess of the entitlement within 14 days of the entitlement being so reduced.

5.9 Release of Security and Retention Moneys

If the Contractor has provided security, retention moneys or both, then the Principal shall release them when required by Clause 42.6. If the Contractor has provided additional security for any item of unfixed plant and materials pursuant to Clause 42.2, the Principal shall release that additional security within 14 days of the incorporation into the Works of the unfixed plant or materials.

If the Principal has provided security, then, when the Contractor has been paid all moneys finally due to the Contractor on any account whatsoever (whether in connection with the Contract or otherwise) the Contractor shall release the security provided by the Principal.

5.10 Holding of and Interest on Cash Security and Retention Moneys

Alternative 1

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

Interest earned on cash security provided by the Contractor and on retention moneys belongs to the Contractor. Interest earned on cash security provided by the Principal belongs to the Principal.

Upon a party becoming entitled to receive any moneys, including interest in the account, the other party shall forthwith have that other party's appointee sign all documentation necessary to withdraw the moneys and shall promptly give the signed documentation to the party entitled to receive such moneys.

Alternative 2

A party holding cash security or retention moneys shall own any interest earned on the cash security or retention moneys. Except where cash security or retention moneys are held by a government department or agency or a municipal, public or statutory authority, cash security or retention moneys shall be held in trust by the party holding them for the other party until the Principal or the Contractor is entitled to receive them.

5.11 Deed of Guarantee, Undertaking and Substitution

Where—

- (a) a party is a corporation that is related to or is a subsidiary of another corporation as defined in the Corporations Law as amended from time to time; and
- (b) the Principal has included in the tender documents a form of Deed of Guarantee, Undertaking and Substitution,

that party shall, if requested by the other party in writing within 7 days of the Date of Acceptance of Tender, provide the other party within 14 days of that request having been made, a Deed of Guarantee, Undertaking and Substitution in the form included in the tender documents duly executed by the first party and that other corporation for the performance of the obligations and the discharge of the liabilities of the first party under the Contract.

For the purpose of this Clause 5.11, the terms ‘corporation’ and ‘subsidiary’ have the meanings defined in the Corporations Law.

6 EVIDENCE OF CONTRACT

5

6.1 Contract in Absence of Formal Instrument of Agreement

Unless 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.

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6.2 Formal Instrument of Agreement

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If the conditions of tender require a Formal Instrument of Agreement, the Principal shall prepare in duplicate a Formal Instrument of Agreement and shall, within 28 days of the Date of Acceptance of Tender, forward it to the Contractor with a request that it be executed in the manner directed in writing by the Principal.

Within 14 days after being so requested in writing by the Principal, the Contractor shall execute both copies of the Formal Instrument of Agreement and return them to the Principal.

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Within 14 days of receipt from the Contractor of the two copies of the Formal Instrument of Agreement duly executed by the Contractor, the Principal shall execute both copies, have them stamped (unless they are exempt from duty) and forward one copy to the Contractor.

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The Superintendent may extend the periods under this Clause 6.2 by notice in writing to the parties.

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The Principal shall bear the cost of any stamp duty payable on the Contract.

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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 that person stated in the Contract or last communicated in writing by that person to the person giving the notice, whichever is the earlier.

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The Principal, the Contractor and the Superintendent shall each notify the others of a change of address.

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Without limiting the generality of ‘notice’, it includes a document.

8 CONTRACT DOCUMENTS

50

8.1 Discrepancies

The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any ambiguity or discrepancy in any document prepared for the purpose of executing the work under the Contract, that party shall notify the Superintendent in writing of the ambiguity or discrepancy. In the event of an ambiguity or discrepancy being discovered and brought to the attention of the Superintendent, or discovered by the Superintendent, the Superintendent shall direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.

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60

If the direction causes the Contractor to incur more or less cost than the Contractor, having complied with Clause 4.1(c), could reasonably have anticipated at the time of tendering, then to the extent that such ambiguity or discrepancy is—

- (a) in the Principal's Project Requirements, the difference shall be valued under Clause 40.5; and
- (b) in the Design Documents or between the Design Documents and the Principal's Project Requirements, such ambiguity or discrepancy shall be at the Contractor's risk and the direction shall not entitle the Contractor to any extra payment or an extension of time.

8.2 Dimensions

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

8.3 Supply of Documents by Principal

The Principal shall supply to the Contractor the number of copies stated in Annexure Part A or, if no number is stated, then 5 copies of the documents describing the Principal's Project Requirements and other documents required by the Contract to be supplied by the Principal to the Contractor.

Documents supplied by the Principal to the Contractor shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, 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

In relation to those documents stated in Annexure Part A the Contractor shall supply the number of copies stated in Annexure Part A or, if no number is stated, 5 copies.

The Contractor shall supply to the Superintendent the documents and information required by the Superintendent and as required by the Contract, in a form satisfactory to the Superintendent and at those times or within those design stages applicable to the documents stated in Annexure Part A or, if no times or stages are stated, not less than 14 days before the work contained in those documents is commenced.

A direction by the Superintendent to vary anything in the Design Documents shall be a variation to the work under the Contract only to the extent that the Design Documents, before such variation, complied, or would have complied, with the Principal's Project Requirements.

Neither the Principal nor the Superintendent shall be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract. The Principal's or the Superintendent's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Contractor, shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or departure from the Contractor's Design Obligations or other requirements of the Contract.

If the Contract provides that the Contractor must obtain the Superintendent's direction whether documents are suitable or are not suitable then, within the time stated in Annexure Part A or, if no time is stated, within 14 days after receipt of the documents, the Superintendent shall notify the Contractor that the documents are suitable or are not suitable. If the Superintendent notifies the Contractor that the documents are not suitable, the Superintendent shall give reasons why the documents are not suitable and the Contractor shall submit new or amended documents for the Superintendent's direction pursuant to this Clause 8.4.

8.5 Availability of Documents

Whilst work under the Contract is being performed, one complete set of the Principal's Project Requirements, the Design Documents and other written information supplied by the Principal, the Superintendent and the Contractor, the Contractor's Consultants and subcontractors, shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Superintendent and any persons nominated in writing by either of them.

During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Superintendent and any persons 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 Principal 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 issue of the Final Certificate pursuant to Clause 42.6 or the earlier termination of the Contract.

* 8.7 Media Releases

The Contractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior approval of the Principal, which approval shall not be unreasonably withheld. The Contractor shall refer to the Principal any enquiries concerning the project from any media.

9 ASSIGNMENT AND SUBCONTRACTING

9.1 Assignment

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

9.2 Subcontracting (Including Work Performed by Consultants)

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld—

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

With a request for approval, the Contractor shall provide to the Superintendent 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 Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 14 days of a request by the Contractor for approval, the Superintendent shall notify the Contractor of approval or the reasons why approval is not given.

Approval may be conditional upon the subcontract including—

- (i) provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
- (ii) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (iii) 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 D.

For the purposes 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

- (iv) where the subcontractor is a Consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required of the Contractor under Clause 21.

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 Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor.

9.4 Selected Subcontract Work

If the Contract includes Selected Subcontract Work, the Contractor shall subcontract the Selected Subcontract Work to a Selected Subcontractor. A Selected Subcontractor is the subcontractor identified in the Contractor's tender from a list of not less than two subcontractors provided by the Principal in the tender documents for Selected Subcontract Work.

If the tender documents specify the terms and conditions upon which the subcontract is to be entered into, the subcontract shall include those terms and conditions.

9.5 Provisions Applying Generally to Selected Subcontract Work

If the Contractor is required by Clause 9 or 10 to enter into a subcontract, or to execute a deed of novation or to accept an assignment, the Contractor shall proceed promptly to do so and shall notify the Superintendent in writing as soon as the subcontract or novation has been effected or the assignment has been accepted.

With the Contractor's consent, the Superintendent may direct the Contractor to perform Selected Subcontract Work.

Except as herein provided—

- (a) the Principal shall have no liability to a Selected Subcontractor arising from the subcontract between the Contractor and the Selected Subcontractor; and
- (b) the Principal shall not be liable to the Contractor for any act, default or omission or breach of contract by a Selected Subcontractor arising from the subcontract between the Contractor and the Selected Subcontractor.

9.6 Termination of Selected Subcontract

The Contractor shall not unreasonably terminate a subcontract for Selected Subcontract Work and as early as possible the Contractor shall notify the Superintendent of the Contractor's intention to terminate and the reasons. If a Selected Subcontractor repudiates or abandons a subcontract or it is terminated, the Contractor shall forthwith notify the Superintendent of that fact. The Superintendent shall promptly issue a direction as to the

manner of completing the Selected Subcontract Work. With the Contractor's consent, the Superintendent may direct the Contractor to perform Selected Subcontract Work, otherwise the Superintendent shall direct the Contractor—

- (a) to choose another subcontractor from the list of subcontractors provided by the Principal in the tender documents for Selected Subcontract Work; or 5
- (b) to enter into a subcontract with a subcontractor chosen by the Superintendent and agreed to by the Contractor. 10

The Contractor shall not be obliged to enter into a subcontract with a subcontractor referred to in Clause 9.6(a) against whom the Contractor raises reasonable objection.

The Contractor shall, as soon as practicable, enter into a subcontract with the subcontractor so chosen and notify the Superintendent accordingly. 15

If compliance with such a direction 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 valued under Clause 40.5 except where a provisional sum for the Selected Subcontract Work has been included in the Contract, in which case the provisions of Clause 11(b) shall apply. 20

10 NOVATION 25

This Clause 10 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 E, between the Principal, the Contractor and the subcontractor or the Selected Subcontractor stated in Annexure Part A (as the case may be) for the particular part of the Preliminary Design or Selected Subcontract Work (as the case may be). 30

11 PROVISIONAL SUMS 35

A provisional sum included in the Contract shall not itself be payable by the Principal but where at the direction of the Superintendent the work or item to which the provisional sum relates is performed or supplied by— 40

- (a) the Contractor, the work or item shall be valued under Clause 40.5; and
- (b) a subcontractor to the Contractor, the Principal shall pay the Contractor the amount payable by the Contractor to the subcontractor for the work or item, disregarding any damages payable by the Contractor to the subcontractor or vice versa, plus an amount for profit and attendance calculated by using the percentage thereon stated in Annexure Part A or, where not so stated, as stated elsewhere in the Contract. 45

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). 50

12 LATENT CONDITIONS 55

12.1 Definition

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— 60
 - (i) examined all information made available in writing by the Principal to the Contractor for the purpose of tendering; 65

- (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 Latent Condition is disturbed, give written notice thereof to the Superintendent.

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

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

12.3 Extension of Time and Cost

Delay caused by a Latent Condition may justify an extension of time under Clause 35.5. If a Latent Condition causes the Contractor to—

- (a) carry out more work;
 - (b) use more Constructional Plant; or
 - (c) incur more cost (including but not limited to extra costs for delay or disruption),
- than the Contractor could reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 40.5.

12.4 Time Bar

Where pursuant to Clause 12.3 a valuation is to be made under Clause 40.5, regard shall not be had to the value of more work carried out, more Constructional Plant used or more cost incurred earlier than 28 days before the date on which the Contractor gives the written notice required by the first paragraph of Clause 12.2.

13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

13.1 Warranties and Indemnities

Unless otherwise provided in the Contract, the Principal shall indemnify the Contractor against the Principal's Project Requirements, the design, materials, documents and methods of working required by the Principal in the Contract or provided or directed by the Principal or the Superintendent infringing any patent, copyright, registered design, trademark or name, or other protected right.

The Contractor warrants that unless otherwise provided in the Contract, the Contractor owns the copyright in those of the Design Documents provided by the Contractor. The Contractor also shall indemnify the Principal against any design, materials, documents and methods of working provided by the Contractor infringing any patent, copyright, registered design, trademark or name, or other protected right.

13.2 Intellectual Property Rights granted to Principal

Alternative 1

The Contractor grants to the Principal an irrevocable licence to use the Design Documents for the work under the Contract. 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. 5

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 consultant of the Principal novated under Clause 10) hereby vest in the Principal, and the Principal grants to the Contractor an irrevocable licence to use the Design Documents for the work under the Contract. 10 15

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 the work under the Contract. 20

14 LEGISLATIVE REQUIREMENTS

14.1 Complying with Legislative Requirements

The Contractor shall satisfy all Legislative Requirements except those which—

- (a) are specified in Annexure Part A; or 30
- (b) the Superintendent directs are to be satisfied by or on behalf of the Principal.

If a Legislative Requirement is at variance with a provision of the Contract or the Principal's Project Requirements, as soon as the Contractor discovers the variance, the Contractor shall notify the Superintendent in writing specifying the difference. 35

14.2 Changes in Legislative Requirements

If a Legislative Requirement— 40

- (a) necessitates—
 - (i) a change to the Works; 45
 - (ii) a change to so much of the Temporary Works, Constructional Plant or method of working as may be specified in the Principal's Project Requirements;
 - (iii) a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Works or Temporary Works; or 50
 - (iv) an increase or decrease in a fee or charge or payment of a new fee or charge;
- (b) has effect after the 14th day prior to the date of closing of tenders; and 55
- (c) could not reasonably have been anticipated at that prior date,

then to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued under Clause 40.5. 60

15 PROTECTION OF PEOPLE AND PROPERTY

Insofar as compliance with the requirements of the Contract permits, the Contractor shall— 65

- (a) provide all things and take all measures necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles; and 70
- (c) prevent nuisance and unreasonable noise and disturbance.

Without limiting the generality of the Contractor's obligations, they include the provision of barricades, guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If the Contractor or the employees or agents of the Contractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Contractor shall promptly make good 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 15, in addition to any other remedies of the Principal, the Superintendent may after giving reasonable notice in writing to the Contractor, have the subject work carried out by other persons and the reasonable cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work Under the Contract

Except as provided in Clause 16.3, the Contractor shall be responsible for—

- (a) the care of the whole of the work under the Contract from and including the date of commencement of the work under the Contract to 4:00 pm on the Date of Practical Completion, at which time, the responsibility for the care of the Works (except to the extent provided in Clause 16.1(b)) shall pass to the Principal; and
- (b) the care of 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 the Contractor's obligations under Clauses 30, 31 and 37.

Without limiting the generality of the Contractor's obligations in Clause 16.1(a), the Contractor shall be responsible for the care of unfixed items the value of which has been included in a payment certificate under Clause 42.1, things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract, and things brought onto the Site by subcontractors for that purpose. The Contractor shall provide the storage and protection necessary to preserve those items and things.

16.2 Reinstatement

If loss or damage occurs to the work under the Contract during the period for which the Contractor is responsible for the care thereof (other than loss or damage caused by any of the Excepted Risks referred to in Clause 16.3), the Contractor shall, at the Contractor's cost, rectify such loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract.

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, if and to the extent directed by the Superintendent, rectify the loss or damage, which shall be deemed to be a variation under Clause 40. In the case of loss or damage being caused by a combination of Excepted Risks and other risks, any such direction and consequential valuation made under Clause 40.5 shall take into account the proportional responsibility of the Contractor and the Principal.

16.3 Excepted Risks

The Excepted Risks causing loss or damage, for which the Principal is liable, are—

- (a) any negligent act or omission of the Principal, the Superintendent or the employees, consultants or agents of the Principal;
- (b) any risk specifically excepted in the Contract;

- (c) war, invasion, act 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 the Contractor's Consultants or subcontractors or the employees or agents of any of these; 5
- (e) use or occupation by the Principal or the employees or agents of the Principal, the Principal's consultants or other contractors of the Principal (not being employed by the Contractor), of any part of the work under the Contract; and 10
- (f) defects in such part of the design of the work under the Contract, including the Preliminary Design provided by the Principal, as is not included in the Contractor's warranties under Clause 4. 15

17 DAMAGE TO PERSONS AND PROPERTY

17.1 Indemnity by Contractor

Insofar as this Clause 17.1 applies to property, it applies to property other than the work under the Contract.

The Contractor shall indemnify the Principal against—

- (a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Contractor of the work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal, the Superintendent or the employees or agents of the Principal contributed to the loss, damage, death or injury.

This Clause 17.1 shall not apply to—

- (i) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (ii) exclude any other right of the Principal to be indemnified by the Contractor;
- (iii) things for the care of which the Contractor is responsible under Clause 16.1; and
- (iv) claims in respect of the right of the Principal to have the work under the Contract carried out.

17.2 Indemnity by the Principal

The Principal shall indemnify the Contractor in respect of claims referred to in Clause 17.1(iv).

18 INSURANCE OF THE WORK UNDER THE CONTRACT

Alternative 1

Before the Contractor commences work under the Contract, the Contractor shall effect an insurance policy covering all the things referred to in Clause 16.1 against loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under Clause 16.2 and things in storage off Site and in transit to the Site.

The insurance cover under this Clause 18 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; and
- (f) loss or damage resulting from the Excepted Risks referred to in Clause 16.3(b) and (c).

The insurance cover shall be for an amount not less than the sum of—

- (i) the Contract Sum;
- (ii) the amount stated in Annexure Part A to provide for costs of demolition and removal of debris;
- (iii) the amount stated in Annexure Part A to cover fees of the consultants;
- (iv) the value stated in Annexure Part A of any materials or things to be supplied by the Principal for the purposes of the work under the Contract; and
- (v) the additional amount or percentage stated in Annexure Part A of the total of the items referred to in Clause 18(i) to (iv).

The insurance policy shall be in the joint names of the Principal and the Contractor, and shall cover the Principal, the Contractor and all Consultants, and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Contractor ceases to be responsible under Clause 16.1 for the care of anything.

Alternative 2

On or before the Date of Acceptance of Tender, the Principal shall effect a policy of insurance in relation to the work under the Contract in the terms of the policy or proposed policy included in the documents on which the Contractor tendered. The policy or proposed policy shall include the name of the insurer. The Principal shall maintain the policy while the Contractor has an interest therein and the Principal shall pay all premiums.

19 PUBLIC LIABILITY INSURANCE

Alternative 1

Before the Contractor commences work under the Contract, the Contractor shall effect a public liability policy of insurance in the joint names of the Principal and the Contractor which covers the Principal, the Contractor, the Superintendent, all Consultants and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance).

The public liability policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in Annexure Part A and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Final Certificate is issued pursuant to Clause 42.6. 5

Alternative 2

On or before the Date of Acceptance of Tender, the Principal shall effect in relation to the work under the Contract a public liability policy of insurance in the terms of the policy or proposed policy included in the documents on which the Contractor tendered. The policy or proposed policy shall include the name of the insurer. The Principal shall maintain the policy while the Contractor has an interest therein and the Principal shall pay all premiums. 10 15

20 INSURANCE OF EMPLOYEES

Before commencing work under the Contract the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed. 20

Where permitted by law the insurance policy or policies shall be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor. 25

The Contractor shall ensure that all Consultants and all subcontractors have similarly insured their employees. 30

21 PROFESSIONAL INDEMNITY INSURANCE

Before the Contractor commences work under the Contract, the Contractor shall effect a professional indemnity insurance policy with a total aggregate cover of not less than the sum stated in Annexure Part A or, if no amount is stated, the amount of \$1,000,000. 35

The policy and such level of cover shall be maintained until the Final Certificate is issued pursuant to Clause 42.6 and thereafter for a period as is stated in Annexure Part A. 40

The Contractor shall ensure that every Consultant, if within a category stated in Annexure Part A, is insured for professional indemnity with a cover not less than the sum stated in Annexure Part A.

Each Consultant's policy shall be maintained until the Final Certificate is issued pursuant to Clause 42.6 and thereafter for a period as is stated in Annexure Part A. 45

22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

22.1 Proof of Insurance

Before the Contractor commences work under the Contract and whenever requested in writing by the other party, a party liable to effect or maintain insurance shall produce evidence to the satisfaction and approval of the other party of the insurance effected and maintained. 55

The effecting of insurance shall not limit the liabilities or obligations of a party under other provisions of the Contract. 60

22.2 Failure to Produce Proof of Insurance

If after being requested in writing by the other party to do so, a party fails to produce evidence of compliance with insurance obligations under Clause 18, 19 or 20 to the satisfaction and approval of the other party, the other party may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the party in 65