

Australian Standard[®]

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

This Australian Standard was prepared by Committee OB/3, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 27 November 1995 and published on 31 December 1995.

The following interests are represented on Committee OB/3:

Association of Consulting Engineers Australia
Australasian Railways Association
Australian Chamber of Commerce and Industry
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Engineers Australia
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AS 4303—1995
(Incorporating Amendment No. 1)

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**General conditions of subcontract
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 is to be used in conjunction with the following project procurement methods:

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

If the project procurement method chosen for the Main Contract results in the Subcontract incorporating design functions, then if the project procurement method is—

- (i) *Design and Construct*—the Main Contractor would provide the Main Contractor'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 Main Contractor would provide the Main Contractor's Project Requirements, would always provide a Preliminary Design and accordingly would complete Annexure Part A Items 14 and 15;
- (iii) *Design, Novate and Construct*—the Main Contractor would provide the Main Contractor's Project Requirements, would always provide a Preliminary Design, would complete Annexure Part A Items 14 and 15 and would complete Annexure Part A Item 30 stating which secondary subcontractors (including consultants) or Selected Secondary Subcontractors are to be novated to the Subcontractor.

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

WARNINGS:

- 1 This Standard is not recommended for use as the agreement between the Main Contractor and a consultant, or in 'design only' consultancies where the work under the Subcontract does not involve any Subcontractor's Design Obligations.**
- 2 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 Subcontract) and 19 (Public Liability Insurance).
Parties wishing to limit their liability should seek legal and insurance advice before entering a subcontract under this Standard.
- 3 In relation to insurances, the parties should have regard to Clause 18 regarding the availability during the tender period of a copy of the insurance policy in relation to the work under the Subcontract, and Clause 22.1 regarding proof of evidence of insurances generally before the work commences under the Subcontract.**
- 4 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.**

- 5 **Main Contractors should ensure that their specific requirements are fully and completely incorporated in the ‘Main Contractor’s Project Requirements’ obtaining specialist advice if necessary. Where a Subcontractor provides a proposed design as part of its tender the parties should give consideration to whether that design should form part of the Main Contractor’s Project Requirements.**
- 6 **Items in Annexure Part A which are marked with a hash symbol (#) indicate that these items are to be deleted where the Subcontract 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 Subcontract.**

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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CONTENTS

	<i>Page</i>
1 CONSTRUCTION OF SUBCONTRACT	6
2 INTERPRETATION	6
3 NATURE OF SUBCONTRACT	10
4 WARRANTIES	11
5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS	12
6 EVIDENCE OF SUBCONTRACT	14
7 SERVICE OF NOTICES	15
8 SUBCONTRACT DOCUMENTS	15
9 ASSIGNMENT AND SUBCONTRACTING	17
10 NOVATION	19
11 PROVISIONAL SUMS	19
12 LATENT CONDITIONS	20
13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS	21
14 LEGISLATIVE REQUIREMENTS	21
15 PROTECTION OF PEOPLE AND PROPERTY	22
16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE	22
17 DAMAGE TO PERSONS AND PROPERTY	24
18 INSURANCE OF THE WORK UNDER THE SUBCONTRACT	24
19 PUBLIC LIABILITY INSURANCE	24
20 INSURANCE OF EMPLOYEES	25
21 PROFESSIONAL INDEMNITY INSURANCE	25
22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES	25
23 SUBCONTRACT SUPERINTENDENT	27
24 DIRECTIONS BY OTHERS	27
25 SUBCONTRACTOR'S REPRESENTATIVE	28
26 CONTROL OF SUBCONTRACTOR'S EMPLOYEES AND SECONDARY SUBCONTRACTORS	28
27 SITE	28
28 SETTING OUT THE SUBCONTRACT WORKS	30
29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT	30
30 MATERIALS AND WORK	31
31 EXAMINATION AND TESTING	32
32 WORKING HOURS	33
33 PROGRESS AND PROGRAMMING OF THE WORKS	34
34 SUSPENSION OF THE WORKS	35
35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION	36
36 DELAY OR DISRUPTION COSTS	39
37 DEFECTS LIABILITY	39
38 CLEANING UP	40
39 URGENT PROTECTION	40
40 VARIATIONS	41
41 DAYWORK	42
42 CERTIFICATES AND PAYMENTS	43
43 PAYMENT OF WORKERS AND SECONDARY SUBCONTRACTORS	46

	<i>Page</i>
44 DEFAULT OR INSOLVENCY	47
45 TERMINATION BY FRUSTRATION	51
46 NOTIFICATION OF CLAIMS	51
47 DISPUTE RESOLUTION	52
48 WAIVER OF CONDITIONS	55
49 SERVICES AND FACILITIES	55
 ANNEXURE PART A	 56
ANNEXURE PART B	69
ANNEXURE PART C	70
ANNEXURE PART D	71
ANNEXURE PART E	74
 INDEX	 76

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STANDARDS AUSTRALIA

Australian Standard

General conditions of subcontract for design and construct

1 CONSTRUCTION OF SUBCONTRACT

The law governing the Subcontract, 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 Main Contractor, the Subcontract Superintendent and the Subcontractor 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 Subcontract are expressed to be alternatives and the Subcontract fails to state which alternative applies, the first alternative shall apply.

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

2 INTERPRETATION

In the Subcontract, except where the context otherwise requires—

‘Bill of Quantities’ means a document named therein as a Bill of Quantities issued to tenderers by or on behalf of the Main Contractor, stating estimated quantities of work to be carried out;

‘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 Subcontract but not forming part of the Subcontract Works;

‘Date for Practical Completion’ means—

(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,

but if any extension of time for Practical Completion is granted by the Subcontract 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;

‘Date of Practical Completion’ means—

- (a) the date certified by the Subcontract Superintendent in a Certificate of Practical Completion to be the date upon which Practical Completion was reached; or
- (b) where another date is determined in any arbitration or litigation as the date upon which Practical Completion was reached, that other date;

‘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;

‘Design Documents’ means the drawings, specifications and other information, samples, models, patterns and the like required by the Subcontract and created (and including, where the context so requires, those to be created by the Subcontractor) for the construction of the Subcontract Works;

‘direction’ includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

‘dispute’ has the meaning referred to in Clause 47.4;

‘Excepted Risk’ means any of the risks which are referred to in Clause 16.3;

‘Final Certificate’ means a certificate issued by the Subcontract Superintendent to the Contractor and to the Subcontractor pursuant to Clause 42.6;

‘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—

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Subcontract or any part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Subcontract; and
- (c) fees and charges payable in connection with the foregoing;

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

‘Main Contract Claim’ has the meaning referred to in Clause 47.6;

‘Main Contract Dispute’ has the meaning referred to in Clause 47.4;

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

‘Main Contractor’ means the Main Contractor stated in Annexure Part A;

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

- (a) shall include the stated purpose for which the Subcontract Works are intended;
- (b) may include the Main Contractor’s design, timing and cost objectives for the Subcontract Works; and
- (c) where stated in Annexure Part A, shall include a Preliminary Design;

‘month’ means calendar month;

‘person’ includes a firm or body corporate or unincorporate or an individual;

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

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

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

‘Principal’ means the Principal to the Main Contract as stated in Annexure Part A;

‘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 Subcontract 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;

‘secondary subcontract’ means a subcontract between the Subcontractor and a secondary subcontractor;

‘secondary subcontractor’ means a subcontractor to the Subcontractor and in Clauses 9, 10 and 11(b) includes Subcontractor’s Consultant;

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

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

‘Separable Portion’ means a portion of the work under the Subcontract described in the Subcontract as a Separable Portion or which the Subcontract 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 Subcontractor by the Main Contractor for the purpose of the Subcontract;

‘Subcontract’ means the agreement between the Main Contractor and the Subcontractor;

‘Subcontract Claim’ has the meaning referred to in Clause 47.5;

‘Subcontract Sum’ means—

- (a) where the Main Contractor accepted a lump sum, the lump sum;
- (b) where the Main Contractor accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Bill of Quantities or Schedule of Rates; or

(c) where the Main Contractor 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 Subcontract;

‘Subcontract Superintendent’ means the person stated in Annexure Part A as the Subcontract Superintendent or other person from time to time appointed in writing by the Main Contractor to be the Subcontract Superintendent and notified as such in writing to the Subcontractor by the Main Contractor;

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

‘Subcontractor’ means the person stated in Annexure Part A and bound to execute the work under the Subcontract ;

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

‘Subcontractor’s Design Obligations’ means all tasks necessary to design and specify the Subcontract Works required by the Subcontract, including preparation of the Design Documents and, if the documents stated in Annexure Part A describing the Main Contractor’s Project Requirements include a Preliminary Design, developing the Preliminary Design;

‘Subcontractor’s Program’ is referred to in Clause 33.2;

‘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 under the Main Contract and notified as such in writing to the Subcontractor by the Main Contractor and, so far as concerns the functions exercisable under the Main Contract by a superintendent’s representative, includes a superintendent’s representative;

‘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 Subcontract;

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

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

‘work’ includes the provision of materials;

‘work under the Subcontract’ means the work which the Subcontractor is or may be required to execute under the Subcontract and includes the Subcontractor’s Design Obligations, variations, remedial work, Constructional Plant and Temporary Works.

The clause headings and subclause headings in these General Conditions of Subcontract shall not form part of these General Conditions of Subcontract and shall not be used in the interpretation of the Subcontract.

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.

If the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Subcontract, 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.

3 NATURE OF SUBCONTRACT

3.1 Performance and Payment

Unless otherwise provided in the Contract, the Subcontractor shall execute and complete the work under the Subcontract in accordance with the requirements of the Subcontract.

The Main Contractor shall pay the Subcontractor—

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

adjusted by any additions or deductions made pursuant to the Subcontract.

3.2 Quantities

Quantities in a Bill of Quantities or Schedule of Rates are estimated quantities only.

A direction shall not be required to be given by the Subcontract Superintendent by reason of the actual quantity of an item required to perform the Subcontract being greater or less than the quantity shown in the Bill of Quantities or Schedule of Rates.

3.3 Adjustment for Actual Quantities—Schedule of Rates

Where otherwise than by reason of a direction of the Subcontract Superintendent to vary the work under the Subcontract, the actual quantity of an item required to perform the Subcontract is greater or less than the quantity shown in the Schedule of Rates—

- (a) where the Main Contractor 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 Subcontract Superintendent as a variation; and
- (b) where the Main Contractor accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where the 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 Subcontract 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 Subcontract Superintendent as a variation.

3.4 Purpose of the Bill of Quantities

Alternative 1

A Bill of Quantities forms part of the Subcontract only to the extent provided in the Subcontract.

Alternative 2

A Bill of Quantities forms part of the Specification.

3.5 Pricing and Lodgement of the Bill of Quantities

Where there is a Bill of Quantities—

- (a) all items included in the Bill of Quantities shall be priced and extended by the Subcontractor and the prices as extended shall, on addition, equal the sum accepted by the Main Contractor for the execution of the whole of the work to which the Bill of Quantities relates;
- (b) the Subcontractor shall lodge the Bill of Quantities so priced and extended with the Subcontract Superintendent before the expiration of the time for lodgement stated in Annexure Part A or such further time as may be directed by the Subcontract Superintendent from time to time; and

- (c) notwithstanding any other provision of the Subcontract, the Subcontractor shall not be entitled to payment until the Subcontractor has lodged the Bill of Quantities so priced and extended.

3.6 Errors in Pricing of the Bill of Quantities

Any errors in extension or addition or both, or correction of incorrect or inconsistent rates or prices (including the insertion of rates or prices wrongly omitted and the deletion of rates or prices wrongly included) discovered by the Main Contractor or the Subcontractor in the priced Bill of Quantities shall be notified to the Subcontract Superintendent in writing by the party making the discovery and corrected in a manner agreed between the Subcontractor and the Subcontract Superintendent or, in the event of failure to agree, as determined by the Subcontract Superintendent so that the total of all items in the priced Bill of Quantities continues to equal the sum accepted by the Main Contractor for the execution of the whole of the work to which the Bill of Quantities relates.

3.7 Errors in Bills of Quantities

If the Bill of Quantities is in error in that it—

- (a) contains an incorrect quantity in relation to any item included therein;
- (b) contains an item which should not have been included therein; or
- (c) omits an item which should have been included therein;

then—

- (i) in the case of Clause 3.7(a) where the item is deficient in quantity or in the case of Clause 3.7(c)—upon application in writing to the Subcontract Superintendent by the Subcontractor; and
- (ii) in the case of Clause 3.7(a) where the item is excessive in quantity or in the case of Clause 3.7(b)—upon notification in writing to the Subcontractor by the Subcontract Superintendent,

the lump sum accepted by the Main Contractor for the execution of the whole of the work to which the Bill of Quantities relates shall except when the value of the error is less than \$400, be adjusted by such amount as is required to correct the error, determined in the manner provided by Clause 40.5 for the valuation of variations as if the correction were a variation under Clause 40.

The Bill of Quantities shall be deemed to be in error as aforesaid to the extent that the items and quantities included in it differ from those required for the execution of the Subcontract Works in accordance with the drawings and specification referred to in the Subcontract, measured in accordance with the method of measurement evidenced by the Subcontract.

4 WARRANTIES

4.1 Subcontractor's Warranties

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

- (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 Subcontract;
- (b) subject to Clause 9, shall engage and retain the Subcontractor's Consultants identified in the Subcontractor's tender and who are suitably qualified and experienced;

- (c) has examined and carefully checked any Preliminary Design included in the Main Contractor's Project Requirements and that such Preliminary Design is suitable, appropriate and adequate for the purpose stated in the Main Contractor's Project Requirements;
- (d) shall execute and complete the Subcontractor's Design Obligations and produce the Design Documents to accord with the Main Contractor'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 Main Contractor; and
- (e) shall execute and complete the work under the Subcontract in accordance with the Design Documents so that the Subcontract Works, when completed, shall —
- (i) be fit for their stated purpose; and
 - (ii) comply with all the requirements of the Subcontract and all Legislative Requirements.

4.2 Warranties Unaffected

The Subcontractor acknowledges that the warranties in Clause 4.1 and the Subcontractor'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 Main Contractor and included in the Main Contractor's Project Requirements;
- (b) that the Subcontractor has entered into a novation of any prior contract between the Main Contractor and a consultant of the Main Contractor under Clause 10 and thereafter has retained that consultant in connection with the work under the Subcontract;
- (c) any receipt or review of, or comment or direction on, the Design Documents by the Subcontract 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 Subcontract.

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.

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

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.

5.4 Time for Provision of Security

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 21 of Annexure Part A.

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—

- (a) the party has become entitled to exercise a right under the Subcontract 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.

5.7 Substitution of Security for Retention Moneys

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

*** 5.8 Reduction of Security and Retention Moneys**

Upon the issue of the Certificate of Practical Completion, the Main Contractor'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.

Upon the issue of the Certificate of Practical Completion, the Subcontractor'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 Subcontract Superintendent is of the opinion that it is reasonable to further reduce the Main Contractor's entitlement to security and retention moneys, that entitlement shall be reduced to the amount which the Subcontract Superintendent determines to be reasonable.

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

The Subcontractor shall release security in excess of the entitlement within 21 days of the entitlement being so reduced.

5.9 Release of Security and Retention Moneys

If the Subcontractor has provided security, retention moneys or both, then the Main Contractor shall release them when required by Clause 42.6. If the Subcontractor has provided additional security for any item of unfixed plant and materials pursuant to Clause 42.2, the Main Contractor shall release that additional security within 21 days of the incorporation into the Subcontract Works of the unfixed plant or materials.

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

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 Main Contractor and the Subcontractor and shall be one from which moneys can only be drawn with the signatures of two persons, one appointed by each of the Main Contractor and the Subcontractor. The moneys shall be held until the Main Contractor or the Subcontractor is entitled to receive them.

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

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 Main Contractor or the Subcontractor 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 Main Contractor has included in the Subcontract 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 Subcontract.

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

6 EVIDENCE OF SUBCONTRACT

6.1 Subcontract 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 Subcontract, 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 Subcontract.

6.2 Formal Instrument of Agreement

If the conditions of tender require a Formal Instrument of Agreement, the Main Contractor 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 Subcontractor with a request that it be executed in the manner directed in writing by the Main Contractor.

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

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

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

The Main Contractor shall bear the cost of any stamp duty payable on the Subcontract.

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

The Main Contractor, the Subcontractor and the Subcontract Superintendent shall each notify the others of a change of address.

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

8 SUBCONTRACT DOCUMENTS

8.1 Discrepancies

The several documents forming the Subcontract 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 Subcontract, that party shall notify the Subcontract 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 Subcontract Superintendent, or discovered by the Subcontract Superintendent, the Subcontract Superintendent shall direct the Subcontractor as to the interpretation to be followed by the Subcontractor in carrying out the work.

If the direction causes the Subcontractor to incur more or less cost than the Subcontractor, 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 Main Contractor'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 Main Contractor's Project Requirements, such ambiguity or discrepancy shall be at the Subcontractor's risk and the direction shall not entitle the Subcontractor 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 Main Contractor

The Main Contractor shall supply to the Subcontractor the number of copies stated in Annexure Part A or, if no number is stated, then 3 copies of the documents describing the Main Contractor's Project Requirements and other documents required by the Subcontract to be supplied by the Main Contractor to the Subcontractor.

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

8.4 Supply of Documents by Subcontractor

In relation to those documents stated in Annexure Part A, the Subcontractor shall supply the number of copies stated in Annexure Part A or, if no number is stated, 7 copies.

The Subcontractor shall supply to the Subcontract Superintendent the documents and information required by the Subcontract Superintendent and as required by the Subcontract, in a form satisfactory to the Subcontract 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.

Documents supplied by the Subcontractor, other than the Design Documents, shall be the property of the Main Contractor but shall not be used or copied otherwise than for the execution of the work under the Subcontract or use of, operation of, repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Subcontract Works or the Main Contract Works by the Main Contractor, the Subcontract Superintendent, the Principal, the Superintendent and their consultants.

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

Neither the Main Contractor nor the Subcontract 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 Subcontract. The Main Contractor's or the Subcontract Superintendent's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Subcontractor, shall not relieve the Subcontractor from responsibility for the Subcontractor's errors or omissions or departure from the Subcontractor's Design Obligations or other requirements of the Subcontract.

If the Subcontract provides that the Subcontractor must obtain the Subcontract 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 21 days after receipt of the documents, the Subcontract Superintendent shall notify the Subcontractor that the documents are suitable or are not suitable. If the Subcontract Superintendent notifies the Subcontractor that the documents are not suitable, the Subcontract Superintendent shall give reasons why the documents are not suitable and the Subcontractor shall submit new or amended documents for the Subcontract Superintendent's direction pursuant to this Clause 8.4.

8.5 Availability of Documents

Whilst work under the Subcontract is being performed, one complete set of the Main Contractor's Project Requirements, the Design Documents and other written information supplied by the Main Contractor, the Subcontract Superintendent, the Subcontractor, the Subcontractor's Consultants and the secondary subcontractors shall be kept by the Subcontractor at the Site or other location approved in writing by the Main Contractor and shall be available at all times for reference by the Main Contractor, the Subcontract 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 Subcontract away from the part of the Site where the Subcontract 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 Subcontractor at the place of manufacture or assembly and shall be available for reference by the Main Contractor, the Subcontract 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 Subcontractor or the Main Contractor and marked or otherwise identified as confidential, shall be regarded as confidential and shall not be disclosed to a third party other than the Principal, the Superintendent and their identified consultants for the purpose of the execution or use of, operation of, repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Main Contract Works except with the prior agreement of the other party to the Subcontract.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else other than the Principal, the Superintendent and their identified consultants any confidential matter even after the issue of the Final Certificate pursuant to Clause 42.6 or the earlier termination of the Subcontract.

*** 8.7 Media Releases**

The Subcontractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior approval of the Main Contractor, which approval shall not be unreasonably withheld. The Subcontractor shall refer to the Main Contractor 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 Subcontract or any payment or any other right, benefit or interest thereunder.

9.2 Secondary Subcontracting (Including Work Performed by the Subcontractor's Consultants)

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

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

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

The Subcontractor shall provide to the Subcontract Superintendent other information which the Subcontract Superintendent reasonably requests, including the proposed subcontract documents without prices.

Within 28 days of a request by the Subcontractor for approval, the Subcontract Superintendent shall notify the Subcontractor of approval or the reasons why approval is not given.

Approval may be conditional upon the secondary subcontract including—

- (i) provision that the secondary subcontractor shall not assign or contract (including subcontract) without the consent in writing of the Subcontractor;
- (ii) provisions which may be reasonably necessary to enable the Subcontractor to fulfil the Subcontractor's obligations to the Main Contractor;

- (iii) provision that if the Subcontract is terminated and upon the secondary subcontractor being paid the sum certified by the Subcontract Superintendent as owing to the secondary subcontractor, the Subcontractor and the secondary subcontractor shall, after the Main Contractor 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 Subcontractor hereby irrevocably appoints the Superintendent under the Main Contract to be the Subcontractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Subcontractor accordingly; and

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

9.3 Subcontractor's Responsibility

Approval to contract (including subcontract) shall not relieve the Subcontractor from any liability or obligation under the Subcontract. Except where the Subcontract otherwise provides, the Subcontractor shall be liable to the Main Contractor for the acts and omissions of secondary subcontractors and employees and agents of secondary subcontractors as if they were acts or omissions of the Subcontractor.

9.4 Selected Secondary Subcontract Work

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

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

9.5 Provisions Applying Generally to Selected Secondary Subcontract Work

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

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

Except as herein provided—

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

9.6 Termination of Selected Secondary Subcontract

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

of that fact. The Subcontract Superintendent shall promptly issue a direction as to the manner of completing the Selected Secondary Subcontract Work. With the Subcontractor's consent, the Subcontract Superintendent may direct the Subcontractor to perform Selected Subcontract Work, otherwise the Subcontract Superintendent shall direct the Subcontractor—

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

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

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

If compliance with such a direction causes the Subcontractor to incur more or less cost than otherwise would have been incurred had the Subcontractor not been given the direction, the difference shall be valued under Clause 40.5 except where a provisional sum for the Selected Secondary Subcontract Work has been included in the Subcontract, in which case the provisions of Clause 11(b) shall apply.

10 NOVATION

This Clause 10 applies only where the Main Contractor's Project Requirements include a Preliminary Design or the Subcontract includes Selected Secondary Subcontract Work.

When directed by the Main Contractor, the Subcontractor, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part E, between the Main Contractor, the Subcontractor and the secondary subcontractor stated in Annexure Part A for the particular part of the Preliminary Design or Selected Secondary Subcontract Work (as the case may be).

11 PROVISIONAL SUMS

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

- (a) the Subcontractor, the work or item shall be valued under Clause 40.5; and
- (b) a secondary subcontractor to the Subcontractor, the Main Contractor shall pay the Subcontractor the amount payable by the Subcontractor to the secondary subcontractor for the work or item, disregarding any damages payable by the Subcontractor to the secondary 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 Subcontract.

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

12 LATENT CONDITIONS

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 Subcontractor at the time of the Subcontractor's tender if the Subcontractor had—
 - (i) examined all information made available in writing by the Main Contractor to the Subcontractor for the purpose of tendering;
 - (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 Subcontract specifies to be Latent Conditions.

12.2 Notification

If during the execution of the work under the Subcontract, the Subcontractor becomes aware of a Latent Condition, the Subcontractor shall forthwith and where possible before the Latent Condition is disturbed, give written notice thereof to the Subcontract Superintendent.

If required by the Subcontract Superintendent, the Subcontractor shall provide to the Subcontract 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 Subcontractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Subcontractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;
- (d) the Subcontractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by the Subcontract 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 Subcontractor to—

- (a) carry out more work;
 - (b) use more Constructional Plant; or
 - (c) incur more cost (including but not limited to extra costs of delay or disruption),
- than the Subcontractor 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 21 days before the date on which the Subcontractor 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 Subcontract, the Main Contractor shall indemnify the Subcontractor against the Main Contractor's Project Requirements, the design, materials, documents and methods of working required by the Main Contractor in the Subcontract or provided or directed by the Main Contractor or the Subcontract Superintendent infringing any patent, copyright, registered design, trademark or name, or other protected right.

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

13.2 Intellectual Property Rights granted to Main Contractor and Principal

Alternative 1

The Subcontractor grants to the Main Contractor and to the Principal irrevocable licences to use the Design Documents for and incidental to the work under the Subcontract. Such licences shall extend to the execution or use of, operation of, repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Subcontract Works and the licences shall include copying of the documents for such purposes.

Alternative 2

Copyright and property in the Design Documents (and, as between the Main Contractor and the Subcontractor, any part of the Preliminary Design produced under a prior contract between the Main Contractor and a consultant of the Main Contractor novated under Clause 10) hereby vest in the Main Contractor, who shall, where the Main Contract so provides, do everything necessary to enable copyright and property in the Design Documents to be vested in the Principal. The Main Contractor grants to the Subcontractor and to secondary subcontractors irrevocable licences to use the Design Documents for the work under the Subcontract. The Main Contractor shall, to the extent required to enable the Subcontractor to carry out the obligations of the Subcontractor under the Subcontract, do everything necessary to enable the Subcontractor and secondary subcontractors to be granted irrevocable licences by the Principal to use the Design Documents for the work under the Subcontract.

The Subcontractor shall do everything necessary to perfect such vesting.

The Subcontractor shall ensure that the Design Documents are used, copied and supplied only for the work under the Subcontract.

14 LEGISLATIVE REQUIREMENTS

14.1 Complying with Legislative Requirements

The Subcontractor shall satisfy all Legislative Requirements except those which—

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

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

14.2 Changes in Legislative Requirements

If a Legislative Requirement—

- (a) necessitates—
 - (i) a change to the Subcontract Works;
 - (ii) a change to so much of the Temporary Works, Constructional Plant or method of working as may be specified in the Main Contractor's Project Requirements;
 - (iii) a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Subcontract Works or Temporary Works; or
 - (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
- (c) could not reasonably have been anticipated at that prior date,

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

15 PROTECTION OF PEOPLE AND PROPERTY

Except to the extent that the Main Contractor is required by Clause 49 to provide things or take measures, then insofar as compliance with the requirements of the Subcontract permits, the Subcontractor shall—

- (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
- (c) prevent nuisance and unreasonable noise and disturbance.

Without limiting the generality of the Subcontractor'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 Subcontractor or the employees or agents of the Subcontractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Subcontractor shall promptly make good the damage and pay any compensation which the law requires the Subcontractor to pay.

If the Subcontractor fails to comply with an obligation under this Clause 15, in addition to any other remedies of the Main Contractor, the Subcontract Superintendent may after giving reasonable notice in writing to the Subcontractor, have the subject work carried out by other persons and the reasonable cost incurred by the Main Contractor shall be a debt due from the Subcontractor to the Main Contractor.

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work under the Subcontract

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

- (a) the care of the whole of the work under the Subcontract from and including the date of commencement of the work under the Subcontract to 4:00 pm on the Date of Practical Completion, at which time the responsibility for the care of the Subcontract Works (except to the extent provided in Clause 16.1(b)) shall pass to the Main Contractor; and

- (b) the care of outstanding work and items to be removed from the Site by the Subcontractor after 4:00 pm on the Date of Practical Completion until completion of outstanding work or compliance with the Subcontractor's obligations under Clauses 30, 31 and 37.

Without limiting the generality of the Subcontractor's obligations in Clause 16.1(a), the Subcontractor 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 Subcontractor by the Main Contractor for the purpose of carrying out the work under the Contract and things brought onto the Site by secondary subcontractors for that purpose. The Subcontractor 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 Subcontract during the period for which the Subcontractor 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 Subcontractor shall, at the Subcontractor's cost, rectify such loss or damage so that the work under the Subcontract conforms in every respect with the provisions of the Subcontract.

In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Subcontractor shall, if and to the extent directed by the Subcontract 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 Principal, the Main Contractor and the Subcontractor.

16.3 Excepted Risks

The Excepted Risks causing loss or damage, for which the Principal or the Main Contractor, as the case may be, is liable, are—

- (a) any negligent act or omission of the Principal, the Superintendent, the Main Contractor, the Subcontract Superintendent or an employee, consultant or agent of any of them;
- (b) any risk specifically excepted in the Subcontract;
- (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 Subcontractor, the Subcontractor's Consultants or secondary subcontractors or an employee or agent of any of them;
- (e) use or occupation by the Principal, the Main Contractor or an employee or agent of either of them or other contractors of the Principal or the Main Contractor (not being employed by the Subcontractor) of any part of the work under the Subcontract; and
- (f) defects in such part of the design of the work under the Subcontract, including the Preliminary Design provided by the Main Contractor, as is not included in the Subcontractor's warranties under Clause 4.

17 DAMAGE TO PERSONS AND PROPERTY

17.1 Indemnity by Subcontractor

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

The Subcontractor shall indemnify the Main Contractor against—

(a) loss of or damage to property of the Principal or the Main Contractor, including existing property in or upon which the work under the Subcontract is being carried out; and

(b) claims by any person against the Principal or the Main Contractor or both, 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 Subcontractor of the work under the Subcontract, but the Subcontractor's liability to indemnify the Main Contractor shall be reduced proportionally to the extent that the act or omission of the Principal, the Superintendent, Main Contractor, the Subcontract Superintendent or an employee or agent of any of them (as the case may be) contributed to the loss, damage, death or injury.

This Clause 17.1 shall not apply to—

(i) the extent that the liability of the Subcontractor is limited by another provision of the Subcontract;

(ii) exclude any other right of the Principal or the Main Contractor or both to be indemnified by the Subcontractor;

(iii) things for the care of which the Subcontractor is responsible under Clause 16.1; and

(iv) claims in respect of the right of the Main Contractor to have the work under the Subcontract carried out.

17.2 Indemnity by the Main Contractor

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

18 INSURANCE OF THE WORK UNDER THE SUBCONTRACT

On or before the Date of Acceptance of Tender, the Main Contractor shall cause to have in force a policy of insurance in relation to the work under the Subcontract in the terms of the policy or proposed policy included in the documents on which the Subcontractor tendered or if not so included, a copy of which was provided to the Subcontractor following receipt by the Main Contractor of a written request by the Subcontractor for a copy of the policy. The policy or proposed policy shall include the name of the insurer. The Main Contractor shall maintain or cause to be maintained the policy while ever the Subcontractor has an interest therein and the Main Contractor shall pay or cause to be paid all premiums thereon.

19 PUBLIC LIABILITY INSURANCE

Alternative 1

On or before the Date of Acceptance of Tender, the Main Contractor shall cause to have in force in relation to the work under the Subcontract a public liability policy of insurance in the terms of the policy or proposed policy included in the documents on which the Subcontractor tendered or, if not so included, a copy of which was provided to the Subcontractor following receipt by the Main Contractor of a written request from the Subcontractor for a copy of the policy. The policy or proposed policy shall include the name of the insurer. The Main Contractor shall maintain or cause to be maintained the policy while ever the Subcontractor has an interest therein and the Main Contractor shall pay or cause to be paid all premiums thereon.

Alternative 2

Before the Subcontractor commences work under the Subcontract, the Subcontractor shall effect a public liability policy of insurance in the joint names of the Principal, the Main Contractor and the Subcontractor which covers the Principal, the Superintendent, the Main Contractor, the Subcontract Superintendent, the Subcontractor, the Subcontractor's Consultants and all secondary subcontractors employed from time to time in relation to the work under the Subcontract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Subcontractor's liability to the Main Contractor and the Main Contractor's liability to the Subcontractor 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 Subcontract, shall be effected with an insurer and in terms both approved in writing by the Main Contractor which approvals shall not be unreasonably withheld. The policy shall be maintained until the Final Certificate is issued pursuant to Clause 42.6.

20 INSURANCE OF EMPLOYEES

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

Where permitted by law the insurance policy or policies shall be extended to indemnify the Principal and the Main Contractor for their respective statutory liabilities to persons employed by the Subcontractor.

The Subcontractor shall ensure that all Subcontractor's Consultants and all secondary subcontractors have similarly insured their employees.

21 PROFESSIONAL INDEMNITY INSURANCE

Before the Subcontractor commences work under the Subcontract, the Subcontractor 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.

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.

The Subcontractor shall ensure that every Subcontractor's 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 Subcontractor's 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.

22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

22.1 Proof of Insurance

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

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

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 default to the other party. Where the defaulting party is the Subcontractor, the Main Contractor may refuse payment until evidence of compliance with insurance obligations under Clauses 19, 20 and 21 is produced by the Subcontractor to the satisfaction and approval of the Main Contractor. The rights given by this Clause 22.2 are in addition to any other right.

22.3 Notices from or to the Insurer

The party effecting or causing to have in force insurance under Clause 18 or 19 shall ensure that each policy of insurance contains provisions acceptable to the other party that will—

- (a) require the insurer, whenever the insurer gives the Principal, the Main Contractor or the Subcontractor a notice of cancellation or other notice concerning the policy at the same time to inform the other party in writing that the notice has been given;
- (b) provide that a notice of claim given to the insurer by the Principal, the Superintendent, the Main Contractor, the Subcontract Superintendent, the Subcontractor or a Subcontractor's Consultant shall be accepted by the insurer as a notice of claim given by the Principal, the Superintendent, the Main Contractor, the Subcontract Superintendent, the Subcontractor and the Subcontractor's Consultant; and
- (c) require the insurer, whenever the party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal, the Main Contractor and the Subcontractor prior to the insurer giving any notice of cancellation.

22.4 Notices of Potential Claims

The Subcontractor shall, as soon as practicable, inform the Main Contractor in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clause 18 or 19 and shall keep the Main Contractor informed of subsequent developments concerning the claim. The Subcontractor shall ensure that secondary subcontractors in respect of their operations similarly inform the Main Contractor.

Where a policy of insurance required by the Subcontract has been effected by the Main Contractor, the Main Contractor shall similarly inform the Subcontractor.

22.5 Settlement of Claims

Upon settlement of a claim under the insurance required by Clause 18—

- (a) to the extent that the work under the Subcontract needing reinstatement has been the subject of a payment or allowance by the Main Contractor to the Subcontractor, if the Subcontractor has not completed reinstatement of that work, moneys received shall, if requested by either party, be paid into a bank agreed upon by the parties in an account in the joint names of the Subcontractor and the Main Contractor. As the Subcontractor proceeds to reinstate the loss or damage, the Subcontract Superintendent shall certify against the joint account for the cost of reinstatement; and

- (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Main Contractor to the Subcontractor, the Subcontractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Subcontractor relating to that work under the Subcontract (including the supply of goods and materials on site whether or not incorporated into the Subcontract Works). 5

22.6 Cross Liability

Any insurance required to be effected or caused to be in force in accordance with the Subcontract by the Subcontractor or the Main Contractor in joint names, shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby). 10 15

23 SUBCONTRACT SUPERINTENDENT

The Main Contractor shall ensure that at all times there is a Subcontract Superintendent and that in the exercise of the functions of the Subcontract Superintendent under the Subcontract, the Subcontract Superintendent— 20

- (a) acts honestly and fairly; 25
- (b) acts within the time prescribed under the Subcontract or where no time is prescribed, within a reasonable time; and
- (c) arrives at a reasonable measure or value of work, quantities or time. 30

If pursuant to a provision of the Subcontract enabling the Subcontract Superintendent to give directions, the Subcontract Superintendent gives a direction, the Subcontractor shall comply with the direction. 35

Except where the Subcontract otherwise provides, a direction may be given orally but the Subcontract Superintendent shall as soon as practicable confirm it in writing.

If the Subcontractor in writing requests the Subcontract Superintendent to confirm an oral direction, the Subcontractor shall not be bound to comply with the direction until the Subcontract Superintendent confirms it in writing. 40

The Subcontract Superintendent shall have—

- (i) access to the Site and the work under the Subcontract; and 45
- (ii) after reasonable notice to the Subcontractor, access to any place other than the Site where work under the Subcontract is being carried out or materials are being prepared or stored, 50

for the purposes of discharging the functions of the Subcontract Superintendent under the Subcontract.

24 DIRECTIONS BY OTHERS

The Subcontract Superintendent may from time to time appoint individuals to exercise any functions of the Subcontract Superintendent under the Subcontract but not more than one such individual shall be delegated the same function at the same time. The appointment of such an individual shall not prevent the Subcontract Superintendent from exercising any function. 60

The Subcontract Superintendent shall forthwith notify the Subcontractor in writing of—

- (a) the appointment and the name of each individual so appointed and the functions delegated to that individual; and 65
- (b) the termination of the appointment of each individual.