

Australian Standard™

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



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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 OB/3, General Conditions of Contract.

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

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

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

This Standard covers the following types of project procurement methods:

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

If the project procurement method chosen by the Principal is:

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

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

WARNINGS

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

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

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

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

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

CONTENTS

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

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

STANDARDS AUSTRALIA

Australian Standard

General conditions of contract for design and construct

1 Interpretation and construction of Contract

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

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

<i>date for practical completion</i>	means: (a) where <i>Item 7(a)</i> provides a date for <i>practical completion</i>, the date; (b) where <i>Item 7(b)</i> provides a period of time for <i>practical completion</i>, the last day of the period, but if any <i>EOT</i> for <i>practical completion</i> is directed by the <i>Superintendent</i> or allowed in any arbitration or litigation, it means the date resulting therefrom;
<i>date of acceptance of tender</i>	means the date which appears on the written notice of acceptance of the tender;
<i>date of practical completion</i>	means: (a) the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or (b) where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date;
<i>deed of guarantee, undertaking and substitution</i>	has the meaning in subclause 5.6;
<i>defects</i>	has the meaning in clause 35 and includes omissions;
<i>defects liability period</i>	has the meaning in clause 35;
<i>design documents</i>	means the drawings, specifications and other information, samples, models, patterns and the like required by the <i>Contract</i> and created (and including, where the context so requires, those to be created by the <i>Contractor</i>) for the construction of the <i>Works</i> ;
<i>direction</i>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
<i>dispute</i>	has the meaning in clause 42;
<i>EOT (from 'extension of time')</i>	has the meaning in subclause 34.3;
<i>excepted risk</i>	has the meaning in subclause 14.3;
<i>final certificate</i>	has the meaning in subclause 37.4;
<i>final payment</i>	has the meaning in clause 37;
<i>final payment claim</i>	means the final payment claim referred to in subclause 37.4;
<i>intellectual property right</i>	means any patent, registered design, trademark or name, copyright or other protected right;
<i>latent condition</i>	has the meaning in subclause 25.1;

legislative requirement includes:

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

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

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

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

prescribed notice has the meaning in subclause 41.1;

Principal means the Principal stated in *Item 1*;

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

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

program has the meaning in clause 32;

progress certificate has the meaning in subclause 37.2;

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

public liability policy has the meaning in clause 17;

qualifying cause of delay means:

- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
- (b) other than:
 - (i) a breach or omission by the *Contractor*;
 - (ii) industrial conditions or inclement weather occurring after the *date for practical completion*; and
 - (iii) stated in *Item 28*;

schedule of rates means any schedule included in the *Contract* which, in respect of any section or item of *work* to be carried out, shows the rate or respective rates of payment for the execution of that *work* and which may also include lump sums, *provisional sums*, other sums, quantities and prices;

security means:

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;
- (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
- (f) other form approved by the party having the benefit of the security;

selected subcontract work has the meaning in subclause 9.3;

selected subcontractor has the meaning in subclause 9.3;

separable portion means a portion of the *Works* identified as such in the *Contract* or by the *Superintendent* pursuant to clause 4;

site means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;

subcontractor in clauses 3 and 9 includes a *consultant*;

Superintendent means the person stated in *Item 5* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent and notified as such in writing to the *Contractor* by the *Principal* and, so far as concerns the functions exercisable by a *Superintendent's Representative*, includes a *Superintendent's Representative*;

Superintendent's Representative means an individual appointed in writing by the *Superintendent* under clause 21;

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

and like words have a corresponding meaning.

In the *Contract*:

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

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

2 Nature of Contract

2.1 Performance and payment

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

The *Principal* shall pay the *Contractor*:

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

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

2.2 Contractor's warranties

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

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

2.3 Warranties unaffected

The warranties remain unaffected notwithstanding:

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

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

2.4 Quantities

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

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

2.5 Adjustment for actual quantities

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

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

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

3 Provisional sums

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

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

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

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

4 Separable portions

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

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

5 Security

5.1 Provision

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

5.2 Recourse

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

5.3 Change of security

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

5.4 Reduction and release

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

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

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

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

5.5 Trusts and interest

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

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

5.6 Deed of guarantee, undertaking and substitution

Where:

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

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

6 Evidence of Contract

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

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

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

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

7 Service of notices

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

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

8 Contract documents

8.1 Discrepancies

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

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

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

8.2 Principal-supplied documents

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

They shall:

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

8.3 Contractor-supplied documents

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

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

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

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

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

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

8.4 Availability

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

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

8.5 Confidential information

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

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

* 8.6 Media

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

9 Assignment and subcontracting

9.1 Assignment

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

* See Preface

9.2 Subcontracting generally

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

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

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

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

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

Approval may be conditional upon the subcontract including:

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

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

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

9.3 Selected subcontract work

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

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

9.4 Novation

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

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

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

9.5 Contractor's responsibility

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

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

10 Intellectual property rights

10.1 Warranties and indemnities

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

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

Each party shall indemnify the other against such respective infringements.

10.2 Intellectual property rights granted to Principal

The Alternative in *Item 21* applies.

Alternative 1

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

Alternative 2

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

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

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

11 Legislative requirements

11.1 Compliance

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

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

11.2 Changes

If a *legislative requirement*:

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

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

12 Protection of people and property

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

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

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

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

13 Urgent protection

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

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

14 Care of the work and reinstatement of damage

14.1 Care of WUC

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

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

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

14.2 Reinstatement

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

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

14.3 Excepted risks

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

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

15 Damage to persons and property other than WUC

15.1 Indemnity by Contractor

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

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

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

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

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

This subclause shall not apply to:

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

15.2 Indemnity by Principal

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

16A Insurance of the Works

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

Alternative 1: Contractor to insure

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

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

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

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

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

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

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

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

Alternative 2: Principal to insure

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

16B Professional indemnity insurance

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

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

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

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

17 Public liability insurance

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

Alternative 1: Contractor to insure

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

The policy shall:

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

Alternative 2: Principal to insure

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