

Australian Standard™

**Minor works contract conditions
(Superintendent administered)**



This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 29 October 2001. This Standard was published on 25 February 2002.

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Minor works contract conditions (Superintendent administered)

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PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB-003, General Conditions of Contract to supersede, in part, AS 4305—1996, *Minor works contract conditions*.

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 4905—2002, *Minor works contract conditions (Superintendent administered)* is part of the suite of conditions of contract based on AS 4000—1997, *General conditions of contract*.

This Standard is intended to be used for construct-only projects of a simple nature and of limited monetary value. It is not suitable for projects of a complex or long term nature or where a bill of quantities has been prepared. There is also no provision for separable portions or selected subcontracts.

This Standard provides for administration by a Superintendent. Where it is intended that a Principal administer the contract, AS 4906—2002, *Minor works contract conditions (Principal administered)* should be used.

This Standard is not meant to be used as a short form of AS 4000—1997, *General conditions of contract*. Certain obligations and risks are dealt with differently from the way they are dealt with in AS 4000—1997.

Warnings

- 1) **This Standard provides an option for the parties to limit the Contractor's liability for damage to other property of the Principal. See subclause 10.1(a) and Item 9. Clause 10 (Damage to persons and property other than WUC) does not otherwise limit the liability of parties for special, indirect or consequential losses.**

This unlimited liability applies notwithstanding any limitations or exclusions permitted under insurance clauses 11 (Insurance of the Works) and 12 (Public liability insurance).

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

- 2) **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	4
2	NATURE OF CONTRACT.....	6
3	SECURITY	6
4	SERVICE OF NOTICES.....	7
5	DISCREPANCIES.....	7
6	ASSIGNMENT AND SUBCONTRACTING.....	7
7	LEGISLATIVE REQUIREMENTS.....	7
8	PROTECTION.....	8
9	CARE OF THE WORK AND REINSTATEMENT OF DAMAGE.....	8
10	DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC	9
11	INSURANCE OF THE WORKS	9
12	PUBLIC LIABILITY INSURANCE.....	10
13	INSURANCE OF EMPLOYEES	10
14	INSURANCE PROVISIONS	10
15	SUPERINTENDENT	11
16	REPRESENTATIVES.....	11
17	SITE.....	11
18	MATERIALS AND WORK.....	11
19	PROGRAMMING AND SUSPENSION	12
20	TIME AND PROGRESS.....	12
21	DEFECTS LIABILITY	13
22	VARIATIONS	13
23	PAYMENT.....	14
24	PAYMENT OF WORKERS AND SUBCONTRACTORS.....	15
25	DEFAULT OR INSOLVENCY	15
26	NOTIFICATION OF CLAIMS	19
27	DISPUTE RESOLUTION	19
ANNEXURE		21
INDEX		25

STANDARDS AUSTRALIA

Australian Standard

Minor works contract conditions
(Superintendent administered)

1 Interpretation and construction of Contract

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

<i>Item</i>	means an <i>Item</i> in the Annexure;
<i>certificate of practical completion</i>	has the meaning in subclause 20.4;
<i>compensable cause</i>	means any act, default or omission of the <i>Principal</i> or its consultants, agents or other contractors (not being employed by the <i>Contractor</i>);
<i>construction program</i>	has the meaning in clause 19;
<i>Contract</i>	means the agreement between the <i>Principal</i> and the <i>Contractor</i> ;
<i>contract sum</i>	means: - where the <i>Principal</i> accepted a lump sum, the lump sum; - where the <i>Principal</i> accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the schedule of rates; or - where the <i>Principal</i> accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b), excluding any additions or deductions which may be required to be made under the <i>Contract</i> ;
<i>Contractor</i>	means the person bound to carry out and complete <i>WUC</i> ;
<i>date for practical completion</i>	means the date stated in <i>Item</i> 7(a) or the last day of the period of time stated in <i>Item</i> 7(b), but if any <i>EOT</i> for <i>practical completion</i> is directed or otherwise allowed, 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 tender;
<i>date of practical completion</i>	means: - the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or - 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>defects</i>	has the meaning in clause 21 and includes omissions;

<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 27;
<i>EOT (from ‘extension of time’)</i>	has the meaning in subclause 20.2;
<i>practical completion</i>	is that stage in the carrying out and completion of <i>WUC</i> when <i>the Works</i> are complete except for minor <i>defects</i> ;
<i>Principal</i>	means the Principal stated in <i>Item 1</i> ;
<i>qualifying cause of delay</i>	means: a) any act, default or omission of the <i>Superintendent</i>, the <i>Principal</i> or its consultants, agents or other contractors (not being employed by the <i>Contractor</i>); or b) other than: i) a breach or omission by the <i>Contractor</i>; and ii) industrial conditions or inclement weather occurring after the <i>date for practical completion</i>;
<i>site</i>	means the lands and other places to be made available and any other lands and places made available to the <i>Contractor</i> by the <i>Principal</i> for the purpose of the <i>Contract</i> ;
<i>Superintendent</i>	means the person stated in <i>Item 5</i> as the Superintendent or other person from time to time appointed in writing by the <i>Principal</i> to be the Superintendent and notified as such in writing to the <i>Contractor</i> by the <i>Principal</i> and, so far as concerns the functions exercisable by a <i>Superintendent’s</i> representative, includes a <i>Superintendent’s</i> representative;
<i>the Works</i>	means the whole of the <i>work</i> to be carried out and completed in accordance with the <i>Contract</i> , including variations provided for by the <i>Contract</i> , which by the <i>Contract</i> is to be handed over to the <i>Principal</i> ;
<i>work</i>	includes the provision of materials;
<i>WUC (from ‘work under the Contract’)</i>	means the <i>work</i> which the <i>Contractor</i> is or may be required to carry out and complete under the <i>Contract</i> 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*; and
- 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.

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 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.

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

3 Security

3.1 Provision

Security shall be provided in accordance with *Item 8*. All delivered security, other than cash or retention moneys, shall be transferred in escrow.

3.2 Recourse

Security shall be subject to recourse by the *Principal* who remains unpaid after the time for payment where at least 5 days have elapsed since the *Principal* has notified the *Contractor* of intention to have recourse.

3.3 Reduction and release

Upon the issue of a *certificate of practical completion*, the *Principal's* entitlement to security shall be reduced to 50 per cent thereof and the reduction shall be released and returned within 14 days to the *Contractor*.

The *Principal* shall release and return the balance of security then held to the *Contractor* within 14 days of the final certificate.

3.4 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 *Contractor* 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.

4 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.

5 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.

If compliance with any such *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*.

6 Assignment and subcontracting

6.1 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.

6.2 Subcontracting

The *Contractor* may subcontract part of *WUC* but subcontracting shall not relieve the *Contractor* from any liability or obligation under the *Contract*.

7 Legislative requirements

The *Contractor* shall satisfy all legislative requirements except where otherwise provided for under the *Contract* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

If a change in a legislative requirement necessitates a change to *the Works* and causes the *Contractor* to incur more or less cost than would otherwise have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

8 Protection

Insofar as compliance with the requirements of 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 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.

9 Care of the work and reinstatement of damage

9.1 Care of WUC

Except as provided in subclause 9.3, the *Contractor* shall be responsible for the 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 the 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 the *Contractor's* obligations under clause 21.

9.2 Reinstatement

If loss or damage, other than to the extent 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.

9.3 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 others for whom it is responsible;
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionizing 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 those for whom it is responsible;
- (e) use or occupation of any part of *WUC* by the *Principal* or others for whom it is responsible; and
- (f) defects in the design of *WUC*, other than design provided by the *Contractor*.

10 Damage to persons and property other than WUC

10.1 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. The limit of indemnity under this paragraph, in respect of such property, shall be the amount stated in *Item 9*; 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 others for whom it is responsible 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 9.1; and
- (d) claims in respect of the right of the *Principal* to have *WUC* carried out.

10.2 Indemnity by Principal

The *Principal* shall indemnify the *Contractor* in respect of claims referred to in paragraph (d) of subclause 10.1.

11 Insurance of the Works

Before the *Contractor* commences *WUC*, the *Contractor* shall insure all things referred to in subclause 9.1 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 9.2 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 9.3.

The insurance cover shall be for an amount not less than the sum stated in *Item 10*.