Australian Standard™

General conditions of contract

STANDARDS
AUSTRALIA
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- Association of Consulting Engineers Australia
- Australasian Railways Association
- Australian Chamber of Commerce and Industry
- Australian Procurement and Construction Council
- AUSTROADS
- Construction Industry Engineering Services Group
- Construction Policy Steering Committee
- Electricity Supply Association of Australia
- Institution of Engineers, Australia
- Institution of Professional Engineers, New Zealand
- Law Council of Australia
- Master Builders Australia
- National Construction Council / MTIA
- Process Engineers and Constructors Association
- Royal Australian Institute of Architects

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General conditions of contract

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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 1 (August 1999), Amendment 2 (October 2000), and Amendment 3 (March 2005). The changes required by the Amendments are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure, or part thereof affected.

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.

Subclauses 8.6 and 29.2 (prefixed by an asterisk) 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 B or elsewhere that they are not to apply. See paragraph (i) of clause 1 on page 5 for the effect of stating deletions in Annexure Part B.

Warning

Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than work under the Contract (‘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 16 (Insurance of the Works) and 17 (Public liability insurance).

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

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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1 Interpretation and construction of Contract

In the Contract, except where the context otherwise requires:

**Item** means an Item in Annexure Part A;

**bill of quantities** means a document named therein as a bill of quantities issued to tenderers by or on behalf of the Principal, stating estimated quantities of work to be carried out;

**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 26;

**construction program** has the meaning in clause 32;

**construction plant** means appliances and things used in the carrying out of WUC but not forming part of the Works;

**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 priced bill of quantities or 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;

**date of acceptance of tender** means the date which appears on the written notice of acceptance of the tender;

**date for practical completion** means:

a) where Item 7(a) provides a date for practical completion, the date;

b) where Item 7(b) provides a period of time for practical completion, the last day of the period,

but if any EOT for practical completion is directed by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom;
**Clause 1: Interpretation and construction of Contract**

- **date of practical completion** means:
  a) the date evidenced in a *certificate of practical completion* as 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;

- **deed of guarantee, undertaking and substitution** has the meaning in subclause 5.6;

- **defects** has the meaning in clause 35 and includes omissions;

- **defects liability period** has the meaning in clause 35;

- **dispute** includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

- **EOT** (from ‘extension of time’) has the meaning in subclause 34.3;

- **excepted risk** has the meaning in subclause 14.3;

- **final certificate** has the meaning in subclause 37.4;

- **final payment** has the meaning in clause 37;

- **final payment claim** means the final payment claim referred to in subclause 37.4;

- **Intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right;

- **latent condition** 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;

**prescribed notice** has the meaning in subclause 41.1;

**Principal** means the Principal stated in *Item 1*;

**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 23*;

**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 C 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;
Clause 1: Interpretation and construction of Contract

**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;

**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, bench mark, 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 in these General Conditions of Contract shall not form part of these General Conditions and shall not 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;

f) 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
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 Bill of quantities

The Alternative in Item 10(a) applies.

Alternative 1

A bill of quantities forms part of the Contract and shall be priced in accordance with subclause 2.3.

Alternative 2

A bill of quantities does not form part of the Contract and shall not be priced in accordance with subclause 2.3 unless so stated in Item 10(b).

2.3 Priced bill of quantities

Where a bill of quantities is to be priced:

a) all items included in the bill of quantities shall be priced and extended by the Contractor and the prices as extended shall on addition equal the sum accepted by the Principal for carrying out the whole of the work to which the bill of quantities relates;

b) the Contractor shall lodge the bill of quantities so priced and extended with the Superintendent before the expiration of the time for lodgement stated in Item 10(c) or such further time as may be directed by the Superintendent from time to time;
c) notwithstanding any other provision of the Contract, the Contractor shall not be entitled to payment until the Contractor has lodged the bill of quantities so priced and extended.

If the aggregate amount in a priced bill of quantities does not equal the sum accepted for the work, the subject of the bill of quantities, the Superintendent shall (unless the parties agree within 7 days of notification) determine an appropriate correction of errors and inconsistencies in rates and prices therein, so that the aggregate amount equals such sum.

2.4 Quantities

Quantities in a bill of quantities or 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 a bill of quantities which forms part of the Contract or 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 a bill of quantities which forms part of the Contract or 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 11, 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 bill of quantities or schedule of rates omits an item which should have been included, the item shall be a deemed variation.

Notwithstanding the preceding provisions of this subclause in respect of a bill of quantities, a variation shall not be deemed for actual quantities of an item pursuant to paragraph (a), or for an omitted item or any adjustment made for actual quantities of an item pursuant to paragraph (b), if the difference, the value of the omitted item or the adjustment respectively is less than $400.

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 12 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 13 or 14. 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 13(e)) shall be reduced by the percentage or amount in Item 13(f) or 14(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 13(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.

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.

8.2 Principal-supplied documents

The Principal shall supply to the Contractor the documents and number of copies thereof, both stated in Item 15.

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 thereof, both stated elsewhere in the Contract.

If the Contractor submits documents to the Superintendent, then except where the Contract otherwise provides:

a) the Superintendent shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the Contract;

b) notwithstanding clause 20, 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 such documents, the Superintendent shall give, within the time stated in Item 16, the appropriate direction, including reasons if the documents are not suitable.

Copies of documents supplied by the Contractor shall be the Principal’s property but shall not be used or 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.

9.2 Subcontracting generally

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 17; 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; and

b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor’s obligations to the Principal.

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

When directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a deed of novation in the form included in the invitation to tender, such deed being between the Principal, the Contractor and the subcontractor or selected subcontractor stated in Item 18 for the particular part of WUC.

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

The Principal warrants that, unless otherwise provided in the Contract, 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.
11 Legislative requirements

11.1 Compliance

The Contractor shall satisfy all legislative requirements except those in Item 19(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, shall promptly give the Superintendent written notice thereof.

11.2 Changes

If a legislative requirement:

a) necessitates a change:
   i) to the Works;
   ii) to so much of WUC as is identified in Item 19(b);
   iii) being the provision of services by a municipal, public or other statutory authority in connection with WUC; or
   iv) 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 the design of WUC, other than design provided by the Contractor.

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;

d) damage which is the unavoidable result of the construction of the Works in accordance with the Contract; and
e) 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 damage referred to in paragraph (d) of subclause 15.1 and claims referred to in paragraph (e) of subclause 15.1.

16 Insurance of the Works

The Alternative in Item 20(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 20(b) to provide for costs of demolition and removal of debris;

c) provision in Item 20(c) for consultants’ fees;

b) provision in Item 20(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 20(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 and all 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.

### 17 Public liability insurance

The Alternative in Item 21(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 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 16) 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 21(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 and nominating or stating the insurer. The Principal shall maintain such insurance while ever the Contractor has an interest in WUC.
18 Insurance of employees

Before commencing WUC, the Contractor shall insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover shall be maintained until completion of all WUC.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Principal’s statutory liability to the Contractor’s employees.

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

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

Before the Contractor commences WUC and whenever requested in writing by the other party, a party liable to insure shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the Contract.

19.2 Failure to produce proof of insurance

If after being so requested, a party fails promptly to provide satisfactory evidence of compliance with clause 16, 17 or 18, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the Superintendent as moneys due and payable from the party in default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until such evidence is produced by the Contractor.

19.3 Notices from or to insurer

The party insuring under clause 16 or 17 shall ensure that each insurance policy contains provisions acceptable to the other party which:

a) requires the insurer to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;

b) provides that a notice of claim given to the insurer by either party, the Superintendent or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties, the Superintendent and the subcontractor; and

c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.
19.4 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 16 or 17 and shall keep the other party informed of subsequent developments concerning the claim. The Contractor shall ensure that subcontractors in respect of their operations similarly inform the parties.

19.5 Settlement of claims

Upon settlement of a claim under the insurance required by clause 16:

a) to the extent that reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the Contractor reinstates the loss or damage, the Superintendent shall certify against the joint account for the cost of reinstatement; and

b) to the extent that reinstatement has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the Contractor.

19.6 Cross liability

Any insurance required to be effected in joint names in accordance with the Contract shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting 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).

20 Superintendent

The Principal shall ensure that at all times there is a Superintendent, and that the Superintendent fulfils all aspects of the role and functions reasonably and in good faith.

Except where the Contract otherwise provides, the Superintendent may give a direction orally but shall as soon as practicable confirm it in writing. If the Contractor in writing requests the Superintendent to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Superintendent does so.
21 Superintendent's Representative

The Superintendent may from time to time appoint individuals to exercise delegated Superintendent’s functions, provided that:

a) no aspect of any function shall at any one time be the subject of delegation to more than one Superintendent’s Representative;

b) delegation shall not prevent the Superintendent exercising any function;

c) the Superintendent forthwith gives the Contractor written notice of respectively:

i) the appointment, including the Superintendent’s Representative’s name and delegated functions; and

ii) the termination of each appointment; and

d) if the Contractor makes a reasonable objection to the appointment of a Superintendent’s Representative, the Superintendent shall terminate the appointment.

22 Contractor’s representative

The Contractor shall superintend WUC personally or by a competent representative. Matters within a Contractor’s representative’s knowledge (including directions received) shall be deemed to be within the Contractor’s knowledge.

The Contractor shall forthwith give the Superintendent written notice of the representative’s name and any subsequent changes.

If the Superintendent makes a reasonable objection to the appointment of a representative, the Contractor shall terminate the appointment and appoint another representative.

23 Contractor’s employees and subcontractors

The Superintendent may direct the Contractor to have removed, within a stated time, from the site or from any activity of WUC, any person employed on WUC who, in the Superintendent’s opinion, is incompetent, negligent or guilty of misconduct.
24 Site

24.1 Possession

Provided the Contractor has complied with subclause 19.1, the Principal shall before the expiry of the time in Item 22, give the Contractor possession of sufficient of the site for commencement of WUC on site. If the Principal has not given the Contractor possession of the whole site, the Principal shall give the Contractor possession of such further portions of the site as may, from time to time, be necessary for carrying out WUC. Subject to subclause 39.7, delay by the Principal in giving possession shall not be a breach of the Contract.

Possession of the site shall confer on the Contractor a right to only such use and control as is necessary to enable the Contractor to carry out WUC and shall exclude camping, residential purposes and any purpose not connected with WUC, unless approved by the Superintendent.

24.2 Access for Principal and others

The Principal and the Principal’s employees, consultants and agents may at any time after reasonable written notice to the Contractor, have access to any part of the site for any purpose. The Contractor shall permit persons engaged by the Principal to carry out work on the site other than WUC and shall cooperate with them. The Principal shall give to the Contractor the names and roles of the persons so engaged.

The Contractor shall at all reasonable times give the Superintendent access to WUC.

The Principal shall ensure that none of the persons referred to in this subclause impedes the Contractor.

24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the site shall as between the parties be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall:

a) take precautions to prevent their loss, removal or damage; and

b) give the Superintendent written notice of the discovery.

All costs so incurred by the Contractor shall be assessed by the Superintendent and added to the contract sum.
25  Latent conditions

25.1 Scope

Latent conditions are physical conditions on the site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent Contractor at the time of the Contractor’s tender if the Contractor had inspected:

a) all written information made available by the Principal to the Contractor for the purpose of tendering;

b) all information influencing the risk allocation in the Contractor’s tender and reasonably obtainable by the making of reasonable enquiries; and

c) the site and its near surrounds.

25.2 Notification

The Contractor, upon becoming aware of a latent condition while carrying out WUC, shall promptly, and where possible before the latent condition is disturbed, give the Superintendent written notice of the general nature thereof.

If required by the Superintendent promptly after receiving that notice, the Contractor shall, as soon as practicable, give the Superintendent a written statement of:

a) the latent condition encountered and the respects in which it differs materially;

b) the additional work, resources, time and cost which the Contractor estimates to be necessary to deal with the latent condition; and

c) other details reasonably required by the Superintendent.

25.3 Deemed variation

The effect of the latent condition shall be a deemed variation, priced having no regard to additional cost incurred more than 28 days before the date on which the Contractor gave the notice required by the first paragraph of subclause 25.2 but so as to include the Contractor’s other costs for each compliance with subclause 25.2.

26  Setting out the Works

26.1 Setting out

The Principal shall ensure that the Superintendent gives the Contractor the data, survey marks and like information necessary for the Contractor to set out the Works, together with those survey marks specified in the Contract. Thereupon the Contractor shall set out the Works in accordance with the Contract.
26.2 Errors in setting out

The Contractor shall rectify every error in the position, level, dimensions or alignment of any WUC after promptly notifying the Superintendent and unless the Superintendent within 3 days directs otherwise.

If the error was caused by incorrect data, survey marks or information given by the Superintendent, the cost incurred by the Contractor in rectifying the error shall be assessed by the Superintendent and added to the contract sum.

26.3 Care of survey marks

The Contractor shall keep in their true positions all survey marks supplied by the Superintendent.

The Contractor shall reinstate any survey mark disturbed, after promptly notifying the Superintendent and unless the Superintendent within 3 days directs otherwise.

If the disturbance was caused by the Superintendent or a person referred to in subclause 24.2 other than the Contractor, the cost incurred by the Contractor in reinstating the survey mark shall be assessed by the Superintendent and added to the contract sum.

27 Cleaning up

The Contractor shall keep the site and WUC clean and tidy and regularly remove rubbish and surplus material.

Within 14 days after the date of practical completion, the Contractor shall remove temporary works and construction plant. The Superintendent may extend the time to enable the Contractor to perform remaining obligations.

If the Contractor fails to comply with the preceding obligations in this clause, the Superintendent may direct the Contractor to rectify the non-compliance and the time for rectification.

If:

a) the Contractor fails to comply with such a direction; and

b) that failure has not been made good within 5 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work carried out by others,

the Principal may have that work so carried out and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal. The rights given by this paragraph are additional to any other rights and remedies.
28 Materials, labour and construction plant

Except where the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor’s obligations and discharge of the Contractor’s liabilities.

In respect of any materials, machinery or equipment to be supplied by the Contractor in connection with the Contract, the Superintendent may direct the Contractor to:

a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and

b) arrange reasonable inspection at such place or sources by the Superintendent, the Principal and persons authorised by the Principal.

The Superintendent may give the Contractor a written direction not to remove materials or construction plant from the site. Thereafter the Contractor shall not remove them without the Superintendent’s prior written approval (which shall not be unreasonably withheld).

29 Quality

29.1 Quality of material and work

Unless otherwise provided the Contractor shall use suitable new materials and proper and tradesmanlike workmanship.

*29.2 Quality assurance

If the Contract elsewhere requires further quality assurance, the Contractor shall:

a) plan, establish and maintain a conforming quality system; and

b) ensure that the Superintendent has access to the quality system of the Contractor and subcontractors so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not discharge the Contractor’s other obligations under the Contract.
29.3 Defective work

If the Superintendent becomes aware of work done (including material provided) by the Contractor which does not comply with the Contract, the Superintendent shall as soon as practicable give the Contractor written details thereof. If the subject work has not been rectified, the Superintendent may direct the Contractor to do any one or more of the following (including times for commencement and completion):

a) remove the material from the site;

b) demolish the work;

c) reconstruct, replace or correct the work; and

d) not deliver it to the site.

If:

a) the Contractor fails to comply with such a direction; and

b) that failure has not been made good within 8 days after the Contractor receives written notice from the Superintendent that the Principal intends to have the subject work rectified by others,

the Principal may have that work so rectified and the Superintendent shall certify the cost incurred as moneys due from the Contractor to the Principal.

29.4 Acceptance of defective work

Instead of a direction pursuant to subclause 29.3, the Superintendent may direct the Contractor that the Principal elects to accept the subject work, whereupon there shall be a deemed variation.

29.5 Timing

The Superintendent may give a direction pursuant to this clause at any time before the expiry of the last defects liability period.

30 Examination and testing

30.1 Tests

At any time before the expiry of the last defects liability period, the Superintendent may direct that any WUC be tested. The Contractor shall give such assistance and samples and make accessible such parts of WUC as may be directed by the Superintendent.

30.2 Covering up

The Superintendent may direct that any part of WUC shall not be covered up or made inaccessible without the Superintendent's prior written direction.

30.3 Who conducts

Tests shall be conducted as provided elsewhere in the Contract or by the Superintendent or a person (which may include the Contractor) nominated by the Superintendent.
30.4 Notice

The Superintendent or the Contractor (whichever is to conduct the test) shall give reasonable written notice to the other of the date, time and place of the test. If the other does not attend, the test may nevertheless proceed.

30.5 Delay

Without prejudice to any other right, if the Contractor or the Superintendent delays in conducting a test, the other, after giving reasonable written notice of intention to do so, may conduct the test.

30.6 Completion and results

On completion of the tests, the Contractor shall make good WUC so that it fully complies with the Contract.

Results of tests shall be promptly made available by each party to the other and to the Superintendent.

30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the Principal except where the Contract otherwise provides or the test is consequent upon, or reveals a failure of the Contractor to comply with the Contract (including this clause).

31 Working hours

If the working hours and working days on the site are not stated elsewhere in the Contract, they shall be as notified by the Contractor to the Superintendent before commencement of work on site. They shall not be varied without the Superintendent’s prior written approval, except when, in the interests of safety of persons or property, the Contractor finds it necessary to carry out WUC otherwise, whereupon the Contractor shall give the Superintendent written notice of those circumstances as early as possible.

32 Programming

The Contractor shall give the Superintendent reasonable advance notice of when the Contractor needs information, materials, documents or instructions from the Superintendent or the Principal.

The Principal and the Superintendent shall not be obliged to give any information, materials, documents or instructions earlier than the Principal or the Superintendent, as the case may be, should reasonably have anticipated at the date of acceptance of tender.

The Superintendent may direct in what order and at what time the various stages or portions of WUC shall be carried out. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall give the Superintendent written notice of the reasons.

A construction program is a written statement showing the dates by which, or the times within which, the various stages or portions of WUC are to be carried out or completed. It shall be deemed a Contract document.

The Superintendent may direct the Contractor to give the Superintendent a construction program within the time and in the form directed.

The Contractor shall not, without reasonable cause, depart from a construction program.
If compliance with any such directions under this clause, except those pursuant to the Contractor’s default, causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be assessed by the Superintendent and added to or deducted from the contract sum.

33 Suspension

33.1 Superintendent’s suspension

The Superintendent may direct the Contractor to suspend the carrying out of the whole or part of WUC for such time as the Superintendent thinks fit, if the Superintendent is of the opinion that it is necessary:

a) because of an act, default or omission of:
   i) the Superintendent, the Principal or its employees, consultants, agents or other contractors (not being employed by the Contractor); or
   ii) the Contractor, a subcontractor or either’s employees or agents;

b) for the protection or safety of any person or property; or

c) to comply with a court order.

33.2 Contractor’s suspension

If the Contractor wishes to suspend the carrying out of the whole or part of WUC, otherwise than pursuant to subclause 39.9, the Contractor shall obtain the Superintendent’s prior written approval. The Superintendent may approve the suspension and may impose conditions of approval.

33.3 Recomencement

As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Contractor to recommence suspended WUC as soon as reasonably practicable.

The Contractor may recommence WUC suspended pursuant to subclause 33.2 or 39.9 at any time after reasonable notice to the Superintendent.
33.4 Cost

The Contractor shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the Contractor made the protection, safety or court order necessary, the Contractor shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the Contractor otherwise incurs 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.

34 Time and progress

34.1 Progress

The Contractor shall ensure that WUC reaches practical completion by the date for practical completion.

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to WUC shall promptly give the Superintendent and the other party written notice of that cause and the estimated delay.

34.3 Claim

The Contractor shall be entitled to such extension of time for carrying out WUC (including reaching practical completion) as the Superintendent assesses (‘EOT’), if:

a) the Contractor is or will be delayed in reaching practical completion by a qualifying cause of delay; and

b) the Contractor gives the Superintendent, within 28 days of when the Contractor should reasonably have become aware of that causation occurring, a written claim for an EOT evidencing the facts of causation and of the delay to WUC (including extent).

If further delay results from a qualifying cause of delay evidenced in a claim under paragraph (b) of this subclause, the Contractor shall claim an EOT for such delay by promptly giving the Superintendent a written claim evidencing the facts of that delay.

34.4 Assessment

When both non-qualifying and qualifying causes of delay overlap, the Superintendent shall apportion the resulting delay to WUC according to the respective causes’ contribution.

In assessing each EOT the Superintendent shall disregard questions of whether:

a) WUC can nevertheless reach practical completion without an EOT; or

b) the Contractor can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the Contractor.
34.5 Extension of time

Within 28 days after receiving the Contractor’s claim for an EOT, the Superintendent shall give to the Contractor and the Principal a written direction evidencing the EOT so assessed. If the Superintendent does not do so, there shall be a deemed assessment and direction for an EOT as claimed.

Notwithstanding that the Contractor is not entitled to or has not claimed an EOT, the Superintendent may at any time and from time to time before issuing the final certificate direct an EOT.

34.6 Practical completion

The Contractor shall give the Superintendent at least 14 days written notice of the date upon which the Contractor anticipates that practical completion will be reached.

When the Contractor is of the opinion that practical completion has been reached, the Contractor shall in writing request the Superintendent to issue a certificate of practical completion. Within 14 days after receiving the request, the Superintendent shall give the Contractor and the Principal either a certificate of practical completion evidencing the date of practical completion or written reasons for not doing so.

If the Superintendent is of the opinion that practical completion has been reached, the Superintendent may issue a certificate of practical completion even though no request has been made.

34.7 Liquidated damages

If WUC does not reach practical completion by the date for practical completion, the Superintendent shall certify, as due and payable to the Principal, liquidated damages in Item 24 for every day after the date for practical completion to and including the earliest of the date of practical completion or termination of the Contract or the Principal taking WUC out of the hands of the Contractor.

If an EOT is directed after the Contractor has paid or the Principal has set off liquidated damages, the Principal shall forthwith repay to the Contractor such of those liquidated damages as represent the days the subject of the EOT.

34.8 Bonus for early practical completion

If the date of practical completion is earlier than the date for practical completion the Superintendent shall certify as due and payable to the Contractor the bonus in Item 25(a) for every day after the date of practical completion to and including the date for practical completion.

The Contractor hereby waives that part of a bonus exceeding the Item 25(b) amount.

34.9 Delay damages

For every day the subject of an EOT for a compensable cause and for which the Contractor gives the Superintendent a claim for delay damages pursuant to subclause 41.1, damages certified by the Superintendent under subclause 41.3 shall be due and payable to the Contractor.
35 Defects liability

The defects liability period stated in Item 27 shall commence on the date of practical completion at 4:00 pm.

The Contractor shall carry out rectification at times and in a manner causing as little inconvenience to the occupants or users of the Works as is reasonably possible.

As soon as possible after the date of practical completion, the Contractor shall carry out all defects existing at the date of practical completion.

During the defects liability period, the Superintendent may give the Contractor a direction to rectify a defect which:

a) shall identify the defect and the date for completion of its rectification; and

b) may state a date for commencement of the rectification and whether there shall be a separate defects liability period therefor (not exceeding that in Item 27, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the Principal may have the rectification carried out by others but without prejudice to any other rights and remedies the Principal may have. The cost thereby incurred shall be certified by the Superintendent as moneys due and payable to the Principal.

36 Variations

36.1 Directing variations

The Contractor shall not vary WUC except as directed in writing.

The Superintendent, before the date of practical completion, may direct the Contractor to vary WUC by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the Contract:

a) increase, decrease or omit any part;

b) change the character or quality;

c) change the levels, lines, positions or dimensions;

d) carry out additional work;

e) demolish or remove material or work no longer required by the Principal.
36.2 Proposed variations

The Superintendent may give the Contractor written notice of a proposed variation.

The Contractor shall as soon as practicable after receiving such notice, notify the Superintendent whether the proposed variation can be effected, together with, if it can be effected, the Contractor’s estimate of the:

a) effect on the construction program (including the date for practical completion); and

b) cost (including all time-related costs, if any) of the proposed variation.

The Superintendent may direct the Contractor to give a detailed quotation for the proposed variation supported by measurements or other evidence of cost.

The Contractor’s costs for each compliance with this subclause shall be certified by the Superintendent as moneys due to the Contractor.

36.3 Variations for convenience of contractor

If the Contractor requests the Superintendent to direct a variation for the convenience of the Contractor, the Superintendent may do so. The direction shall be written and may be conditional. Unless the direction provides otherwise, the Contractor shall be entitled to neither extra time nor extra money.

36.4 Pricing

The Superintendent shall, as soon as possible, price each variation using the following order of precedence:

a) prior agreement;

b) applicable rates or prices in the Contract;

c) rates or prices in a priced bill of quantities, schedule of rates or schedule of prices, even though not Contract documents, to the extent that it is reasonable to use them; and

d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the contract sum.

37 Payment

37.1 Progress claims

The Contractor shall claim payment progressively in accordance with Item 28.

An early progress claim shall be deemed to have been made on the date for making that claim.
Each progress claim shall be given in writing to the Superintendent and shall include details of the value of WUC done and may include details of other moneys then due to the Contractor pursuant to provisions of the Contract.

37.2 Certificates

The Superintendent shall, within 14 days after receiving such a progress claim, issue to the Principal and the Contractor:

a) a progress certificate evidencing the Superintendent’s opinion of the moneys due from the Principal to the Contractor pursuant to the progress claim and reasons for any difference ('progress certificate'); and

b) a certificate evidencing the Superintendent’s assessment of retention moneys and moneys due from the Contractor to the Principal pursuant to the Contract.

If the Contractor does not make a progress claim in accordance with Item 28, the Superintendent may issue the progress certificate with details of the calculations and shall issue the certificate in paragraph (b).

If the Superintendent does not issue the progress certificate within 14 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant progress certificate.

The Principal shall within 7 days after receiving both such certificates, or within 21 days after the Superintendent receives the progress claim, pay to the Contractor the balance of the progress certificate after deducting retention moneys and setting off such of the certificate in paragraph (b) as the Principal elects to set off. If that setting off produces a negative balance, the Contractor shall pay that balance to the Principal within 7 days of receiving written notice thereof.

Neither a progress certificate nor a payment of moneys shall be evidence that the subject WUC has been carried out satisfactorily. Payment other than final payment shall be payment on account only.

37.3 Unfixed plant and materials

The Principal shall not be liable to pay for unfixed plant and materials unless they are listed in Item 29 and the Contractor:

a) provides the additional security in Item 13(e); and

b) satisfies the Superintendent that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the Principal.

Upon payment to the Contractor and the release of any additional security in paragraph (a), the subject plant and materials shall be the unencumbered property of the Principal.

37.4 Final payment claim and certificate

Within 28 days after the expiry of the last defects liability period, the Contractor shall give the Superintendent a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the Contract.
Within 42 days after the expiry of the last defects liability period, the Superintendent shall issue to both the Contractor and the Principal a final certificate evidencing the moneys finally due and payable between the Contractor and the Principal on any account whatsoever in connection with the subject matter of the Contract.

Those moneys certified as due and payable shall be paid by the Principal or the Contractor, as the case may be, within 7 days after the debtor receives the final certificate.

The final certificate shall be conclusive evidence of accord and satisfaction, and in discharge of each party’s obligations in connection with the subject matter of the Contract except for:

a) fraud or dishonesty relating to WUC or any part thereof or to any matter dealt with in the final certificate;

b) any defect or omission in the Works or any part thereof which was not apparent at the end of the last defects liability period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the final certificate;

c) any accidental or erroneous inclusion or exclusion of any work or figures in any computation or an arithmetical error in any computation; and

d) unresolved issues the subject of any notice of dispute pursuant to clause 42, served before the 7th day after the issue of the final certificate.

37.5 Interest

Interest in Item 30 shall be due and payable after the date of default in payment.

37.6 Other moneys due

The Principal may elect that moneys due and owing otherwise than in connection with the subject matter of the Contract also be due to the Principal pursuant to the Contract.

38 Payment of workers and subcontractors

38.1 Workers and subcontractors

The Contractor shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to:

a) workers of the Contractor and of the subcontractors; and

b) subcontractors,

in respect of WUC the subject of that claim.

If the Contractor is unable to give such documentary evidence, the Contractor shall give other documentary evidence of the moneys so due and payable to workers and subcontractors.

Documentary evidence, except where the Contract otherwise provides, shall be to the Superintendent’s satisfaction.
38.2 Withholding payment

Subject to the next paragraph, the Principal may withhold moneys certified due and payable in respect of the progress claim until the Contractor complies with subclause 38.1.

The Principal shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers and subcontractors.

38.3 Direct payment

Before final payment, the Principal, if not aware of a relevant relation-back day (as defined in the Corporations Law) may pay unpaid moneys the subject of subclause 38.1 directly to a worker or a subcontractor where:

a) permitted by law;

b) given a court order in favour of the worker or subcontractor; or

c) requested in writing by the Contractor.

Such payment and a payment made to a worker or subcontractor in compliance with a legislative requirement shall be deemed to be part-satisfaction of the Principal’s obligation to pay pursuant to subclause 37.2 or 37.4, as the case may be.

39 Default or insolvency

39.1 Preservation of other rights

If a party breaches (including repudiates) the Contract, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

39.2 Contractor’s default

If the Contractor commits a substantial breach of the Contract, the Principal may, by hand or by certified post, give the Contractor a written notice to show cause.

Substantial breaches include, but are not limited to:

a) failing to:

   i) provide security;

   ii) provide evidence of insurance;

   iii) comply with a direction of the Superintendent pursuant to subclause 29.3; or

   iv) use the materials or standards of work required by the Contract;

b) wrongful suspension of work;

c) substantial departure from a construction program without reasonable cause or the Superintendent’s approval;

d) where there is no construction program, failing to proceed with due expedition and without delay; and
e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

### 39.3 Principal’s notice to show cause

A notice under subclause 39.2 shall state:

a) that it is a notice under clause 39 of these General Conditions of Contract;

b) the alleged substantial breach;

c) that the Contractor is required to show cause in writing why the Principal should not exercise a right referred to in subclause 39.4;

d) the date and time by which the Contractor must show cause (which shall not be less than 7 clear days after the notice is received by the Contractor); and

e) the place at which cause must be shown.

### 39.4 Principal’s rights

If the Contractor fails to show reasonable cause by the stated date and time, the Principal may by written notice to the Contractor:

a) take out of the Contractor’s hands the whole or part of the work remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or

b) terminate the Contract.

### 39.5 Take out

The Principal shall complete work taken out of the Contractor’s hands and may:

a) use materials, equipment and other things intended for WUC; and

b) without payment of compensation to the Contractor:

i) take possession of, and use such of the construction plant and other things on or in the vicinity of the site as were used by the Contractor; and

ii) contract with such of the Contractor’s subcontractors and consultants, as are reasonably required by the Principal to facilitate completion of WUC.

If the Principal takes possession of construction plant or other things, the Principal shall maintain them and, subject to subclause 39.6, on completion of the work, shall return such of them as are surplus.

The Superintendent shall keep records of the cost of completing the work.

### 39.6 Adjustment on completion of work taken out

When work taken out of the Contractor’s hands has been completed, the Superintendent shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor.
If the Contractor is indebted to the Principal, the Principal may retain construction plant or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the construction plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

39.7 Principal’s default

If the Principal commits a substantial breach of the Contract, the Contractor may, by hand or by certified post, give the Principal a written notice to show cause.

Substantial breaches include, but are not limited to:

a) failing to:
   i) provide security;
   ii) produce evidence of insurance;
   iii) rectify inadequate Contractor’s possession of the site if that failure continues for longer than the time stated in Item 31; or
   iv) make a payment due and payable pursuant to the Contract; and

b) the Superintendent not giving a certificate of practical completion or reasons as referred to in subclause 34.6.

39.8 Contractor’s notice to show cause

A notice given under subclause 39.7 shall state:

a) that it is a notice under clause 39 of these General Conditions of Contract;

b) the alleged substantial breach;

c) that the Principal is required to show cause in writing why the Contractor should not exercise a right referred to in subclause 39.9;

d) the date and time by which the Principal must show cause (which shall not be less than 7 clear days after the notice is received by the Principal); and

e) the place at which cause must be shown.

39.9 Contractor’s rights

If the Principal fails to show reasonable cause by the stated date and time, the Contractor may, by written notice to the Principal, suspend the whole or any part of WUC.

The Contractor shall remove the suspension if the Principal remedies the breach.

The Contractor may, by written notice to the Principal, terminate the Contract, if within 28 days of the date of suspension under this subclause, the Principal fails:

a) to remedy the breach; or

b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the Contractor.
Damages suffered by the Contractor by reason of the suspension shall be assessed by the Superintendent, who shall certify them as moneys due and payable to the Contractor.

39.10 Termination

If the Contract is terminated pursuant to subclause 39.4(b) or 39.9, the parties’ remedies, rights and liabilities shall be the same as they would have been under the law governing the Contract had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

39.11 Insolvency

If:

a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the Contract;

b) execution is levied against a party by a creditor;

c) a party is an individual person or a partnership including an individual person, and if that person:

i) commits an act of bankruptcy;

ii) has a bankruptcy petition presented against him or her or presents his or her own petition;

iii) is made bankrupt;

iv) makes a proposal for a scheme of arrangement or a composition; or

v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor’s petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the Contract;

or

d) in relation to a party being a corporation:

i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

ii) it enters a deed of company arrangement with creditors;

iii) a controller or administrator is appointed;

iv) an application is made to a court for its winding up and not stayed within 14 days;

v) a winding up order is made in respect of it;

vi) it resolves by special resolution that it be wound up voluntarily (other than for a member’s voluntary winding up); or

vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

A) the Principal, the Principal may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or

B) the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under subclause 39.9.
The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of Contract.

40 Termination by frustration

If the Contract is frustrated:

a) the Superintendent shall issue a progress certificate for WUC carried out to the date of frustration, evidencing the amount which would have been payable had the Contract not been frustrated and had the Contractor been entitled to and made a progress claim on the date of frustration;

b) the Principal shall pay the Contractor:
   i) the amount due to the Contractor evidenced by all unpaid certificates;
   ii) the cost of materials and equipment reasonably ordered by the Contractor for WUC and which the Contractor is liable to accept, but only if they will become the Principal’s property upon payment; and
   iii) the costs reasonably incurred:
       A) removing temporary works and construction plant;
       B) returning to their place of engagement the Contractor, subcontractors and their respective employees engaged in WUC at the date of frustration; and
       C) by the Contractor in expectation of completing WUC and not included in any other payment; and

c) each party shall promptly release and return all security provided by the other.

41 Notification of claims

41.1 Communication of claims

The prescribed notice is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the Contract, that party shall give to the other party and to the Superintendent the prescribed notice or a notice of dispute under subclause 42.1.

This subclause and subclause 41.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this subclause, have been included in the final payment claim), the communication of which is required by another provision of the Contract.
41.2 Liability for failure to communicate

The failure of a party to comply with the provisions of subclause 41.1 or to communicate a claim in accordance with the relevant provision of the Contract shall, inter alia, entitle the other party to damages for breach of Contract but shall neither bar nor invalidate the claim.

41.3 Superintendent’s decision

If within 28 days of giving the prescribed notice the party giving it does not notify the other party and the Superintendent of particulars of the claim, the prescribed notice shall be deemed to be the claim.

Within 56 days of receipt of the prescribed notice the Superintendent shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 28 days of such notification gives a notice of dispute under subclause 42.1 which includes such decision, the Superintendent shall certify the amount of that assessment to be moneys then due and payable.

42 Dispute resolution

42.1 Notice of dispute

If a difference or dispute (together called a ‘dispute’) between the parties arises in connection with the subject matter of the Contract, including a dispute concerning:

a) a Superintendent’s direction; or

b) a claim:
   i) in tort;
   ii) under statute;
   iii) for restitution based on unjust enrichment or other quantum meruit; or
   iv) for rectification or frustration,

then either party shall, by hand or by certified mail, give the other and the Superintendent a written notice of dispute adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the parties shall, subject to clauses 39 and 40 and subclause 42.4, continue to perform the Contract.

42.2 Conference

Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the dispute has not been resolved within 28 days of service of the notice of dispute, that dispute shall be and is hereby referred to arbitration.
42.3 **Arbitration**

If within a further 14 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in Item 32(a). The arbitration shall be conducted in accordance with the rules in Item 32(b).

42.4 **Summary relief**

Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the *Contract* or to seek injunctive or urgent declaratory relief.

43 **Waiver of conditions**

Except as provided at law or in equity or elsewhere in the *Contract*, none of the provisions of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.
This page has been left blank
This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the Contract, is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

<table>
<thead>
<tr>
<th>Item</th>
<th>Item</th>
<th>Value</th>
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<tbody>
<tr>
<td>1</td>
<td>Principal</td>
<td>Brewarrina Shire Council</td>
</tr>
<tr>
<td></td>
<td>(clause 1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ABN</td>
<td>22 664 205 362</td>
</tr>
<tr>
<td></td>
<td>ACN</td>
<td>N/A</td>
</tr>
<tr>
<td>2</td>
<td>Principal's address</td>
<td>57 Bathurst Street, Brewarrina, NSW 2839</td>
</tr>
<tr>
<td>3</td>
<td>Contractor</td>
<td>Transport Manager</td>
</tr>
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<td></td>
<td>(clause 1)</td>
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<tr>
<td>4</td>
<td>Contractor’s address</td>
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<tr>
<td>5</td>
<td>Superintendent</td>
<td>Transport Manager</td>
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<td></td>
<td>(clause 1)</td>
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<td></td>
<td>ACN</td>
<td>N/A</td>
</tr>
<tr>
<td>6</td>
<td>Superintendent's address</td>
<td>57 Bathurst Street, Brewarrina, NSW 2839</td>
</tr>
<tr>
<td>7 a)</td>
<td>Date for practical completion</td>
<td>20 November 2019</td>
</tr>
<tr>
<td></td>
<td>(clause 1)</td>
<td></td>
</tr>
<tr>
<td>OR b)</td>
<td>Period of time for practical completion</td>
<td></td>
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<tr>
<td></td>
<td>(clause 1)</td>
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<tr>
<td>8</td>
<td>Governing law</td>
<td>If nothing stated, that of the jurisdiction where the site is located</td>
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† If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A
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<tr>
<td><strong>9</strong></td>
<td>a) Currency (page 5, clause 1(g))</td>
<td>If nothing stated, that of the jurisdiction where the site is located</td>
</tr>
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<td>b) Place for payments (page 5, clause 1(g))</td>
<td>If nothing stated, the Principal's address</td>
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<td></td>
<td>c) Place of business of bank (page 3, clause 1(d))</td>
<td>If nothing stated, the place nearest to where the site is located</td>
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<tr>
<td><strong>10</strong></td>
<td>Bills of quantities (subclause 2.2)</td>
<td></td>
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<tr>
<td></td>
<td>a) Alternative applying (subclause 2.2)</td>
<td>If nothing stated, Alternative 1 applies</td>
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<td></td>
<td>b) If Alternative 2 applies, is the bill of quantities to be priced? (subclause 2.2)</td>
<td>No/Yes (delete one)</td>
</tr>
<tr>
<td></td>
<td>c) Lodgement time (subclause 2.3(b))</td>
<td>If nothing stated, 28 days after date of acceptance of tender</td>
</tr>
<tr>
<td><strong>11</strong></td>
<td>Quantities in schedule of rates, limits of accuracy (subclause 2.5(b))</td>
<td>Upper Limit N/A Lower Limit N/A</td>
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<tr>
<td><strong>12</strong></td>
<td>Provisional sum, percentage for profit and attendance (clause 3)</td>
<td>N/A %</td>
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<td><strong>† 13</strong></td>
<td>Contractor’s security</td>
<td>Retention Money</td>
</tr>
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<td></td>
<td>a) Form (clause 5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) Amount or maximum percentage of contract sum (clause 5)</td>
<td>If nothing stated, 5% of the contract sum</td>
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<td></td>
<td>c) If retention moneys, percentage of each progress certificate (clause 5 and subclause 37.2)</td>
<td>If nothing stated, 10%, until the limit in Item 13(b)</td>
</tr>
<tr>
<td></td>
<td>d) Time for provision (except for retention moneys) (clause 5)</td>
<td>If nothing stated, within 28 days after date of acceptance of tender</td>
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<td></td>
<td>e) Additional security for unfixed plant and materials (subclauses 5.4 and 37.3)</td>
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f) Contractor’s security upon certificate of practical completion is reduced by (subclause 5.4)

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If nothing stated, 50% of amount held

† 14 Principal’s security

a) Form (clause 5)

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b) Amount or maximum percentage of contract sum (clause 5)

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If nothing stated, nil

c) Time for provision (clause 5)

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If nothing stated, within 28 days after date of acceptance of tender

d) Principal’s security upon certificate of practical completion is reduced by (subclause 5.4)

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If nothing stated, 50% of amount held

15 Principal-supplied documents (subclause 8.2)

<table>
<thead>
<tr>
<th>Document</th>
<th>No. of copies</th>
</tr>
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<tbody>
<tr>
<td>1 2019BSC-02 Contract Document</td>
<td>1</td>
</tr>
<tr>
<td>2 Contract Drawings</td>
<td>1</td>
</tr>
<tr>
<td>3 ..............................................................</td>
<td></td>
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<td>4 ..............................................................</td>
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<td>5 ..............................................................</td>
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<td>6 ..............................................................</td>
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If nothing stated, 5 copies of the drawings, specification, bill of quantities or schedule of rates (if any)

16 Time for Superintendent’s direction about documents (subclause 8.3)

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If nothing stated, 14 days

17 Subcontract work requiring approval (subclause 9.2)

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N/A ..............................................................

If applicable, delete and instead complete equivalent Item in the separable portions section of the Annexure Part A
Part A
AS 4000 – 1997

18 Novation (subclause 9.4) Subcontractor Particular part of WUC
N/A ........................................................................
........................................................................

Selected subcontractor Particular part of WUC
N/A ........................................................................
........................................................................

19 Legislative requirements

a) Those excepted (subclause 11.1) N/A ........................................................................
........................................................................

b) Identified WUC (subclause 11.2(a)(ii)) N/A ........................................................................

20 Insurance of the Works (clause 16)

a) Alternative applying N/A ........................................................................
If nothing stated, Alternative 1 applies

If Alternative 1 applies

b) Provision for demolition and removal of debris ........................................................................
........................................................................
OR
..............% of the contract sum

c) Provision for consultants' fees ........................................................................
........................................................................
OR
..............% of the contract sum

d) Value of materials or things to be supplied by the Principal ........................................................................
........................................................................
e) Additional amount or percentage ........................................................................
OR
..............% of the total of paragraphs(a) to (d) in clause 16
21 Public liability insurance
(clause 17)
   a) Alternative applying
      ........................................................................................................................................
      If nothing stated, Alternative 1 applies
   b) Amount per occurrence shall be not less than $10,000,000.00
      ........................................................................................................................................
      If nothing stated, then not less than the contract sum

22 Time for giving possession
(subclause 24.1)
   within.......... days of date of acceptance of tender
   If nothing stated, 14 days

23 Qualifying causes of delay
Causes of delay for which EOTs will not be granted
(page 3, paragraph (b)(iii) of clause 1 and subclause 34.3)
   N/A ..................................................................................................................................
   ..................................................................................................................................
   ..................................................................................................................................

† 24 Liquidated damages, rate
(subclause 34.7)
   .......................................................................................................................... per day $1000.00 ....... per day

† 25 Bonus for early practical completion
(subclause 34.8)
   a) Rate
      N/A ..................................................................................................................................
      .......................................................................................................................... per day $................. per day
   b) Limit
      N/A ..................................................................................................................................
      .......................................................................................................................... $.................
      OR
      .......................................................................................................................... % of contract sum
   If nothing stated, there is no waiver

† 26 Delay damages,
other compensable causes
(page 1, clause 1 and subclause 34.9)
   ........................................................................................................................................
   ........................................................................................................................................
   ........................................................................................................................................
   ........................................................................................................................................

† If applicable, delete and instead complete equivalent item in the separable portions section of the Annexure Part A
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>27</td>
<td>Defects liability period (clause 35)</td>
<td>If nothing stated, 12 months</td>
</tr>
<tr>
<td>28</td>
<td>Progress Claims (subclause 37.1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a) Times for progress claims</td>
<td>Within five (5) business day of each month for WUC completed to the final day of that month</td>
</tr>
<tr>
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<tr>
<td></td>
<td>b) Stages of WUC for progress claims</td>
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<tr>
<td>29</td>
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<td>N/A</td>
</tr>
<tr>
<td>30</td>
<td>Interest rate on overdue payments (subclause 37.5)</td>
<td>If nothing stated, 18% per annum</td>
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<td>Time for Principal to rectify inadequate possession (subclause 39.7)</td>
<td>If nothing stated, 14 days</td>
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<td>32</td>
<td>Arbitration (subclause 42.3)</td>
<td></td>
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<tr>
<td></td>
<td>a) Person to nominate an arbitrator</td>
<td>If no-one stated, the President of the Institute of Arbitrators &amp; Mediators Australia</td>
</tr>
</tbody>
</table>
b) Rules for arbitration

If nothing stated:

a) rules 5-18 of the Rules of The Institute of Arbitrators, Australia for the Conduct of Commercial Arbitrations;

OR

b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in Item 32(c)

c) Appointing Authority under UNCITRAL Arbitration Rules

If no-one stated, the President of the Institute of Arbitrators & Mediators Australia
### Part A

#### Separable Portions

- This section should only be completed if the *Contract* provides for *separable portions*.
- Complete a separate page for each *separable portion* which should be numbered appropriately. Any balance of the *Works* should also be a *separable portion*.

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<tr>
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<tr>
<td>7 a)</td>
<td><strong>Date for practical completion</strong> (clause 1)</td>
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<tr>
<td>OR b)</td>
<td><strong>Period of time for practical completion</strong> (clause 1)</td>
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<td>13</td>
<td><strong>Contractor’s security</strong></td>
</tr>
<tr>
<td>a)</td>
<td><strong>Form</strong> (clause 5)</td>
</tr>
<tr>
<td>b)</td>
<td><strong>Amount or maximum percentage value of this separable portion</strong> (clause 5)</td>
</tr>
<tr>
<td>c)</td>
<td><strong>If retention moneys, percentage of each progress certificate applicable to this separable portion</strong> (clause 5 and subclause 37.2)</td>
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<tr>
<td>d)</td>
<td><strong>Time for provision (except for retention moneys)</strong> (clause 5)</td>
</tr>
<tr>
<td>e)</td>
<td><strong>Additional security for unfixed plant and materials</strong> (subclauses 5.4 and 37.3)</td>
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<tr>
<td>f)</td>
<td><strong>Contractor’s security upon certificate of practical completion is reduced by</strong> (subclause 5.4)</td>
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</table>

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<tr>
<th>Separable portion</th>
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<td>Description of separable portion</td>
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<tr>
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<tr>
<td>OR b) Period of time for practical completion</td>
<td>..........................................................</td>
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<tr>
<td>13 Contractor’s security a) Form</td>
<td>..........................................................</td>
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<tr>
<td>b) Amount or maximum percentage value of this separable portion</td>
<td>..........................................................</td>
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<tr>
<td>c) If retention moneys, percentage of each progress certificate applicable to this separable portion</td>
<td>.......................................................... %</td>
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<td>d) Time for provision (except for retention moneys)</td>
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<td>..........................................................$</td>
</tr>
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<td>..........................................................% of amount held</td>
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</table>

Copyright
14 Principal’s security

a) Form (clause 5)

b) Amount or maximum percentage of value of this separable portion (clause 5)

If nothing stated, nil

c) Time for provision (clause 5)

If nothing stated, within 28 days after date of acceptance of tender

d) Principal’s security upon certificate of practical completion is reduced by (subclause 5.4)

If nothing stated, 50% of amount held

24 Liquidated damages, rate (subclause 34.7)

.............................................................. per day $..............................per day

25 Bonus for early practical completion (subclause 34.8)

a) Rate

.............................................................. per day $..............................per day

b) Limit

.............................................................. $..............................

OR

..............................................................% of value of separable portion

If nothing stated, there is no waiver

26 Delay damages, other compensable causes (page 1, clause 1 and subclause 34.9)

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Part B
Annexure to the
Australian Standard General Conditions of Contract
AS 4000 – 1997

Deletions, amendments and additions

1 The following clauses have been deleted from the General Conditions in AS 4000 – 1997

2 The following clauses have been amended and differ from the corresponding clauses in AS 4000 – 1997

3 The following clauses have been added to those of AS 4000 – 1997
Part C

This form may also be used where the Principal is required to provide an unconditional undertaking, by substituting Principal for Contractor and vice versa, wherever occurring

Annexure to the Australian Standard General Conditions of Contract AS 4000 – 1997

Approved form of unconditional undertaking
(clause 1 – security)

At the request of ................................................................. (‘the Contractor’) and in consideration of ................................................................. (‘the Principal’) accepting this undertaking in respect of the Contract for .................................................................

................................................................. (‘the financial institution’) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of ................................................................. ($.................................)

The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the financial institution or until payment to the Principal by the financial institution of the whole of the sum or such part as the Principal may require.

Should the financial institution be notified in writing, purporting to be signed by ................................................................. for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the financial institution will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the financial institution may at any time without being required so to do pay to the Principal the sum of ................................................................. ($.................................)

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the financial institution hereunder shall immediately cease.

Dated at .................................................. this .................................. day of .............................................. 19...........
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AMENDMENT CONTROL SHEET

AS 4000—1997

Amendment No. 1 (1999)

REVISED TEXT

SUMMARY: This Amendment applies to Clause 18.
Published on 5 August 1999.

Amendment No. 2 (2000)

REVISED TEXT

SUMMARY: This Amendment applies to the Preface.
Published on 11 October 2000.

Amendment No. 3 (2005)

REVISED TEXT

SUMMARY: This Amendment applies to Clause 32 (a) and (c) of Annexure Part A.
Published on 30 March 2005.
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