

AS 4300—1995
(Incorporating Amendment No. 1)

Australian Standard[®]

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

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Australian Chamber of Commerce and Industry
AUSTROADS
Construction Industry Engineering Services Group
Construction Policy Steering Committee
Electricity Supply Association of Australia
Institution of Professional Engineers New Zealand
Law Council of Australia
Master Builders Australia
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**General conditions of contract
for design and construct**

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PREFACE

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

This Standard incorporates Amendment No. 1 (October 2000). The changes required by the Amendment are indicated in the text by a marginal bar and amendment number against the clause, note, table, figure or part thereof affected.

This Standard covers the following types of project procurement methods—

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

If the project procurement method chosen by the Principal is:

- (i) *Design and construct* — the Principal would provide the Principal's Project Requirements, would not normally provide a detailed Preliminary Design and would not require Novation of any subcontractors (including consultants).
- (ii) *Design development and construct*—the Principal would provide the Principal's Project Requirements, would always provide a Preliminary Design and accordingly would complete Annexure Part A Items 10 and 11.
- (iii) *Design, novate and construct*—the Principal would provide the Principal's Project Requirements, would always provide a Preliminary Design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 24 stating which subcontractors (including consultants) or Selected Subcontractors are to be novated to the Contractor.

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

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

WARNINGS:

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

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

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

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

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

A1

WARNING

Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

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

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

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

Communications between the Principal, the Superintendent and the Contractor shall be in the English language.

Measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the National Measurement Act 1960, as amended from time to time.

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

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

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

2 INTERPRETATION

In the Contract, except where the context otherwise requires—

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

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

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

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

‘Contract Sum’ means—

(a) where the Principal accepted a lump sum, the lump sum;

(b) where the Principal accepted rates, the sum ascertained by calculating the products of the rates and the corresponding quantities in the Schedule of Rates; or

(c) where the Principal accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

including provisional sums but excluding any additions or deductions which may be required to be made under the Contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

‘Site’ means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract;

‘subcontractor’ in Clauses 9, 10 and 11(b) includes Consultant;

‘Superintendent’ means the person stated in Annexure Part A as the Superintendent or other person from time to time appointed in writing by the Principal to be the Superintendent and notified as such in writing to the Contractor by the Principal and, so far as concerns the functions exercisable by a Superintendent’s Representative, includes a Superintendent’s Representative;

‘Superintendent’s Representative’ means a person appointed by the Superintendent pursuant to Clause 24;

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

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

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

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

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

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

Words in the singular include the plural and words in the plural include the singular, according to the requirements of the context.

Words importing a gender include every gender. 25

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

3 NATURE OF CONTRACT 35

3.1 Performance and Payment

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

The Principal shall pay the Contractor—

- (a) for work for which the Principal accepted a lump sum, the lump sum; and
- (b) for work for which the Principal accepted rates, the sum ascertained by multiplying the measured quantity of each section or item of work actually carried out under the Contract by the rate accepted by the Principal for the section or item, 45

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

3.2 Quantities

Quantities in a Schedule of Rates are estimated quantities only.

A direction shall not be required to be given by the Superintendent by reason of the actual quantity of an item required to perform the Contract being greater or less than the quantity shown in the Schedule of Rates. 55

3.3 Adjustment for Actual Quantities— Schedule of Rates 60

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

- (a) where the Principal accepted a lump sum for the item, the difference shall be valued under Clause 40.5 as if it were varied work directed by the Superintendent as a variation; and 65

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

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

4 WARRANTIES

4.1 Contractor's Warranties

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

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

4.2 Warranties Unaffected

The Contractor acknowledges that the warranties in Clause 4.1 and the Contractor's Design Obligations shall remain unaffected notwithstanding—

- (a) that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal and included in the Principal's Project Requirements;
- (b) that the Contractor has entered into a novation of any prior contract between the Principal and a consultant of the Principal under Clause 10 and thereafter has retained that consultant in connection with the work under the Contract;
- (c) any receipt or review of, or comment or direction on, the Design Documents by the Superintendent; and
- (d) any variation under Clause 40.

5 SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

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

5.2 Provision of Security

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

5

5.3 Form of Security

The security shall be in the form of cash, bonds or inscribed stock issued by the Australian Government or the Government of a State or Territory of Australia, interest bearing deposit in a trading bank carrying on business in Australia, an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by the party having the benefit of the security.

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The party having the benefit of the security shall have a discretion to approve or disapprove of the form of an unconditional undertaking and the financial institution or insurance company giving it or other form of security offered. The unconditional undertaking in the form of Annexure Part C is approved.

15

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

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5.4 Time for Provision of Security

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

5.5 Retention Moneys

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

5.6 Conversion of Security and Recourse to Retention Moneys

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

35

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

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5.7 Substitution of Security for Retention Moneys

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

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* 5.8 Reduction of Security and Retention Moneys

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

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

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

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

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

5.9 Release of Security and Retention Moneys

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

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

5.10 Holding of and Interest on Cash Security and Retention Moneys

Alternative 1

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

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

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

Alternative 2

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

5.11 Deed of Guarantee, Undertaking and Substitution

Where—

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

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

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

6 EVIDENCE OF CONTRACT

5

6.1 Contract in Absence of Formal Instrument of Agreement

Unless a Formal Instrument of Agreement is executed by the parties, the agreement in writing between the parties for the execution of the work under the Contract, including documents or parts of documents to which reference may properly be made to ascertain the rights and obligations of the parties, shall evidence the Contract.

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6.2 Formal Instrument of Agreement

15

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

20

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

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

25

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

30

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

35

7 SERVICE OF NOTICES

A notice shall be deemed to have been given when it is received by the person to whom it is addressed or is delivered to the address of that person stated in the Contract or last communicated in writing by that person to the person giving the notice, whichever is the earlier.

40

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

45

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

8 CONTRACT DOCUMENTS

50

8.1 Discrepancies

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

55

60

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

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

8.2 Dimensions

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

8.3 Supply of Documents by Principal

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

- 25 Documents supplied by the Principal to the Contractor shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.
- 30

8.4 Supply of Documents by Contractor

- In relation to those documents stated in Annexure Part A the Contractor shall supply the number of copies stated in Annexure Part A or, if no number is stated, 5 copies.
- 35

- The Contractor shall supply to the Superintendent the documents and information required by the Superintendent and as required by the Contract, in a form satisfactory to the Superintendent and at those times or within those design stages applicable to the documents stated in Annexure Part A or, if no times or stages are stated, not less than 14 days before the work contained in those documents is commenced.
- 40

- A direction by the Superintendent to vary anything in the Design Documents shall be a variation to the work under the Contract only to the extent that the Design Documents, before such variation, complied, or would have complied, with the Principal's Project Requirements.
- 45

- Neither the Principal nor the Superintendent shall be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract. The Principal's or the Superintendent's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Contractor, shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or departure from the Contractor's Design Obligations or other requirements of the Contract.
- 50

- If the Contract provides that the Contractor must obtain the Superintendent's direction whether documents are suitable or are not suitable then, within the time stated in Annexure Part A or, if no time is stated, within 14 days after receipt of the documents, the Superintendent shall notify the Contractor that the documents are suitable or are not suitable. If the Superintendent notifies the Contractor that the documents are not suitable,
- 55 the Superintendent shall give reasons why the documents are not suitable and the Contractor shall submit new or amended documents for the Superintendent's direction pursuant to this Clause 8.4.
- 60

8.5 Availability of Documents

Whilst work under the Contract is being performed, one complete set of the Principal's Project Requirements, the Design Documents and other written information supplied by the Principal, the Superintendent and the Contractor, the Contractor's Consultants and subcontractors, shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Superintendent and any persons nominated in writing by either of them. 5

During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Superintendent and any persons nominated in writing by either of them. 10 15

8.6 Confidential Information

Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Contractor or the Principal and marked or otherwise identified as confidential, shall be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party to the Contract. 20

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the issue of the Final Certificate pursuant to Clause 42.6 or the earlier termination of the Contract. 25

* 8.7 Media Releases

The Contractor shall not issue any information, publication, document or article for publication concerning the project in any media without prior approval of the Principal, which approval shall not be unreasonably withheld. The Contractor shall refer to the Principal any enquiries concerning the project from any media. 30

9 ASSIGNMENT AND SUBCONTRACTING 35

9.1 Assignment

Neither party shall, without the prior written approval of the other and except on such reasonable terms and conditions as are determined in writing by the other, assign the Contract or any payment or any other right, benefit or interest thereunder. 40

9.2 Subcontracting (Including Work Performed by Consultants)

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld— 45

- (a) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder; or 50
- (b) subcontract or allow a subcontractor to subcontract any work described in Annexure Part A.

With a request for approval, the Contractor shall provide to the Superintendent particulars in writing of the work to be subcontracted and the name and the address of the proposed subcontractor. 55

The Contractor shall provide to the Superintendent other information which the Superintendent reasonably requests, including the proposed subcontract documents without prices. 60

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

Approval may be conditional upon the subcontract including—

- 5 (i) provision that the subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
 - (ii) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
 - 10 (iii) provision that if the Contract is terminated and upon the subcontractor being paid the sum certified by the Superintendent as owing to the subcontractor, the Contractor and the subcontractor shall, after the Principal has done so, promptly execute a deed of novation in the form of Annexure Part D.
- For the purposes of effecting such novation only, the Contractor hereby irrevocably appoints the Superintendent to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly; and
- 15 (iv) where the subcontractor is a Consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required of the Contractor under Clause 21.

9.3 Contractor's Responsibility

- 25 Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract. Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Contractor.

9.4 Selected Subcontract Work

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

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

9.5 Provisions Applying Generally to Selected Subcontract Work

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

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

Except as herein provided—

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

9.6 Termination of Selected Subcontract

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

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

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

The Contractor shall not be obliged to enter into a subcontract with a subcontractor
referred to in Clause 9.6(a) against whom the Contractor raises reasonable objection. 10

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

If compliance with such a direction causes the Contractor to incur more or less cost than
otherwise would have been incurred had the Contractor not been given the direction, the
difference shall be valued under Clause 40.5 except where a provisional sum for the
Selected Subcontract Work has been included in the Contract, in which case the 20
provisions of Clause 11(b) shall apply.

10 NOVATION 25

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

When directed by the Principal, the Contractor, without being entitled to compensation,
shall promptly execute a deed of novation in the form of Annexure Part E, between the 30
Principal, the Contractor and the subcontractor or the Selected Subcontractor stated in
Annexure Part A (as the case may be) for the particular part of the Preliminary Design or
Selected Subcontract Work (as the case may be).

11 PROVISIONAL SUMS 35

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

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

The amount payable to a subcontractor for materials or goods is to be taken to be the nett
cost to the Contractor (disregarding any deduction of cash discount for prompt payment). 50

12 LATENT CONDITIONS 55

12.1 Definition

Latent Conditions are—

- (a) physical conditions on the Site or its surroundings, including artificial things but
excluding weather conditions, which differ materially from the physical conditions 60
which should reasonably have been anticipated by the Contractor at the time of the
Contractor's tender if the Contractor had—
 - (i) examined all information made available in writing by the Principal to the 65
Contractor for the purpose of tendering;

- (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the tender and obtainable by the making of reasonable enquiries; and
- 5 (iii) inspected the Site and its surroundings; and
- (b) any other conditions which the Contract specifies to be Latent Conditions.

12.2 Notification

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

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

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

12.3 Extension of Time and Cost

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

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

12.4 Time Bar

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

13 PATENTS, COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

13.1 Warranties and Indemnities

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

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

13.2 Intellectual Property Rights granted to Principal

Alternative 1

The Contractor grants to the Principal an irrevocable licence to use the Design Documents for the work under the Contract. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Works. 5

Alternative 2

Copyright and property in the Design Documents (and, as between the Principal and the Contractor, any part of the Preliminary Design produced under a prior contract between the Principal and a consultant of the Principal novated under Clause 10) hereby vest in the Principal, and the Principal grants to the Contractor an irrevocable licence to use the Design Documents for the work under the Contract. 10 15

The Contractor shall do everything necessary to perfect such vesting.

The Contractor shall ensure that the Design Documents are used, copied and supplied only for the purpose of the work under the Contract. 20

14 LEGISLATIVE REQUIREMENTS

14.1 Complying with Legislative Requirements

The Contractor shall satisfy all Legislative Requirements except those which—

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

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

14.2 Changes in Legislative Requirements

If a Legislative Requirement— 40

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

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

15 PROTECTION OF PEOPLE AND PROPERTY

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

- (a) provide all things and take all measures necessary to protect people and property; 65
- (b) avoid unnecessary interference with the passage of people and vehicles; and 70
- (c) prevent nuisance and unreasonable noise and disturbance. 70

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

If the Contractor or the employees or agents of the Contractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

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

16 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

16.1 Care of the Work Under the Contract

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

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

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

16.2 Reinstatement

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

In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor shall, if and to the extent directed by the Superintendent, rectify the loss or damage, which shall be deemed to be a variation under Clause 40. In the case of loss or damage being caused by a combination of Excepted Risks and other risks, any such direction and consequential valuation made under Clause 40.5 shall take into account the proportional responsibility of the Contractor and the Principal.

16.3 Excepted Risks

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

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

- (c) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's Consultants or subcontractors or the employees or agents of any of these; 5
- (e) use or occupation by the Principal or the employees or agents of the Principal, the Principal's consultants or other contractors of the Principal (not being employed by the Contractor), of any part of the work under the Contract; and 10
- (f) defects in such part of the design of the work under the Contract, including the Preliminary Design provided by the Principal, as is not included in the Contractor's warranties under Clause 4. 15

17 DAMAGE TO PERSONS AND PROPERTY 20

17.1 Indemnity by Contractor 20

Insofar as this Clause 17.1 applies to property, it applies to property other than the work under the Contract. 25

The Contractor shall indemnify the Principal against—

- (a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out; and 30
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Contractor of the work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that the act or omission of the Principal, the Superintendent or the employees or agents of the Principal contributed to the loss, damage, death or injury. 35

This Clause 17.1 shall not apply to—

- (i) the extent that the liability of the Contractor is limited by another provision of the Contract; 40
- (ii) exclude any other right of the Principal to be indemnified by the Contractor; 45
- (iii) things for the care of which the Contractor is responsible under Clause 16.1; and
- (iv) claims in respect of the right of the Principal to have the work under the Contract carried out. 50

17.2 Indemnity by the Principal 50

The Principal shall indemnify the Contractor in respect of claims referred to in Clause 17.1(iv). 55

18 INSURANCE OF THE WORK UNDER THE CONTRACT

Alternative 1 60

Before the Contractor commences work under the Contract, the Contractor shall effect an insurance policy covering all the things referred to in Clause 16.1 against loss or damage resulting from any cause whatsoever until the Contractor ceases to be responsible for their care. 65

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

The insurance cover under this Clause 18 may exclude—

- (a) the cost of making good fair wear and tear or gradual deterioration but shall not exclude the loss or damage resulting therefrom;
- (b) the cost of making good faulty design, workmanship and materials but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete the Works;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and
- (f) loss or damage resulting from the Excepted Risks referred to in Clause 16.3(b) and (c).

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

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

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

Alternative 2

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

19 PUBLIC LIABILITY INSURANCE

Alternative 1

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

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

Alternative 2

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

20 INSURANCE OF EMPLOYEES

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

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

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

21 PROFESSIONAL INDEMNITY INSURANCE

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

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

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

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

22 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

22.1 Proof of Insurance

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

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

22.2 Failure to Produce Proof of Insurance

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

default to the other party. Where the defaulting party is the Contractor, the Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 18, 19, 20 and 21 is produced by the Contractor to the satisfaction and approval of the Principal. The rights given by this Clause 22.2 are in addition to any other right.

22.3 Notices from or to the Insurer

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

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

22.4 Notices of Potential Claims

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

Where a policy of insurance required by the Contract has been effected by the Principal, the Principal shall similarly inform the Contractor.

22.5 Settlement of Claims

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

- (a) to the extent that the work under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, moneys received shall, if requested by either party, be paid into a bank agreed upon by the parties in an account in the joint names of the Contractor and the Principal. As the Contractor proceeds to reinstate the loss or damage, the Superintendent shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Contractor relating to that work under the Contract (including the supply of goods and materials on site whether or not incorporated into the Works).

22.6 Cross Liability

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

23 SUPERINTENDENT

The Principal shall ensure that at all times there is a Superintendent and that in the exercise of the functions of the Superintendent under the Contract, the Superintendent—

- (a) acts honestly and fairly; 5
- (b) acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time; and 10
- (c) arrives at a reasonable measure or value of work, quantities or time. 10

If pursuant to a provision of the Contract enabling the Superintendent to give directions, the Superintendent gives a direction, the Contractor shall comply with the direction. 15

Except where the Contract otherwise provides, a direction may be given orally but the Superintendent shall as soon as practicable confirm it in writing. 15

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 confirms it in writing. 20

The Superintendent shall have—

- (i) access to the Site and the work under the Contract; and 25
- (ii) after reasonable notice to the Contractor, access to any place other than the Site where work under the Contract is being carried out or materials are being prepared or stored, 30

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

24 SUPERINTENDENT'S REPRESENTATIVE

The Superintendent may from time to time appoint individuals to exercise any functions of the Superintendent under the Contract but not more than one Superintendent's Representative shall be delegated the same function at the same time. The appointment of a Superintendent's Representative shall not prevent the Superintendent from exercising any function. 40

The Superintendent shall forthwith notify the Contractor in writing of—

- (a) the appointment and the name of any Superintendent's Representative and the functions delegated to the Superintendent's Representative; and 45
- (b) the termination of the appointment of a Superintendent's Representative. 45

If the Contractor makes a reasonable objection to the appointment of a Superintendent's Representative, the Superintendent shall terminate the appointment. 50

25 CONTRACTOR'S REPRESENTATIVE

The Contractor shall personally superintend the execution of the work under the Contract or, at all times during which any activities relating to the execution of the work under the Contract are taking place, have a competent representative present on the Site and, if required by the Superintendent, at other places at which activities relating to the execution of the work under the Contract are taking place. 60

The Contractor shall forthwith notify the Superintendent in writing of the name of the representative and of any subsequent changes. A Superintendent's direction—

- (a) if it relates to the execution of work on the Site and is given to the representative on the Site; or 65
- (b) if it relates to the execution of work at any other place and is given to the representative at the other place, 65

shall be deemed to have been given to the Contractor. 70

Matters within the knowledge of a representative of the Contractor shall be deemed to be within the knowledge of the Contractor.

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

26 CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

The Superintendent may direct the Contractor to have removed from the Site or from any activity connected with the work under the Contract, within such time as the Superintendent directs, any person employed in connection with the work under the Contract who, in the reasonable opinion of the Superintendent, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on the Site or on activities connected with the work under the Contract without the prior written approval of the Superintendent.

27 SITE

27.1 Access to and Possession of the Site

By the time stated in Annexure Part A, the Principal shall give the Contractor access to the Site sufficient to enable the Contractor to commence and carry out the Contractor's Design Obligations in accordance with the Contract. The Principal shall notify the Contractor in writing of the date when access will be available.

The Principal shall, on or before the expiration of the time stated in Annexure Part A, give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence further work under the Contract. If the Principal has not given the Contractor possession of the whole Site, the Principal shall from time to time give the Contractor possession of such further parts of the Site as may be necessary to enable the Contractor to execute the work under the Contract in accordance with the requirements of the Contract. The Principal shall notify the Contractor in writing of the date upon which the Site or any part thereof will be available.

Notwithstanding the provisions of this Clause 27.1, if the Contractor is in breach of Clause 22.1, the Principal may refuse to give the Contractor possession of the Site or any part of the Site until the Contractor has complied with the requirements of Clause 22.1.

Access to or possession of the Site shall confer on the Contractor a right only to such use and control as is necessary to enable the Contractor to execute the work under the Contract.

27.2 Access for the Principal and Others

The Principal and the Principal's employees and agents may at any time after reasonable notice to the Contractor have access to any part of the Site for any purpose.

The Contractor shall permit the execution of work on the Site by persons engaged by the Principal and shall cooperate with them and coordinate the Contractor's work with their work.

If requested by the Contractor, the Principal shall provide to the Contractor the names of the persons so engaged.

The Contractor shall at all reasonable times after reasonable notice give the Principal and other persons authorized in writing by the Principal or by the Superintendent access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

The Principal shall ensure that the Contractor is not impeded in the execution of the Contractor's work by the Superintendent whilst exercising the right of access given by Clause 23 or by any persons exercising the right of access given to those persons by this Clause 27.2.

27.3 Delivery of Materials to and Work on the Site Before Possession

Until possession of the Site or part of the Site is given to the Contractor under Clause 27.1, the Contractor shall not deliver materials to or perform work (except as permitted by Clause 27.1 for executing and completing the Contractor's Design Obligations) on the Site or part of the Site, as the case may be, unless approval in writing is given by the Superintendent. 5

27.4 Use of the Site by the Contractor

Unless the Contract otherwise provides or the Superintendent gives prior written approval, the Contractor shall not use the Site or allow it to be used for— 10

- (a) camping; 15
- (b) residential purposes; or
- (c) any purpose not connected with the work under the Contract.

27.5 Finding of Minerals, Fossils and Relics 20

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and other 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 take precautions to prevent their loss, removal or damage and shall notify the Superintendent of the discovery. 25

If compliance with obligations under this Clause 27.5 causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5. 30

28 SETTING OUT THE WORKS

28.1 Setting Out 35

The Superintendent shall supply to the Contractor the information, data and survey marks necessary to enable the Contractor to set out the Works and the survey marks specified in the Contract. Upon receipt of any necessary information, data and survey marks, the Contractor shall set out the Works in accordance with the Contract and shall provide all instruments and things necessary for that purpose. 40

28.2 Care of Survey Marks

The Contractor shall keep in their true positions all survey marks supplied by the Superintendent. 45

If a survey mark is disturbed or obliterated, the Contractor shall immediately notify the Superintendent and, unless the Superintendent otherwise directs, the Contractor shall reinstate the survey mark. 50

If the disturbance or obliteration is caused by the Superintendent or a person referred to in Clause 27.2 other than the Contractor, the cost incurred by the Contractor in reinstating the survey mark shall be valued under Clause 40.5. 55

28.3 Errors in Setting Out

If the Contractor discovers an error in the position, level, dimensions or alignment of any work under the Contract, the Contractor shall immediately notify the Superintendent and, unless the Superintendent otherwise directs, the Contractor shall rectify the error. 60

If the error has been caused by incorrect information, survey marks or data supplied by the Superintendent, the cost incurred by the Contractor in rectifying the error shall be valued under Clause 40.5. 65

29 MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

29.1 Provision of Materials, Labour and Constructional Plant

5 Except to the extent that 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 under the Contract.

29.2 Removal of Materials and Constructional Plant

10 From time to time the Superintendent may, by written notice to the Contractor, direct the Contractor not to remove from the Site, materials or Constructional Plant. Thereafter, the Contractor shall not remove the materials or the Constructional Plant without the prior written approval of the Superintendent, which approval shall not be unreasonably
15 withheld.

29.3 Manufacture and Supply of Materials

20 The Superintendent may direct the Contractor to supply particulars of—

- (a) the mode and place of manufacture;
- (b) the source of supply;
- 25 (c) the performance capacities; and
- (d) other information,

in respect of any materials, machinery or equipment to be supplied by the Contractor
30 under or used in connection with the Contract.

30 MATERIALS AND WORK

30.1 Quality of Material and Work

35 The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials and proper and tradesmanlike workmanship.

*** 30.2 Quality Assurance**

40 The Contractor shall, if requirements relating to quality assurance are so stated in the Contract—

- 45 (a) plan, establish and maintain a quality system which conforms to those requirements; and
- (b) provide the Superintendent with access to the quality system of each of the
50 Contractor and subcontractors 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 relieve the Contractor
55 of the responsibility to comply with the Contract.

30.3 Defective Material or Work

60 If the Superintendent discovers material or work provided by the Contractor which is not in accordance with the Contract, the Superintendent shall as soon as practicable notify the Contractor. The Superintendent may direct the Contractor—

- (a) to remove the material from the Site;
- 65 (b) to demolish the work;
- (c) to redesign, reconstruct, replace or correct the material or work; or
- (d) not to deliver the material or work to the Site.

The Superintendent may direct the times within which the Contractor must commence and complete the removal, demolition, redesign, reconstruction, replacement or correction.

If the Contractor fails to comply with a direction issued by the Superintendent pursuant to this Clause 30.3 within the time specified by the Superintendent in the direction and provided the Superintendent has given the Contractor notice in writing that after the expiry of 8 days from the date on which the Contractor receives the notice the Principal intends to have the work of removal, demolition, redesign, reconstruction, replacement or correction carried out by other persons, the Principal may have that work carried out by other persons and that cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

30.4 Variations due to Defective Material or Work

Instead of a direction pursuant to Clause 30.3, the Superintendent may direct a variation under Clause 40. The variation shall be valued under Clause 40.5 and—

- (a) if the variation causes an increase or decrease in the value to the Principal of the Works, regard shall also be had to the increase or decrease; and
- (b) if the variation results in the Contractor incurring more or less cost than would reasonably have been incurred had the Contractor been given a direction pursuant to Clause 30.3, regard shall also be had to the difference.

30.5 Acceptance of Defective Material or Work

Instead of a direction pursuant to Clause 30.3 or 30.4, the Superintendent may direct the Contractor that the Principal elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting increase or decrease in the value to the Principal of the Works and any other loss suffered by the Principal shall be valued under Clause 40.5.

30.6 Generally

If the Superintendent gives a direction pursuant to Clause 30.3, 30.4 or 30.5, the direction shall be given as soon as practicable after the Superintendent becomes aware that material or work is not in accordance with the Contract. The Superintendent may give such a direction at any time before the issue of the Final Certificate under Clause 42.6.

Except to the extent that to do so would be inconsistent with a direction pursuant to Clause 30.4 or 30.5 and notwithstanding that the Superintendent has not given a direction pursuant to Clause 30.3, the Contractor shall promptly remove, demolish, redesign, reconstruct, replace or correct material or work that is not in accordance with the Contract.

A progress payment, or a test or a failure by the Superintendent or anyone else to disapprove any material or work, shall not prejudice the power of the Superintendent to subsequently give a direction pursuant to Clause 30.3, 30.4 or 30.5.

Nothing in Clause 30 shall prejudice any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide material or work in accordance with the Contract.

The Superintendent shall not be obliged to give a direction pursuant to Clause 30.4 or 30.5 to assist the Contractor.

31 EXAMINATION AND TESTING

31.1 Superintendent May Order Tests

At any time before the expiry of the Defects Liability Period the Superintendent may direct that any material or work under the Contract be tested. The Contractor shall provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Superintendent. On completion of the tests, the Contractor shall promptly make good the work tested so that it fully complies with the Contract.

31.2 Covering Up of Work

The Superintendent may direct that any part of the work under the Contract shall not be covered up or made inaccessible without the Superintendent's prior approval.

31.3 Who Conducts Tests

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

31.4 Notice of Tests

Before conducting a test under the Contract, the party conducting the test, being the Superintendent or the Contractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

31.5 Procedure if Tests Delayed

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

31.6 Results of Tests

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

31.7 Costs of Testing

Costs of and incidental to testing shall be valued under Clause 40.5.

Such costs shall be borne by the Principal or paid by the Principal to the Contractor unless—

- (a) the Contract provides that the Contractor shall bear the costs, or the test is one which the Contractor was required to conduct other than a test directed pursuant to Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Contract;
- (c) the test is in respect of work under the Contract covered up or made inaccessible without the Superintendent's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal.

31.8 Access for Testing

If before the issue of the Final Certificate—

- (a) the Principal or the Superintendent asserts that material or work is not in accordance with the Contract; and
 - (b) the Contractor requests permission to test the material or work,
- the Principal shall not unreasonably refuse the Contractor access to test the material or work.

32 WORKING HOURS

The working hours and working days for work on the Site shall be as stated in the Contract and if not so stated, as notified by the Contractor to the Superintendent prior to commencement of work on Site and shall not be varied without the prior approval of the Superintendent except when, in the interests of safety of the work under the Contract or to protect life or property, the Contractor finds it necessary to carry out work outside the

working hours or on other than the working days stated in the Contract. In such cases the Contractor shall notify the Superintendent in writing of the circumstances as early as possible.

All costs attributable to the contract administration by or on behalf of the Principal of work during times approved pursuant to the previous paragraph shall be borne by the Principal. 5

33 PROGRESS AND PROGRAMMING OF THE WORKS

33.1 Rate of Progress

The Contractor shall proceed with the work under the Contract with due expedition and without delay. 10

The Contractor shall not suspend the progress of the whole or any part of the work under the Contract except where the suspension is pursuant to Clause 44.9 or is directed or approved by the Superintendent pursuant to Clause 34. 15

The Superintendent shall furnish to the Contractor the information, materials, documents and instructions stated in Annexure Part A by the times or within the periods stated in Annexure Part A. 20

The Contractor shall give the Superintendent reasonable advance notice of when the Contractor requires any other information, materials, documents or instructions from the Superintendent or the Principal. 25

The Principal and the Superintendent shall not be obliged to furnish any other 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. 30

The Superintendent may direct in what order and at what time the various stages or parts of the work under the Contract shall be performed. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall notify the Superintendent in writing, giving reasons. 35

If compliance with the direction causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be valued under Clause 40.5. 40

33.2 Contractor's Program

For the purposes of Clause 33, a 'Contractor's Program' is a statement in writing showing the major activities in the work under the Contract, the dates by which or the times within which key decisions are to be made and information is to be provided and the various stages or parts of the work under the Contract are to be executed or completed. 45

A Contractor's Program shall not affect rights or obligations in Clause 33.1. 50

The Contractor may voluntarily furnish to the Superintendent a Contractor's Program.

The Superintendent may direct the Contractor to furnish to the Superintendent a Contractor's Program within the time and in the form directed by the Superintendent. 55

The Contractor shall not depart, without reasonable cause, from—

(a) a Contractor's Program included in the Contract; or

(b) a Contractor's Program furnished to the Superintendent. 60

The furnishing of a Contractor's Program or of a further Contractor's Program shall not relieve the Contractor of any obligations under the Contract including the obligation not to depart, without reasonable cause, from an earlier Contractor's Program. 65

34 SUSPENSION OF THE WORKS

34.1 Suspension by the Superintendent

5 If the Superintendent considers that the suspension of the whole or part of the work under the Contract is necessary—

- (a) because of an act or omission of—
 - 10 (i) the Principal, the Superintendent or an employee, consultant, other contractor or agent of the Principal; or
 - (ii) the Contractor, a Consultant, a subcontractor or an employee or agent of any of them;
- 15 (b) for the protection or safety of any person or property; or
- (c) to comply with an order of a court,

20 the Superintendent shall direct the Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Superintendent thinks fit.

34.2 Suspension by the Contractor

25 If the Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 44.9, the Contractor shall obtain the prior written approval of the Superintendent. The Superintendent may approve of the suspension and may impose conditions of approval.

34.3 Recommencement of Work

30 As soon as the Superintendent becomes aware that the reason for any suspension no longer exists, the Superintendent shall direct the Contractor to recommence work as soon as reasonably practicable on the whole or on the relevant part of the work under the Contract.

If work is suspended pursuant to Clause 34.2 or 44.9, the Contractor may recommence work at any time after reasonable advance notice to the Superintendent.

34.4 Cost of Suspension

40 Any cost incurred by the Contractor by reason of a suspension pursuant to Clause 34.1 or 34.2 shall be borne by the Contractor but if the suspension is due to an act or omission of the Principal, the Superintendent or an employee, consultant, other contractor or agent of the Principal and the suspension causes the Contractor to incur more or less cost than
45 otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 40.5.

34.5 Effect of Suspension

50 Suspension shall not affect the Date for Practical Completion but the cause of suspension may be a ground for extension of time under Clause 35.5.

35 TIMES FOR COMMENCEMENT AND PRACTICAL COMPLETION

35.1 Commencement

60 The Contractor shall promptly commence the work under the Contract.

35.2 Time for Practical Completion

The Contractor shall execute the work under the Contract to Practical Completion by the Date for Practical Completion.

65 Upon the Date of Practical Completion the Contractor shall give possession of the Site and the Works to the Principal.

35.3 Separable Portions

The interpretations of—

- (a) Date for Practical Completion; 5
- (b) Date of Practical Completion; and
- (c) Practical Completion, 10

and Clauses 5.2, 5.5, 5.8 (if applicable), 5.9, 16, 35, 37, 38 and 42.3 shall apply separately to each Separable Portion and references therein to the Works and to work under the Contract shall mean so much of the Works and the work under the Contract as is comprised in the relevant Separable Portion. 15

If the Contract does not make provision for the amount of security, retention moneys, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the security, retention moneys, liquidated damages or bonus applicable to the whole of the work under the Contract as the value of the Separable Portion bears to the value of the whole of the work under the Contract. 20

35.4 Use of Partly Completed Works

If a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage and the parties cannot agree upon the creation of Separable Portions, the Superintendent may determine that the respective parts shall be Separable Portions. 25

In using a Separable Portion that has reached Practical Completion, the Principal shall not hinder the Contractor in the performance of the work under the Contract. 30

35.5 Extension of Time for Practical Completion

When it becomes evident to the Contractor that anything, including an act or omission of the Principal, the Superintendent or the Principal's employees, consultants, other contractors or agents, may delay the work under the Contract, the Contractor shall promptly notify the Superintendent in writing with details of the possible delay and the cause. 35

When it becomes evident to the Principal that anything which the Principal is obliged to do or provide under the Contract may be delayed, the Principal shall promptly give notice to the Superintendent who shall promptly notify the Contractor in writing of the extent of the likely delay. 40

If the Contractor is or will be delayed in reaching Practical Completion by a cause described in the next paragraph and within 28 days after the delay occurs, the Contractor gives the Superintendent a written claim for an extension of time for Practical Completion setting out the facts on which the claim is based, the Contractor shall be entitled to an extension of time for Practical Completion. 45

The causes are— 50

- (a) any of the following—
 - †(i) industrial conditions; 55
 - †(ii) inclement weather; or
 - (iii) any other cause, 60
- occurring on or before the Date for Practical Completion and which are beyond the reasonable control of the Contractor; and

65

† Note: Clauses 35.5 (a)(i) and 35.5(a)(ii) prefixed by '†' are optional and the Annexure should be completed appropriately. If the Annexure options are not completed, the particular Clause will apply.

- (b) any of the following other causes whether occurring before, on or after the Date for Practical Completion—
- (i) delay or disruption caused by—
 - the Principal;
 - the Superintendent;
 - an employee, consultant, other contractor or agent of the Principal or Superintendent;
 - (ii) actual quantities of work being greater than the quantities in a Schedule of Rates determined by reference to the upper limit of accuracy applicable to Clause 3.3(b) and stated in Annexure Part A (otherwise than by reason of a variation);
 - (iii) a Latent Condition;
 - (iv) a variation;
 - (v) a change in Legislative Requirements;
 - (vi) a direction by a municipal, public or statutory authority but not where the direction arose from the failure of the Contractor to comply with a Legislative Requirement;
 - (vii) delay by a municipal, public or statutory authority not caused by the Contractor;
 - (viii) a claim referred to in Clause 17.1(iv);
 - (ix) a breach of the Contract by the Principal;
 - (x) another cause which is expressly stated in the Contract to be a cause for an extension of time for Practical Completion.

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause of delay listed in Clause 35.5(a) or (b), then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time for Practical Completion.

Notwithstanding the preceding paragraph the Contractor shall be entitled to an extension of time if the concurrent delay occurs after the Date for Practical Completion and the cause of the delay is one or more of the events listed in Clauses 35.5(b)(i), (iv), (viii) and (ix).

In determining whether the Contractor is or will be delayed in reaching Practical Completion regard shall not be had to—

- whether the Contractor can reach Practical Completion by the Date for Practical Completion without an extension of time; or
- whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

With any claim for an extension of time for Practical Completion, or as soon as practicable thereafter, the Contractor shall give the Superintendent written notice of the period of extension claimed.

If the Contractor is entitled to an extension of time for Practical Completion the Superintendent shall, within 28 days of receipt of the notice of the number of days extension claimed, grant a reasonable extension of time. If within the 28 days the Superintendent does not grant the full extension of time claimed, the Superintendent shall before the expiration of the 28 days give the Contractor notice in writing of the reason.

In determining a reasonable extension of time for an event causing delay, the Superintendent shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.

Notwithstanding that the Contractor is not entitled to or has not claimed an extension of time, the Superintendent may at any time and from time to time before the issue of the Final Certificate by notice in writing to the Contractor extend the time for Practical Completion for any reason. 5

A delay by the Principal or the failure of the Superintendent to grant a reasonable extension of time or to grant an extension of time within 28 days, shall not cause the Date for Practical Completion to be set at large but nothing in this paragraph shall prejudice any right of the Contractor to damages. 10

35.6 Liquidated Damages for Delay in Reaching Practical Completion 15

If the Contractor fails to reach Practical Completion by the Date for Practical Completion, the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in Annexure Part A for every day after the Date for Practical Completion to and including the Date of Practical Completion or the date that the Contract is terminated pursuant to Clause 44, whichever first occurs. 20

If after the Contractor has paid or the Principal has deducted liquidated damages, the time for Practical Completion is extended, the Principal shall forthwith repay to the Contractor any liquidated damages paid or deducted in respect of the period to and including the new Date for Practical Completion. 25

*** 35.7 Limit on Liquidated Damages**

The Contractor's liability under Clause 35.6 is limited to the amount stated in Annexure Part A. 30

*** 35.8 Bonus for Early Practical Completion**

If the Date of Practical Completion is earlier than the Date for Practical Completion the Principal shall pay the Contractor the bonus stated in Annexure Part A for every day after the Date of Practical Completion to and including the Date for Practical Completion. 35

The total of the bonus shall not exceed the limit stated in Annexure Part A. 40

36 DELAY OR DISRUPTION COSTS

Where the Contractor has been granted an extension of time under Clause 35.5 for any delay or disruption caused by any of the events referred to in Clause 35.5(b)(i), the Principal shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay. 45

Where the Contractor has been granted an extension of time under Clause 35.5 for any delay caused by any other event for which payment of extra costs for delay or disruption is provided for in Annexure Part A or elsewhere in the Contract, the Principal shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay. 50

Nothing in this Clause 36 shall— 55

- (a) oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a variation or any other payment under the Contract; or 60
- (b) limit the Principal's liability for damages for breach of contract.

37 DEFECTS LIABILITY

The Defects Liability Period stated in Annexure Part A shall commence at 4:00 pm on the Date of Practical Completion.

As soon as possible after the Date of Practical Completion, the Contractor shall rectify any defects or omissions in the work under the Contract existing at the Date of Practical Completion.

At any time during the Defects Liability Period, the Superintendent may direct the Contractor to promptly rectify any omission or defect in the work under the Contract for which the Contractor is responsible. The direction shall identify the omission or defect and state a date by which the Contractor shall complete the rectification work and may state a date by which the rectification work shall commence. The direction may provide that in respect of the rectification work there shall be a separate Defects Liability Period of a stated duration not exceeding the period stated in Annexure Part A. The separate Defects Liability Period shall commence on the date the rectification work is completed. This Clause 37 shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.

If the rectification work is not commenced or completed by the stated dates, the Superintendent may have the rectification work carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the reasonable cost of the rectification work incurred by the Principal shall be a debt due from the Contractor to the Principal.

If it is necessary for the Contractor to carry out rectification work the Contractor shall do so at times and in a manner which cause as little inconvenience to the occupants or users of the Works as is reasonably possible.

38 CLEANING UP

The Contractor shall keep the Site and the work clean and tidy. The Contractor shall regularly remove rubbish and surplus material.

Within 14 days after the Date of Practical Completion, the Contractor shall remove Temporary Works and Constructional Plant.

The Superintendent may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Contractor to perform remaining obligations.

Notwithstanding the provisions of Clause 44, if the Contractor fails to comply with any obligation imposed on the Contractor by this Clause 38, the Superintendent may, after the Superintendent has given reasonable notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this paragraph are in addition to any other right.

39 URGENT PROTECTION

If urgent action is necessary to protect the work under the Contract, 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 reasonable cost incurred by the Principal in the circumstances shall be a debt 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 39.

40 VARIATIONS

40.1 Variations to the Work under the Contract

The Superintendent may direct the Contractor to do any one or more of the following— 5

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work or of anything described in the Principal's Project Requirements or the Design Documents; 10
- (c) change the levels, lines, positions or dimensions of anything described in the Principal's Project Requirements, the Design Documents or any part of the work under the Contract; 15
- (d) execute additional work;
- (e) demolish or remove material or work no longer required by the Principal.

The Contractor shall not vary the work under the Contract except as directed by the Superintendent or approved in writing by the Superintendent pursuant to Clause 40. 20

The Contractor is bound only to execute a variation which is within the general scope of the Contract. 25

Except where otherwise provided in the Contract, the Superintendent shall not direct a variation after the Date for Practical Completion.

40.2 Proposed Variations 30

Upon receipt of a notice in writing from the Superintendent notifying the Contractor of a proposed variation under Clause 40, the Contractor shall notify the Superintendent whether the proposed variation can be effected. If the variation can be effected, the Contractor shall— 35

- (a) notify the Superintendent of the effect which the Contractor anticipates that the variation will have on the Contractor's Program and time for Practical Completion; and
- (b) provide an estimate of the cost (including delay or disruption costs, if any, and the cost or effect on any applicable warranty) of the proposed variation. 40

The Principal shall reimburse the Contractor for the reasonable costs of complying with the requirements of this Clause 40.2. 45

40.3 Pricing the Variation 45

Unless the Superintendent and the Contractor agree upon the price for a variation, the variation directed or approved by the Superintendent pursuant to Clause 40.1 shall be valued under Clause 40.5. 50

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

40.4 Variations for the Convenience of the Contractor 55

If the Contractor requests the Superintendent to approve a variation for the convenience of the Contractor, the Superintendent may do so in writing. The approval may be conditional. 60

Unless the Superintendent otherwise directs in the notice approving the variation, the Contractor shall not be entitled to—

- (a) an extension of time for Practical Completion; or
- (b) extra payment, 65

in respect of the variation or anything arising out of the variation which would not have arisen had the variation not been approved. 70

The Superintendent shall not be obliged to approve a variation for the convenience of the Contractor.

40.5 Valuation

Where the Contract provides that a valuation shall be made under this Clause 40.5, the Principal shall pay or allow the Contractor or the Contractor shall pay or allow the Principal, as the case may require, an amount ascertained by the Superintendent as follows—

- (a) if the Contract prescribes specific rates or prices to be applied in determining the value, those rates or prices shall be used;
- (b) if Clause 40.5(a) does not apply, the rates or prices in a Schedule of Rates shall be used to the extent that it is reasonable to use them;
- (c) to the extent that neither Clause 40.5(a) nor (b) applies, reasonable rates or prices shall be used;
- (d) to the extent that neither Clause 40.5(a), (b) nor (c) applies, as Daywork valued in accordance with Clause 41; and
- (e) if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 14.2, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit.

For the purposes of a valuation to be made in accordance with Clause 40.5(a), (b), (c) or (d)—

- (i) in determining the deduction to be made for work which is taken out of the Contract, the deduction shall include a reasonable amount for profit and overheads;
- (ii) if the valuation relates to extra costs incurred by the Contractor for delay or disruption, the valuation shall include a reasonable amount for overheads but shall not include profit or loss of profit; and
- (iii) if Clause 11(b) applies, the percentage referred to in Clause 11(b) shall be used for valuing the Contractor's profit and attendance.

When pursuant to Clause 40.3 the Superintendent directs the Contractor to support a variation with measurements and other evidence of cost, the Superintendent shall allow the Contractor the reasonable cost of preparing the measurements or other evidence of cost that has been incurred over and above the reasonable overhead cost.

41 DAYWORK

In determining the value of Daywork regard shall be had to—

- (a) the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the Site at the time as established by the Contractor to the satisfaction of the Superintendent or at such other rates as may be approved by the Superintendent;
- (b) the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under Clause 41(a);
- (c) the amount of hire charges in respect of Constructional Plant approved by the Superintendent for use on the work in accordance with such hiring rates and conditions as may be agreed between the Superintendent and the Contractor or, in the absence of agreement, in accordance with such rates and conditions as may be determined by the Superintendent;
- (d) the amounts paid for services, subcontract work and professional fees;
- (e) the actual cost to the Contractor at the Site of all materials supplied and required for the work; and

- (f) the charge stated in Annexure Part A or, if no charge is stated, a charge agreed between the Superintendent and the Contractor, to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit, or, in the absence of agreement, a reasonable charge determined by the Superintendent.

Amounts payable for Daywork shall not be subject to adjustment for rise and fall in costs notwithstanding that the Contract may provide for adjustment for rise and fall in costs.

42 CERTIFICATES AND PAYMENTS

42.1 Payment Claims, Certificates, Calculations and Time for Payment

At the times for payment claims or upon completion of the stages of the work under the Contract stated in Annexure Part A and upon the issue of a Certificate of Practical Completion and within the time prescribed by Clause 42.5, the Contractor shall deliver to the Superintendent claims for payment supported by evidence of the amount due to the Contractor and such information as the Superintendent may reasonably require. Claims for payment shall include the value of work carried out by the Contractor in the performance of the Contract to that time together with all amounts then otherwise due to the Contractor arising out of the Contract.

If the time for any payment claim under the preceding paragraph falls due on a day which is Saturday, Sunday, Statutory or Public Holiday the Contractor shall submit the claim either on the day before or next following that date which itself is not a Saturday, Sunday, Statutory or Public Holiday.

If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require the Superintendent to issue the payment certificate in respect of that payment claim earlier than would have been the case had the Contractor submitted the payment claim in accordance with the Contract.

Within 14 days of receipt of a claim for payment, the Superintendent shall assess the claim and shall issue to the Principal and to the Contractor a payment certificate stating the amount of the payment which, in the Superintendent's opinion, is to be made by the Principal to the Contractor or by the Contractor to the Principal. The Superintendent shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference. The Superintendent shall also set out, as applicable, in any payment certificate issued pursuant to Clause 42, the allowances made for—

- (a) the value of work carried out by the Contractor in the performance of the Contract to the date of the claim;
- (b) amounts otherwise due from—
 - (i) the Principal to the Contractor; and
 - (ii) the Contractor to the Principal;
- (c) amounts assessed under Clause 46.4 and not duly disputed;
- (d) amounts paid previously under the Contract;
- (e) amounts previously deducted for retention moneys pursuant to Annexure Part A; and
- (f) retention moneys to be deducted pursuant to Annexure Part A,

arising out of the Contract resulting in the balance due to the Contractor or the Principal, as the case may be.

If the Contractor fails to make a claim for payment under this Clause 42.1, the Superintendent may nevertheless issue a payment certificate and the Principal or the Contractor, as the case may be, shall pay the amount so certified within 14 days of that Certificate.

Subject to the provisions of the Contract, within 28 days of receipt by the Superintendent of a claim for payment or within 14 days of issue by the Superintendent of the Superintendent's payment certificate, whichever is the earlier, and within 14 days of the issue of a Final Certificate, the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case may be, an amount not less than the amount shown in such certificate as due to the Contractor or to the Principal, as the case may be, or if no payment certificate has been issued, the Principal shall pay the amount of the Contractor's claim. A payment made pursuant to this Clause 42.1 shall not prejudice the right of either party to dispute under Clause 47 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 47 or as otherwise agreed) of the amount so properly due and payable, the Principal or the Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under Clause 42.6.

42.2 Unfixed Plant and Material

The Principal shall be obliged to pay for any item of unfixed plant and materials (notwithstanding that the item has not been incorporated into the Works) where that item is listed in Annexure Part A if the Contractor—

- (a) provides the amount of additional security stated in Annexure Part A separately approved by the Principal under Clause 5.3; and
- (b) establishes to the satisfaction of the Superintendent that the Contractor has paid for the item, the item is properly stored, labelled the property of the Principal and is adequately protected.

Upon payment to the Contractor of the amount which includes the value of the item, and upon the release of any security, the item shall be the property of the Principal free of any lien or charge.

Any additional security provided for any item of unfixed plant and materials shall be released in accordance with Clause 5.9.

Except as provided in the Contract, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

42.3 Certificate of Practical Completion

The Contractor shall give the Superintendent at least 14 days 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 of the receipt of the request, the Superintendent shall give to the Contractor and to the Principal a Certificate of Practical Completion certifying the Date of Practical Completion or give the Contractor in writing the reasons for not issuing the Certificate.

When the Superintendent is of the opinion that Practical Completion has been reached, the Superintendent may issue a Certificate of Practical Completion, whether or not the Contractor has made a request for its issue.

42.4 Effect of Certificates

The issue of a payment certificate or a Certificate of Practical Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim by the Principal or the Contractor.

42.5 Final Payment Claim

Within 28 days of the expiry of the Defects Liability Period, or where there is more than one, the last to expire, the Contractor shall provide the Superintendent with a final payment claim and endorse it 'Final Payment Claim'. 5

In addition to claims for payment required to be included in a payment claim under Clause 42.1, the Contractor shall include in the Final Payment Claim all claims for moneys which the Contractor considers to be due from the Principal arising out of any alleged breach of the Contract. All such claims, whether under Clause 42.1 or this Clause 42.5, which have not already been barred, shall be barred after the expiration of the period for lodging a Final Payment Claim. 10

42.6 Final Certificate

Within 14 days of receipt of the Contractor's Final Payment Claim or, where the Contractor fails to provide such claim, the expiration of the period specified in Clause 42.5 for the lodgement of the Final Payment Claim by the Contractor, the Superintendent shall issue to the Contractor and to the Principal a final payment certificate endorsed 'Final Certificate'. In the certificate the Superintendent shall certify the amount which, in the Superintendent's opinion, is finally due from the Principal to the Contractor or from the Contractor to the Principal arising out of the Contract or any alleged breach thereof. In such Final Certificate the Superintendent shall also set out such of the allowances in Clause 42.1(a) to (f) inclusive as are appropriate to such Final Certificate. 15 20 25

Unless either party, either before the Final Certificate has been issued or not later than 21 days after the issue thereof, serves a notice of dispute under Clause 47, the Final Certificate shall be evidence that the Works have been completed in accordance with the terms of the Contract and that any necessary effect has been given to all the terms of the Contract which require additions or deductions to be made to the Contract Sum, except in the case of— 30

- (a) fraud, dishonesty or fraudulent concealment relating to the work under the Contract or any part thereof or to any matter dealt with in the said Certificate; 35
- (b) any defect (including omission) in the Works or any part thereof which was not apparent at the end of the Defects Liability Period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the Final Certificate; or 40
- (c) any accidental or erroneous inclusion or exclusion of any work, plant, materials or figures in any computation or any arithmetical error in any computation. 45

Within 14 days after the issue of a Final Certificate, the Principal shall release to the Contractor any security, retention moneys or both then held by the Principal. 45

42.7 Interest on Overdue Payments

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be the rate stated in Annexure Part A or if no rate is stated, the rate shall be 18 per cent per annum. Interest shall be compounded at six monthly intervals. 50 55

42.8 Set Offs by the Principal

The Principal may deduct from moneys due to the Contractor any money due from the Contractor to the Principal otherwise than under the Contract and if those moneys are insufficient, the Principal may, subject to Clause 5.6, have recourse to retention moneys and, if they are insufficient, then to security under the Contract. 60

42.9 Recourse for Unpaid Moneys

Where, within the time provided by the Contract, a party fails to pay the other party an amount due and payable under the Contract, the other party may, subject to Clause 5.6, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Contract and any deficiency remaining may be recovered by the other party as a debt due and payable.

43 PAYMENT OF WORKERS AND SUBCONTRACTORS

43.1 Payment of Workers

The Superintendent may, not less than 5 days before each payment certificate is due, in writing direct the Contractor to—

- (a) give the Superintendent a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on work under the Contract have at the date of the direction been paid all moneys due and payable to them in respect of their employment on the work under the Contract; and
- (b) provide documentary evidence to the Superintendent that at the date of the direction all workers who have been employed by a subcontractor of the Contractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract.

43.2 Payment of Subcontractors

Not earlier than 14 days after the Contractor has made each claim for payment under Clause 42.1, and before the Principal makes that payment to the Contractor, the Contractor shall give to the Superintendent a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors have been paid all moneys due and payable to them in respect of work under the Contract.

43.3 Withholding of Payment

If the Contractor fails—

- (a) to provide, within 5 days of the direction by the Superintendent pursuant to Clause 43.1, the statutory declaration or the documentary evidence, as the case may be; or
- (b) to comply with Clause 43.2,

then notwithstanding Clause 42.1, the Principal may withhold payment of moneys due to the Contractor until the statutory declaration or documentary evidence, as the case may be, is received by the Superintendent.

If the Contractor provides to the Superintendent satisfactory proof of the maximum amount due and payable to workers and subcontractors by the Contractor, the Principal shall not be entitled to withhold any amount in excess of the maximum amount.

43.4 Direct Payment

Where the Principal is entitled to or is required to make payment to a subcontractor of a sum certified by the Superintendent as owing to the subcontractor under a subcontract, the Principal may, on behalf of the Contractor, make the payment directly to the subcontractor and the amount so paid shall be a debt due from the Contractor to the Principal.

At the written request of the Contractor, and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor.

If a payment is made in respect of moneys referred to in Clause 43.1 or 43.2 by the Principal to or in respect of a worker or subcontractor in compliance with a Legislative Requirement, the amount paid shall be a debt due from the Contractor to the Principal.

If any worker or subcontractor obtains a court order in respect of moneys referred to in Clause 43.1 or 43.2 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

After becoming aware of the occurrence of a relation-back day (as defined in the Corporations Law) in respect of the Contractor, the Principal shall not make any payment (other than a payment made pursuant to a Legislative Requirement) to a worker or subcontractor without the concurrence of the official receiver or trustee in bankruptcy of the estate of the bankrupt or the liquidator, as the case may be.

44 DEFAULT OR INSOLVENCY

44.1 Preservation of Other Rights

If a party breaches or repudiates the Contract, nothing in Clause 44 shall prejudice the right of the other party to recover damages or exercise any other right.

44.2 Default by the Contractor

If the Contractor commits a substantial breach of contract and the Principal considers that damages may not be an adequate remedy, the Principal may give the Contractor a written notice to show cause.

Substantial breaches include but are not limited to—

- (a) failing to perform properly the Contractor's Design Obligations;
- (b) failing to provide security;
- (c) failing to provide evidence of insurance;
- (d) failing to comply with a direction of the Superintendent pursuant to Clause 30.3;
- (e) failing to use the materials or standards of workmanship required by the Contract;
- (f) suspension of work in breach of Clause 33.1;
- (g) failing to proceed with due expedition and without delay in breach of Clause 33.1; and
- (h) in respect of Clause 43, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue.

44.3 Requirements of a Notice by the Principal to Show Cause

A notice given under Clause 44.2 shall—

- (a) state that it is a notice under Clause 44 of these General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 44.4;
- (d) specify the time and date by which the Contractor must show cause (which time shall not be less than 7 clear days after the notice is given to the Contractor); and
- (e) specify the place at which cause must be shown.

44.4 Rights of the Principal

If by the time specified in a notice given under Clause 44.2, the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in this Clause 44.4, the Principal may by notice in writing to the Contractor—

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract.

Upon giving a notice under Clause 44.2, the Principal may suspend payments to the Contractor until the earlier of—

- (i) the date upon which the Contractor shows reasonable cause;
- (ii) the date upon which the Principal takes action under Clause 44.4(a) or (b); or
- (iii) the date which is 7 days after the last day for showing cause in the notice under Clause 44.2.

If the Principal exercises the right under Clause 44.4(a), the Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 44.6.

44.5 Procedure when the Principal Takes Over Work

If the Principal takes work out of the hands of the Contractor under Clause 44.4(a), the Principal shall complete that work and the Principal may without payment of compensation take possession of—

- (a) such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Contractor; and
- (b) the Design Documents and other documents, information, materials and the like produced by the Contractor,

which are reasonably required by the Principal to facilitate completion of the work. The Principal shall keep records of the cost of completing the work.

If the Principal takes possession of Constructional Plant, Design Documents or other things, the Principal shall maintain them and, subject to Clause 44.6, on completion of the work, the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause 44.5 which are surplus and, subject to Clause 13, the Design Documents.

44.6 Adjustment on Completion of the Work Taken Out of the Hands of the Contractor

When work taken out of the hands of the Contractor under Clause 44.4(a) is completed, the Superintendent shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate pursuant to this Clause 44.6 to the Principal and the Contractor certifying—

- (a) the amount of that cost, and setting out the calculations employed to arrive at that cost;
- (b) the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor; and
- (c) the difference.

If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal.

If the Contractor is indebted to the Principal, the Principal may retain Constructional Plant or other things taken under Clause 44.5 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional 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. 5

44.7 Default of the Principal

If the Principal commits a substantial breach of contract and the Contractor considers that damages may not be an adequate remedy, the Contractor may give the Principal a written notice to show cause. 10

Substantial breaches include but are not limited to— 15

- (a) failing to provide security; 15
- (b) failing to produce evidence of insurance;
- (c) failing, in breach of Clause 27.1, to give the Contractor access to the Site to enable the Contractor to commence and carry out the Contractor's Design Obligations but only if the failure continues for longer than the period stated in Annexure Part A; 20
- (d) failing, in breach of Clause 27.1, to give the Contractor possession of the Site or sufficient of the Site to enable the Contractor to commence further work under the Contract but only if the failure continues for longer than the period stated in Annexure Part A; 25
- (e) failing to make a payment due under the Contract; and 30
- (f) failure by the Superintendent either to issue a Certificate of Practical Completion or give the Contractor the reasons in writing for not issuing that Certificate within 14 days of receipt of a request by the Contractor to issue that Certificate, in breach of Clause 42.3. 35

44.8 Requirements of a Notice by the Contractor to Show Cause

A notice given under Clause 44.7 shall—

- (a) state that it is a notice under Clause 44 of these General Conditions of Contract; 40
- (b) specify the alleged substantial breach;
- (c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 44.9; 45
- (d) specify the time and date by which the Principal must show cause (which shall not be less than 7 clear days after the notice is given to the Principal); and
- (e) specify the place at which cause must be shown. 50

44.9 Rights of the Contractor

If by the time specified in a notice given under Clause 44.7, the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in this Clause 44.9, the Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract. 55

The Contractor shall lift the suspension if the Principal remedies the breach but if within 28 days of the date of suspension under this Clause 44.9, the Principal fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor may by notice in writing to the Principal terminate the Contract. 60

The Contractor shall be entitled to recover from the Principal any damages incurred by the Contractor by reason of the suspension. 65

44.10 Rights of the Parties on Termination

If the Contract is terminated pursuant to Clause 44.4(b) or 44.9, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

If Alternative 2 of Clause 13.2 applies and the Principal has terminated the Contract, the Principal may also, without payment of compensation, take possession of the Design Documents.

44.11 Insolvency

If—

- (a) a party informs the other party 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 (Cth); 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) the party enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for the winding up of the party and not stayed within 14 days;
 - (v) a winding up order is made in respect of the party;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
 - (vii) a mortgagee of any property of the party 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 Clause 44.4(a); or
- (B) the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under Clause 44.9.

The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

* 45 TERMINATION BY FRUSTRATION

If under the law governing the Contract, the Contract is frustrated, the Principal shall pay the Contractor—

- (a) the amount due to the Contractor shown in any unpaid payment certificate; 5
- (b) for work executed prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated and the Contractor had been entitled to and had made a payment claim on the date of frustration; 10
- (c) the cost of materials reasonably ordered by the Contractor for the work under the Contract, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment; 15
- (d) costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal; 15
- (e) all cash security and retention moneys; 20
- (f) the reasonable cost of removal of Temporary Works and Constructional Plant; and
- (g) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration. 25

If the Contractor has provided security other than cash security, the Principal shall promptly release that security to the Contractor.

If the Principal has provided security, when the Contractor has been paid all moneys finally due to the Contractor on any account whatsoever (whether in connection with the Contract or otherwise), the Contractor shall release the security provided by the Principal in respect of the Contract. 30

46 NOTIFICATION OF CLAIMS 35

46.1 Communication of Claims

As soon as practicable after a party could reasonably have been aware of any claim in connection with the Contract or the subject matter thereof, that party shall give to the other party and to the Superintendent the prescribed notice under Clause 46.3 or a notice of dispute under Clause 47.1. 40

This Clause 46.1 and Clauses 46.3, 46.4 and 46.5 shall not apply to any claim, including a claim for payment, the communication of which is required by another provision of the Contract. 45

46.2 Liability for Failure to Communicate 50

The failure of a party to comply with the provisions of Clause 46.1 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 not be grounds for invalidating the claim. 55

46.3 The Prescribed Notice

The prescribed notice is a notice in writing which includes—

- (a) an outline of the basis of the claim or proposed claim; and 60
- (b) the quantum or likely quantum of the claim or proposed claim.

46.4 Superintendent's Decision 65

If within 28 days of giving the prescribed notice the party giving the notice 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 shall promptly notify the parties in writing of the decision. Unless a party within a further 28 days of such notification serves a notice of dispute under Clause 47.1 which includes such claim, the Superintendent shall include the amount of that assessment in the next payment certificate issued pursuant to Clause 42.

46.5 Time for Disputing Superintendent's Direction

If the Superintendent—

- (a) has given a direction (other than a decision under Clause 47.2) pursuant to the Contract; and
- (b) has served a notice in writing on each party that if a party wishes to dispute the direction, then that party is required to do so under Clause 47,

the direction shall not be disputed unless a notice of dispute in accordance with Clause 47.1 is given by one party to the other party and to the Superintendent within 28 days of the date of service on that party of the notice pursuant to Clause 46.5(b).

47 DISPUTE RESOLUTION

47.1 Notice of Dispute

If a dispute or difference (hereafter called a 'dispute') between the Contractor and the Principal arises in connection with the Contract or the subject matter thereof, including a dispute concerning—

- (a) a direction given by the Superintendent; or
- (b) a claim—
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment; or
 - (iv) for rectification or frustration,

then either party shall deliver by hand or send by certified mail to the other party and to the Superintendent a notice of dispute in writing adequately identifying and providing details of the dispute.

Notwithstanding the existence of a dispute, the Principal and the Contractor shall continue to perform the Contract and, subject to Clause 44, the Contractor shall continue with the work under the Contract and the Principal and the Contractor shall continue to comply with Clause 42.1.

47.2 Further Steps Required Before Proceedings

Alternative 1

Within 14 days of service of a notice of dispute, the parties shall confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute.

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.

Alternative 2

A party served with a notice of dispute may give a written response to the notice to the other party and the Superintendent within 28 days of the receipt of the notice.

Within 42 days of service on the Superintendent of a notice of dispute or within 14 days of the receipt by the Superintendent of the written response, whichever is the earlier, the Superintendent shall give to each party the Superintendent's written decision on the dispute, together with reasons for the decision.

If either party is dissatisfied with the decision of the Superintendent or if the Superintendent fails to give a written decision on the dispute within the time required under this Clause 47.2, the parties shall, within 14 days of the date of receipt of the decision or within 14 days of the date upon which the decision should have been given by the Superintendent, confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. 5

If the dispute has not been resolved within 28 days of the date the Superintendent has given a decision or should have given a decision, that dispute shall be and is hereby referred to arbitration. 10

47.3 Arbitration

Arbitration shall be effected by an arbitrator, who shall be nominated by the person named in Annexure Part A, or if no person is named, by the Chairperson for the time being of the Chapter of The Institute of Arbitrators Australia in the State or Territory stated in Annexure Part A item applicable to Clause 1. 15

Unless the parties agree in writing, any person agreed upon by the parties to resolve the dispute pursuant to Clause 47.2 shall not be appointed as an arbitrator, nor may that person be called as a witness by either party in any proceedings, other than for evidence that Clause 47.2 steps were attempted. 20

Notwithstanding Clause 42.7, the arbitrator may award whatever interest the arbitrator considers reasonable. 25

If one party has overpaid the other, whether pursuant to a Superintendent's certificate or not and whether under a mistake of law or fact, the arbitrator may order repayment together with interest. 30

47.4 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 in respect of a dispute under Clause 47 or any matter arising under the Contract. 35

48 WAIVER OF CONDITIONS

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing of the Principal in each instance. 40

**ANNEXURE to the Australian Standard General
Conditions of Contract for Design and Construct****PART A**

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 these General Conditions of Contract and shall be read as part of the Contract.

Item

- | | |
|--|--|
| 1 The law applicable is that of the State or Territory of:
(Clause 1) | Queensland |
| 2 Payments under the Contract shall be made at:
(Clause 1) | The Principals Address. |
| 3 The Principal:
(Clause 2) | Hamilton Hayes Henderson Architects
ACN 106 336 698 |
| 4 The address of the Principal: | 8 Pacific Avenue, Miami, QLD, 4220 |
| 5 The Contractor:
(Clause 2) | Alder Constructions Pty Ltd
ACN 106 657 470 |
| 6 The address of the Contractor: | 116 Siganto Drive, Helensvale, QLD, 4212 |
| 7 The Superintendent:
(Clause 2) | Hamilton Hayes Henderson Architects –
Robert Divens |
| 8 The address of the Superintendent: | ACN 106 336 698
8 Pacific Avenue, Miami, QLD, 4220 |

- 9 # The Date for Practical Completion:
(Clause 2) 28th March 2025
- OR
- # The period of time for Practical Completion:
(Clause 2)
- 10 Preliminary Design: (A) A Preliminary Design
(Clause 2) is included
in the Principal's Project Requirements.
- 11 The Principal's Project Requirements are described in the following documents (additional to those listed in the Annexure item for Preliminary Design):
(Clause 2) Documents describing the Principal's Project Requirements are:
Preliminary Design
- 12 # Contractor shall provide security in the amount of:
(Clause 5.2) 2.5 per cent of the contract sum
- 13 # Principal shall provide security in the amount of:
(Clause 5.2) 2.5 per cent of the contract sum

- 14 Retention moneys shall be deducted progressively as follows:
(Clauses 5.5 and 42.1) 5 per cent of the value of the work incorporated into the Works until 5 per cent of the Contract Sum is reached
- 15 The period of notice required of a party's intention to convert security into cash or to have recourse to security or retention moneys:
(Clause 5.6) 5 days
- 16 The percentage to which the Principal's entitlement to security and retention moneys is reduced:
(Clause 5.8) 20 per cent
- 17 The number of copies of documents to be supplied by the Principal:
(Clause 8.3)
(if nothing stated, 5 copies)
- 18 Documents, number of copies, and the times or design stages at which they are to be supplied by the Contractor:
(Clause 8.4)
- | <u>DOCUMENTS</u> | <u>NUMBER OF COPIES</u> | <u>TIME/ DESIGN STAGE</u> |
|------------------|-------------------------|---------------------------|
| Tender Letter | 5 | Tender submission |
| Methodology | 5 | Tender submission |
| Program | 5 | Tender submission |
| Drawings | 5 | Pre-Construction |
| Specifications | 5 | Pre-Construction |
- 19 The time within which the Superintendent must give a direction as to the suitability of documents:
(Clause 8.4) 5 days
- 20 Work which cannot be subcontracted without approval:
(Clause 9.2)
- | <u>WORK BY CONSULTANTS</u> | <u>WORK BY OTHERS</u> |
|----------------------------|-----------------------|
| | |
| | |
| | |
| | |
- 21 Subcontractors or Selected Subcontractors whose contracts the Principal may direct be novated:
(Clause 10) N/A

- 22 Intellectual property rights granted to the Principal—the Alternative applying:
(Clause 13.2) (if nothing stated, Alternative 1 applies)
- 23 Legislative Requirements not required to be satisfied by Contractor:
(Clause 14.1)
- 24 Insurance of the work under the Contract—the Alternative applying:
(Clause 18) (if nothing stated, Alternative 1 applies)
- If Alternative 1 applies
- (a) The amount for demolition and removal of debris: \$
(Clause 18(ii))
- (b) The amount for consultants' fees: \$
(Clause 18(iii))
- (c) The value of materials or things to be supplied by the Principal: \$
(Clause 18(iv))
- (d) The additional amount or percentage: \$
(Clause 18(v))
- or
- 10 per cent (%)
- 25 Public liability policy of insurance—the Alternative applying:
(Clause 19) (if nothing stated, Alternative 1 applies)
- 26 If Alternative 1 applies the amount of public liability insurance shall be not less than: \$20,000,000.
(Clause 19)
- 27 Amount of Contractor's professional indemnity insurance shall be not less than: \$20,000,000
(Clause 21)
- 28 Period for which Contractor's professional indemnity insurance shall be maintained after issue of the Final Certificate: 12 months
(Clause 21)

- 29 The time by which access to the Site shall be given:
(Clause 27.1) 14th June 2024
.....
- 30 The times by, or periods within which the Superintendent is to furnish information, materials, documents or instructions to the Contractor:
(Clause 33.1) 5 days
- 31 Events causing delay:
- industrial conditions (Clause 35.5(a)(i)) Applicable
 - inclement weather (Clause 35.5(a)(ii)) Applicable
- 32 # Rate of liquidated damages : (Clause 35.6) \$1,200 per day
- 33 # Limit of liquidated damages: (Clause 35.7) \$ 25,200.00
- 34 # Bonus for early Practical Completion: (Clause 35.8) \$400 per day
- 35 # Limit of bonus: (Clause 35.8) \$4,000.00

OTHER EVENTS

- 36 # Other events for which extra costs for delay or disruption are payable: (Clause 36) N/A
- 37 # The Defects Liability Period: (Clause 37) 12 months.
- 38 (a) Times under the Contract for payment claims: (Clause 42.1) 25th day of each month
- OR
- (b) Stages of the work under the Contract for payment claims: (Clause 42.1)
-
-
-
-
-
- 39 Unfixed plant and materials for which payment claims may be made before they are incorporated in the Works: (Clause 42.2) N/A
- 40 The rate of interest on overdue payments: (Clause 42.7) 18 per cent per annum

- 41 The delay in giving possession of the Site or sufficient of the Site which shall be a substantial breach: (Clause 44.7(d)) Applicable
- 42 Further steps required before proceedings—the Alternative applying : (if nothing stated, Alternative 1 applies)
(Clause 47.2)
- 43 The person to nominate an arbitrator: (Clause 47.3) Principal

Separable Portion

- 2 Separable Portion: N/A
- 3 The Date for Practical Completion:
(Clause 2)
- OR
- The period of time for Practical Completion:
(Clause 2)
- 4 Contractor shall provide security in the amount of: \$
(Clause 5.2)
- 5 Principal shall provide security in the amount of: \$
(Clause 5.2)
- 6 Rate of liquidated damages : \$. per day
(Clause 35.6)
- 7 Limit of liquidated damages: \$
(Clause 35.7)
- 8 Bonus for early Practical Completion: \$ per day
(Clause 35.8)
- 9 Limit of bonus: \$
(Clause 35.8)

OTHER EVENTS

- 10 Other events for which extra costs for delay or disruption are payable:
(Clause 36)
-
-
-
- 11 The Defects Liability Period:
(Clause 37)

Use this part of Annexure Part A where there are Separable Portions and ensure that the work described in the Separable Portions covers all the work under the Contract. Make a separate page

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

PART B

DELETIONS, AMENDMENTS AND ADDITIONS

- 1 The following Clauses or parts of Clauses have been deleted from the General conditions in AS 4300—1995:

.....
.....
.....
.....
.....
.....

- 2 The following Clauses have been amended and differ from the corresponding Clauses in AS 4300—1995:

.....
.....
.....
.....
.....
.....

- 3 The following Clauses have been added to those of AS 4300—1995:

.....
.....
.....
.....
.....
.....

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

PART C

APPROVED FORM OF UNCONDITIONAL UNDERTAKING (Clause 5.3)

At the request of ACN ("the Contractor")
and in consideration of ACN ("the Principal")
accepting this undertaking in respect of the contract for
. ("the Project")
. ACN ("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.

§ This undertaking shall expire on the day of 19

DATED at this day of 19

§ Delete as appropriate.

**ANNEXURE to the Australian Standard
General Conditions of Contract for Design and
Construct**

PART D

DEED OF NOVATION

(Clause 10)

This Deed made the day of 19
between ("Principal")
of ACN
and ("the Contractor")
of ACN
and ("the subcontractor")
of ACN
witnesses that —

- 1 Upon receipt by the subcontractor of all moneys owing under the prior contract—
 - (a) the Contractor shall punctually perform the obligations of the Principal under the prior contract prescribed in the schedule hereto as far as they are not performed. The Contractor acknowledges itself bound by the provisions of the prior contract as if the Contractor had been named as the Principal in the prior contract;
 - (b) the subcontractor shall punctually perform like obligations and be bound to the Contractor as if the provisions of the prior contract were incorporated herein; and
 - (c) the Principal and subcontractor shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The Principal and subcontractor each warrant to the Contractor that preliminary design or Selected Subcontract Work, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the laws in force in the State or Territory stated in the provisions of the agreement between the Principal and Contractor and in the event that no State or Territory is so stated then in accordance with the law for the time being in force in the State or Territory in which the project is being carried out.

Schedule

Documents:

.....

.....

.....

.....

In witness whereof the parties have executed this Deed of Novation by affixing their seals.

THE COMMON SEAL of (Principal)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (Contractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

THE COMMON SEAL of (subcontractor)
was affixed to this document in the presence of:

.....
Secretary/Director

.....
Name (please print)

.....
Director

.....
Name (please print)

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AMENDMENT CONTROL SHEET

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REVISED TEXT

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