

Australian Standard™

General conditions of contract for the
supply of equipment with installation

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

The following are represented on Committee OB-003:

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

Keeping Standards up-to-date

Standards are living documents which reflect progress in science, technology and systems. To maintain their currency, all Standards are periodically reviewed, and new editions are published. Between editions, amendments may be issued. Standards may also be withdrawn. It is important that readers assure themselves they are using a current Standard, which should include any amendments which may have been published since the Standard was purchased.

Detailed information about Standards can be found by visiting the Standards Web Shop at www.standards.com.au and looking up the relevant Standard in the on-line catalogue.

Alternatively, the printed Catalogue provides information current at 1 January each year, and the monthly magazine, *The Global Standard*, has a full listing of revisions and amendments published each month.

Australian Standards™ and other products and services developed by Standards Australia are published and distributed under contract by SAI Global, which operates the Standards Web Shop.

We also welcome suggestions for improvement in our Standards, and especially encourage readers to notify us immediately of any apparent inaccuracies or ambiguities. Contact us via email at mail@standards.org.au, or write to the Chief Executive, Standards Australia, GPO Box 5420, Sydney, NSW 2001.

This Standard was issued in draft form for comment as DR 99270.

Australian Standard™

General conditions of contract for the supply of equipment with installation

Originated as part of AS CB16—1957.
Previous edition AS 2987—1987.
Revised and redesignated in part as AS 4910—2002.
Reissued incorporating Amendment No. 1 (March 2005).

COPYRIGHT

© Standards Australia

All rights are reserved. No part of this work may be reproduced or copied in any form or by any means, electronic or mechanical, including photocopying, without the written permission of the publisher.

Published by Standards Australia, GPO Box 5420, Sydney, NSW 2001, Australia

ISBN 0 7337 3531 2

PREFACE

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB-003, General Conditions of Contract to supersede, in part, AS 2987—1987, *General conditions of contract for the supply of equipment with or without installation*.

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

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

AS 4910—2002, *General conditions of contract for the supply of equipment with installation* is part of the suite of conditions of contract based on AS 4000—1997, *General conditions of contract*.

This Standard is for the supply of equipment, including building elements, which is purpose-built or manufactured and which includes installation. If installation is not required, AS/NZS 4911:2002, *General conditions of contract for the supply of equipment without installation* should be used.

Clause 43 and subclauses 8.6 and 29.2 prefixed by * are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these clauses or indicating clearly in Annexure Part C or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 for the effect of stating changes in Annexure Part C.

Warnings

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

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

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

- 2) For the purposes of clause 29, the inclusion of Quality Assurance requirements in the Contract will require detailed clauses which have regard to the quality standard selected for the work.
- 3) Users of this document should ensure the availability of appropriate insurances if risk in the equipment is not to pass to the Purchaser upon delivery.
- 4) Users of this document should be aware of relevant legislation relating to the sale and supply of goods in the Commonwealth of Australia, each State or Territory of Australia and New Zealand.
- 5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

CONTENTS

| | <i>Page</i> |
|--|-------------|
| 1 INTERPRETATION AND CONSTRUCTION OF CONTRACT | 5 |
| 2 NATURE OF CONTRACT | 9 |
| 3 PROVISIONAL SUMS | 10 |
| 4 SEPARABLE PORTIONS | 10 |
| 5 SECURITY | 11 |
| 6 EVIDENCE OF CONTRACT | 12 |
| 7 SERVICE OF NOTICES | 12 |
| 8 CONTRACT DOCUMENTS | 12 |
| 9 ASSIGNMENT AND SUBCONTRACTING | 13 |
| 10 INTELLECTUAL PROPERTY RIGHTS | 14 |
| 11 LEGISLATIVE REQUIREMENTS | 15 |
| 12 PROTECTION OF PEOPLE AND PROPERTY | 15 |
| 13 URGENT PROTECTION | 16 |
| 14 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE | 16 |
| 15 DAMAGE TO PERSONS AND PROPERTY OTHER THAN WUC | 17 |
| 16 INSURANCE OF EQUIPMENT AND THE WORKS | 17 |
| 17 PUBLIC LIABILITY INSURANCE | 19 |
| 18 INSURANCE OF EMPLOYEES | 19 |
| 19 INSPECTION AND PROVISIONS OF INSURANCE POLICIES | 19 |
| 20 SUPERINTENDENT | 21 |
| 21 SUPERINTENDENT' S REPRESENTATIVE | 21 |
| 22 CONTRACTOR' S REPRESENTATIVE | 21 |
| 23 CONTRACTOR' S EMPLOYEES AND SUBCONTRACTORS | 21 |
| 24 SITE | 21 |
| 25 LATENT CONDITIONS | 22 |
| 26 SETTING OUT THE WORKS | 23 |
| 27 CLEANING UP | 23 |
| 28 MATERIALS, LABOUR AND CONSTRUCTION PLANT | 24 |
| 29 QUALITY | 24 |
| 30 EXAMINATION AND TESTING | 25 |
| 31 WORKING HOURS | 26 |
| 32 PROGRAMMING | 26 |
| 33 SUSPENSION | 27 |
| 34 TIME AND PROGRESS | 27 |
| 35 DEFECTS LIABILITY | 29 |
| 36 VARIATIONS | 30 |
| 37 PAYMENT | 31 |
| 38 PAYMENT OF WORKERS AND SUBCONTRACTORS | 32 |

| | <i>Page</i> |
|--|-------------|
| 39 DEFAULT OR INSOLVENCY | 33 |
| 40 TERMINATION BY FRUSTRATION | 36 |
| 41 NOTIFICATION OF CLAIMS..... | 37 |
| 42 DISPUTE RESOLUTION | 37 |
| 43 GENERAL LIMITATION OF LIABILITY | 38 |
| 44 WAIVER OF CONDITIONS | 39 |
| ANNEXURE PART A | 40 |
| ANNEXURE PART B | 50 |
| ANNEXURE PART C | 51 |
| INDEX | 52 |

STANDARDS AUSTRALIA

Australian Standard

General conditions of contract for the supply of equipment with installation

1 Interpretation and construction of Contract

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

| | |
|--|--|
| <i>Item</i> | means an <i>Item</i> in Annexure Part A; |
| <i>certificate of practical completion</i> | has the meaning in subclause 34.6; |
| <i>compensable cause</i> | means: <ol style="list-style-type: none"> any act, default or omission of the <i>Superintendent</i>, the <i>Purchaser</i> or its consultants, or other contractors (not being employed by the <i>Contractor</i>); or those listed in <i>Item</i> 29; |
| <i>construction plant</i> | means appliances and things used in the carrying out of <i>WUC</i> but not forming part of <i>the Works</i> ; |
| <i>Contract</i> | has the meaning in clause 6; |
| <i>contract sum</i> | means: <ol style="list-style-type: none"> where the <i>Purchaser</i> accepted a lump sum, the lump sum; where the <i>Purchaser</i> accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the <i>schedule of rates</i>; or where the <i>Purchaser</i> accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b), including <i>provisional sums</i> but excluding any additions or deductions which may be required to be made under the <i>Contract</i> ; |
| <i>Contractor</i> | means the person bound to carry out and complete <i>WUC</i> ; |
| <i>date for delivery</i> | means: <ol style="list-style-type: none"> the date; or the last day of the period, if any, stated in <i>Item</i> 8, but if any <i>EOT</i> for <i>delivery</i> is directed by the <i>Purchaser</i> or allowed in any arbitration or litigation, it means the date resulting therefrom; |
| <i>date for practical completion</i> | means: <ol style="list-style-type: none"> where <i>Item</i> 9(a) provides a date for <i>practical completion</i>, the date; |

| | |
|--|--|
| | <p>b) where <i>Item 9(b)</i> provides a period of time for <i>practical completion</i>, the last day of the period,</p> <p>but if any <i>EOT</i> for <i>practical completion</i> is directed by the <i>Superintendent</i> or allowed in any arbitration or litigation, it means the date resulting therefrom;</p> |
| <i>date of acceptance of tender</i> | means the date which appears on the written notice of acceptance of the tender; |
| <i>date of delivery</i> | means: <ol style="list-style-type: none"> the date upon which the <i>Equipment</i> was <i>delivered</i>; or where another date is determined in any arbitration or litigation as the date upon which the <i>Equipment</i> was <i>delivered</i>, that other date; |
| <i>date of practical completion</i> | means: <ol style="list-style-type: none"> the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date; |
| <i>deed of guarantee, undertaking and substitution</i> | has the meaning in subclause 5.6; |
| <i>defects</i> | has the meaning in clause 35 and includes omissions; |
| <i>defects liability period</i> | has the meaning in clause 35; |
| <i>deliver (and delivered, delivering)</i> | has the meaning in subclause 34.1; |
| <i>delivery</i> | has the meaning in subclause 34.1; |
| <i>delivery place</i> | is stated in <i>Item 7</i> ; |
| <i>direction</i> | includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement; |
| <i>dispute</i> | has the meaning in clause 42; |
| <i>EOT (from 'extension of time')</i> | has the meaning in subclause 34.3; |
| <i>Equipment</i> | means the goods to be supplied or supplied by the <i>Contractor</i> pursuant to the <i>Contract</i> ; |
| <i>excepted risk</i> | has the meaning in subclause 14.3; |
| <i>final certificate</i> | has the meaning in subclause 37.4; |
| <i>final payment</i> | has the meaning in clause 37; |
| <i>final payment claim</i> | means the final payment claim referred to in subclause 37.4; |
| <i>intellectual property right</i> | means any patent, registered design, trademark or name, copyright or other protected right; |

| | |
|----------------------------------|--|
| <i>latent condition</i> | has the meaning in subclause 25.1; |
| <i>legislative requirement</i> | includes: <ul style="list-style-type: none"> a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where <i>WUC</i> or the particular part thereof is being carried out; b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction where <i>WUC</i> or the particular part thereof is being carried out; and c) fees and charges payable in connection with the foregoing; |
| <i>practical completion</i> | is that stage in the carrying out and completion of <i>WUC</i> when: <ul style="list-style-type: none"> a) <i>the Works</i> are complete except for minor <i>defects</i>: <ul style="list-style-type: none"> i) which do not prevent <i>the Works</i> from being reasonably capable of being used for their stated purpose; ii) which the <i>Superintendent</i> determines the <i>Contractor</i> has reasonable grounds for not promptly rectifying; and iii) the rectification of which will not prejudice the convenient use of <i>the Works</i>; b) those <i>tests</i> which are required by the <i>Contract</i> to be carried out and passed before <i>the Works</i> reach practical completion have been carried out and passed; and c) documents and other information required under the <i>Contract</i> which, in the <i>Superintendent's</i> opinion, are essential for the use, operation and maintenance of <i>the Works</i> have been supplied; |
| <i>prescribed notice</i> | has the meaning in subclause 41.1; |
| <i>program</i> | has the meaning in clause 32; |
| <i>progress certificate</i> | has the meaning in subclause 37.2 |
| <i>provisional sum</i> | has the meaning in clause 3; |
| <i>public liability policy</i> | has the meaning in clause 17; |
| <i>Purchaser</i> | means the person stated in <i>Item 1</i> ; |
| <i>qualifying cause of delay</i> | means: <ul style="list-style-type: none"> a) any act, default or omission of the <i>Superintendent</i>, the <i>Purchaser</i>, its consultants, agents or other contractors (not being employed by the <i>Contractor</i>); or b) other than: <ul style="list-style-type: none"> i) a breach or omission by the <i>Contractor</i>; ii) industrial conditions or inclement weather occurring after the <i>date for practical completion</i>; and iii) stated in <i>Item 26</i>; |

| | |
|--|--|
| <i>schedule of rates</i> | means any schedule included in the <i>Contract</i> which, in respect of any section or item of <i>work</i> to be carried out, shows the rate or respective rates of payment for the execution of that <i>work</i> and which may also include lump sums, other sums, quantities and prices; |
| <i>security</i> | means: <ul style="list-style-type: none"> a) cash; b) retention moneys; c) bonds or inscribed stock or their equivalent issued by a national, state or territory government; d) interest bearing deposit in a bank carrying on business at the place stated in <i>Item</i> 11(c); e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or f) other form approved by the party having the benefit of the <i>security</i>; |
| <i>selected subcontract work</i> | has the meaning in subclause 9.3; |
| <i>selected subcontractor</i> | has the meaning in subclause 9.3; |
| <i>separable portion</i> | means a portion of <i>the Works</i> identified as such in the <i>Contract</i> or by the <i>Superintendent</i> pursuant to clause 4; |
| <i>site</i> | means the lands and other places to be made available and any other lands and places made available to the <i>Contractor</i> by the <i>Purchaser</i> for the purpose of the <i>Contract</i> ; |
| <i>Superintendent</i> | means the person stated in <i>Item</i> 5 as the Superintendent or other person from time to time appointed in writing by the <i>Purchaser</i> to be the Superintendent and notified as such in writing to the <i>Contractor</i> by the <i>Purchaser</i> and, so far as concerns the functions exercisable by a <i>Superintendent's Representative</i> , includes a <i>Superintendent's Representative</i> ; |
| <i>Superintendent's Representative</i> | means an individual appointed in writing by the <i>Superintendent</i> under clause 21; |
| <i>survey mark</i> | in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring <i>WUC</i> ; |
| <i>temporary works</i> | means <i>work</i> used in carrying out and completing <i>WUC</i> , but not forming part of <i>the Works</i> ; |
| <i>test</i> | has the meaning in subclause 30.1 and includes examine and measure; |
| <i>the Works</i> | means the whole of the <i>work</i> to be carried out and completed in accordance with the <i>Contract</i> , including <i>variations</i> provided for by the <i>Contract</i> , which by the <i>Contract</i> is to be handed over to the <i>Purchaser</i> ; |
| <i>variation</i> | has the meaning in clause 36; |

work includes the provision of materials including those forming part of the *Equipment*;

WUC (from 'work under the Contract') means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes the supply and installation of the *Equipment*, *variations*, remedial *work*, *construction plant* and *temporary works*, and like words have a corresponding meaning.

In the *Contract*:

- a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- b) time for doing any act or thing under this *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- e) communications between the *Purchaser*, the *Superintendent* and the *Contractor* shall be in the English language;
- f) measurements of physical quantities shall be in legal units of measurements of the jurisdiction in *Item 10*;
- g) unless otherwise provided, prices are in the currency in *Item 11(a)* and payments shall be made in that currency at the place in *Item 11(b)*;
- h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction stated in *Item 10*; and
- i) the changes in Annexure Part C shall be deemed to be part of these General Conditions.

2 Nature of Contract

2.1 Performance and payment

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

The *Purchaser* shall pay the *Contractor*:

- (a) for *work* for which the *Purchaser* accepted a lump sum, the lump sum; and

- (b) for *work* for which the *Purchaser* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Purchaser* for the section or item, adjusted by any additions or deductions made pursuant to the *Contract*.

2.2 Quantities

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

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

2.3 Adjustment for actual quantities

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

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

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

3 Provisional sums

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

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

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

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

4 Separable portions

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

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

5 Security

5.1 Provision

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

5.2 Recourse

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

5.3 Change of Security

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

5.4 Reduction and release

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

The *Purchaser's* entitlement to *security* in *Item* 14(e) shall cease 14 days after the *delivery* of the *Equipment* for which that *security* was provided.

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

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

5.5 Trusts and interest

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

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

5.6 Deed of guarantee, undertaking and substitution

Where:

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

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

6 Evidence of Contract

Until a formal instrument of agreement is executed by the parties, documents evidencing the parties' consensus shall constitute the *Contract*. If such *Contract* requires a formal instrument of agreement, the *Purchaser* shall, within 28 days of the *date of acceptance of tender*, send it in duplicate for execution by the *Contractor*. Within 14 days after receiving them, the *Contractor* shall (if they are correct) properly execute both copies and return them.

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

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

7 Service of notices

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

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

8 Contract documents

8.1 Discrepancies

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

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

8.2 Purchaser-supplied documents

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

They shall:

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

8.3 Contractor-supplied documents

The *Contractor* shall supply to the *Superintendent* the documents and number of copies thereof, both stated elsewhere in the *Contract*.

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

- (a) the *Superintendent* shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) any *Superintendent's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Superintendent's direction* about such documents, the *Superintendent* shall give, within the time stated in *Item 17*, the appropriate *direction*, including reasons if the documents are not suitable.

Copies of documents supplied by the *Contractor* shall be the *Purchaser's* property but shall not be used or copied otherwise than for the installation, use, support, repair, maintenance or alteration of *the Works*.

8.4 Availability

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

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

8.5 Confidential information

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

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

* 8.6 Media

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

9 Assignment and subcontracting

9.1 Assignment

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

* See Preface

9.2 Subcontracting generally

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

- (a) subcontract or allow a subcontractor to subcontract any *work* described in *Item 18*; or
- (b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

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

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

Approval may be conditional upon the subcontract including:

- (a) provision that the subcontractor shall not assign nor subcontract without the *Contractor's* written consent; and
- (b) provisions which may be necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Purchaser*.

9.3 Selected subcontract work

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

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

9.4 Novation

When directed by the *Purchaser*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form included in the invitation to tender, such deed being between the *Purchaser*, the *Contractor* and the subcontractor or *selected subcontractor* stated in *Item 19* for the particular part of *WUC*.

9.5 Contractor's responsibility

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

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

10 Intellectual property rights

10.1 Warranties

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

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

Each party shall indemnify the other against such respective infringements.

10.2 Ownership and licence

Except as provided otherwise in the *Contract*, ownership of *intellectual property rights* (other than third party *intellectual property rights*) associated with *the Works* and any documentation provided by the *Contractor* pursuant to the *Contract* is vested and shall vest in the *Contractor*.

The *Contractor* grants the *Purchaser* a royalty free, non-exclusive, transferable, perpetual licence to use all *intellectual property rights* associated with *the Works* and any documentation provided pursuant to the *Contract* for the installation, use, support, repair, maintenance or alteration of *the Works* by or on behalf of the *Purchaser*.

11 Legislative requirements

11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 20(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Purchaser*.

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

11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
 - (i) to *the Works*;
 - (ii) to so much of *WUC* as is identified in *Item 20(b)*;
 - (iii) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
 - (iv) in a fee or charge or payment of a new fee or charge;
- (b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

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

12 Protection of people and property

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

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

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

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

13 Urgent protection

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

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

14 Care of the work and reinstatement of damage

14.1 Care of WUC

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

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

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

14.2 Reinstatement

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

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

14.3 Excepted risks

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

- (a) any negligent act or omission of the *Superintendent*, the *Purchaser* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- (b) any risk specifically excepted elsewhere in the *Contract*;
- (c) use or occupation of any part of *WUC* by the *Purchaser* or its consultants, agents or other contractors (not being employed by the *Contractor*);

- (d) defects in the design of *WUC*, other than design provided by the *Contractor*; and
- (e) in respect of *WUC* (other than the *Equipment* before *delivery*):
 - (i) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority; and
 - (ii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its subcontractors or either's employees or agents.

15 Damage to persons and property other than *WUC*

15.1 Indemnity by Contractor

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

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

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

arising out of or as a consequence of the carrying out of *WUC*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Superintendent*, the *Purchaser* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

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

15.2 Indemnity by Purchaser

The *Purchaser* shall indemnify the *Contractor* in respect of damage referred to in paragraph (d) of subclause 15.1 and claims referred to in paragraph (e) of subclause 15.1.

16 Insurance of Equipment and the Works

16.1 Insurance of Equipment

The *Contractor* shall insure the *Equipment* for its replacement value against loss or damage occurring before *delivery*.

Insurance cover shall be effected by the time stated in *Item* 21. Insurance shall be in the joint names of the parties and cover the parties' respective rights, interests and liabilities.

16.2 Insurance of the Works

The Alternative in *Item 22(a)* applies.

Alternative 1: Contractor to insure

In addition to its obligations to insure the *Equipment* under subclause 16.1 and before commencing *WUC*, the *Contractor* shall insure all other things referred to in subclause 14.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

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

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

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

- (a) *contract sum*;
- (b) provision in *Item 22(b)* to provide for costs of demolition and removal of debris;
- (c) provision in *Item 22(c)* for consultants' fees;
- (d) value in *Item 22(d)* of any things to be supplied by the *Purchaser* for the purposes of *WUC*; and
- (e) additional amount or percentage in *Item 22(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

Insurance shall be in the joint names of the parties, shall cover the parties and all subcontractors whenever engaged in *WUC* for their respective rights, interests and liabilities and, except where the *Contract* otherwise provides, shall be with an insurer and in terms both approved in writing by the *Purchaser* (which approvals shall not be unreasonably withheld).

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

Alternative 2: Purchaser to insure

Before the *date of acceptance of tender*, the *Purchaser* shall insure *WUC* (other than the *Equipment* before *delivery*), in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Purchaser* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

17 Public liability insurance

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

Alternative 1: Contractor to insure

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

The policy shall:

- (a) be in the joint names of the parties;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties,of the parties, the *Superintendent* and subcontractors from time to time, whenever engaged in *WUC*;
- (c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 23(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Purchaser* (which approvals shall not be unreasonably withheld).

Alternative 2: Purchaser to insure

Before the *date of acceptance of tender*, the *Purchaser* shall effect in relation to *WUC*, a *public liability policy* in the terms of the policy included in the tender documents and nominating or stating the insurer. The *Purchaser* shall maintain such insurance while ever the *Contractor* has an interest in *WUC*.

18 Insurance of employees

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

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

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

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

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

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

19.2 Failure to produce proof of insurance

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

19.3 Notices from or to insurer

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

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Superintendent* or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties, the *Superintendent* and the subcontractor; and
- (c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and before cancellation of the policy.

19.4 Notices of potential claims

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

19.5 Settlement of claims

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

- (a) to the extent that reinstatement has been the subject of a payment or allowance by the *Purchaser* to the *Contractor*, if the *Contractor* has not completed such reinstatement, insurance moneys received shall, if requested by either party, be paid into an agreed bank account in the joint names of the parties. As the *Contractor* reinstates the loss or damage, the *Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Purchaser* to the *Contractor*, the *Contractor* shall be entitled immediately to receive from insurance moneys received, the amount of such moneys so paid in relation to any loss suffered by the *Contractor*.

19.6 Cross liability

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

20 Superintendent

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

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

21 Superintendent's Representative

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

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's Representative*;
- (b) delegation shall not prevent the *Superintendent* exercising any function;
- (c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:
 - (i) the appointment, including the *Superintendent's Representative's* name and delegated functions; and
 - (ii) the termination of each appointment; and
- (d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

22 Contractor's representative

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

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

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

23 Contractor's employees and subcontractors

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

24 Site

24.1 Possession

Provided the *Contractor* has complied with subclause 19.1, the *Purchaser* shall before the expiry of the time in *Item 24*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Purchaser* has not given the *Contractor* possession of the whole *site*, the *Purchaser* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Purchaser* in giving possession shall not be a breach of the *Contract*.

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

24.2 Access for Purchaser and others

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

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

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

24.3 Minerals, fossils and relics

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

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the *Superintendent* written notice of the discovery.

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

25 Latent conditions

25.1 Scope

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

- (a) all written information made available by the *Purchaser* to the *Contractor* for the purpose of tendering;
- (b) all information influencing the risk allocation in the *Contractor's* tender and reasonably obtainable by the making of reasonable enquiries; and
- (c) the *site* and its near surrounds.

25.2 Notification

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

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

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

- (b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- (c) other details reasonably required by the *Superintendent*.

25.3 Deemed variation

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

26 Setting out the Works

26.1 Setting out

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

26.2 Errors in setting out

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

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

26.3 Care of survey marks

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

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

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

27 Cleaning up

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

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

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

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the *Contractor* receives written notice from the *Superintendent* that the *Purchaser* intends to have the subject *work* carried out by others,

the *Purchaser* may have that *work* so carried out and the *Superintendent* shall certify the cost incurred as moneys due from the *Contractor* to the *Purchaser*. The rights given by this paragraph are additional to any other rights and remedies.

28 Materials, labour and construction plant

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

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

- (a) supply particulars of the mode and place of manufacture, the source of supply, the performance capacities and other related information; and
- (b) arrange reasonable inspection at such place or sources by the *Superintendent*, the *Purchaser* and persons authorised by the *Purchaser*.

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

29 Quality

29.1 Quality of material and work

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

* 29.2 Quality assurance

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

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* has access to the quality system of the *Contractor* and subcontractors so as to enable monitoring and quality auditing.

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

29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified or a compromise accepted by the *Purchaser*, the *Superintendent* may direct the

* See Preface

Contractor to do any one or more of the following (including times for commencement and completion):

- (a) remove the *work*;
- (b) demolish the *work*;
- (c) reconstruct, replace or correct the *work*; and
- (d) not deliver it.

If:

- (a) the *Contractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 8 days after the *Contractor* receives written notice from the *Superintendent* that the *Purchaser* intends to have the subject *work* rectified by others,

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

29.4 Acceptance of defective work

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

29.5 Timing

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

30 Examination and testing

30.1 Tests

If required by the *Contract*, the *Contractor* shall perform the *tests* stated in *Item 25* at the times stated in *Item 25*. The *Contractor* shall give the *Superintendent* reasonable notice in writing of where the *tests* will be performed. At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

30.2 Covering up

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

30.3 Who conducts

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

30.4 Notice

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

30.5 Delay

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

30.6 Completion and results

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

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

30.7 Costs

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

31 Working hours

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

32 Programming

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

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

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

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

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

The *Contractor* shall not, without reasonable cause, depart from a *program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Contractor's* default, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the *direction*, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

33 Suspension

33.1 Superintendent's suspension

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

- (a) because of an act, default or omission of:
 - (i) the *Superintendent*, the *Purchaser* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or
 - (ii) the *Contractor*, a subcontractor or either's employees or agents;
- (b) for the protection or safety of any person or property; or
- (c) to comply with a court order.

33.2 Contractor's suspension

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

33.3 Recommencement

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

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

33.4 Cost

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety or court order necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less cost than otherwise would have been incurred, the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum*.

34 Time and progress

34.1 Delivery and progress

The *Contractor*, at its expense, shall *deliver* the *Equipment* on the *date for delivery* to the *delivery place*. If so requested, the *Contractor* shall give the *Purchaser* reasonable advance notice of each *delivery*.

The *Contractor* shall promptly unload the *Equipment* at the *delivery place*.

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

34.2 Notice of delay

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

34.3 Claim

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

- (a) the *Contractor* is or will be delayed in *delivering* the *Equipment* or reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Contractor* gives the *Superintendent*, within 28 days of when the *Contractor* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *WUC* (including extent).

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

34.4 Assessment

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

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

- (a) the *Equipment* can nevertheless be *delivered* without an *EOT*;
- (b) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
- (c) the *Contractor* can accelerate,

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

34.5 Extension of time

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

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

34.6 Practical completion

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

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

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

34.7 Liquidated damages

If the *Equipment* is not delivered by the *date for delivery*, the *Superintendent* shall certify, as due and payable to the *Purchaser*, liquidated damages in *Item 27(a)* for every day after the *date for delivery* to and including the earliest of the *date of delivery* or termination of the *Contract* or the *Purchaser* taking *WUC* out of the hands of the *Contractor*.

If *WUC* does not reach *practical completion* by the *date for practical completion*, the *Superintendent* shall certify, as due and payable to the *Purchaser*, liquidated damages in *Item 27(b)* for every day after the *date for practical completion* to and including the earliest of the *date of practical completion* or termination of the *Contract* or the *Purchaser* taking *WUC* out of the hands of the *Contractor*.

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

34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Superintendent* shall certify as due and payable to the *Contractor* the bonus in *Item 28(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Contractor* hereby waives that part of a bonus exceeding the *Item 28(b)* amount.

34.9 Delay damages

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

35 Defects liability

The *defects liability period* stated in *Item 30* shall commence on the *date of practical completion* at 4:00 pm.

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

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

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

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 30*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

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

36 Variations

36.1 Directing variations

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

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

- (a) increase, decrease or omit any part;
- (b) change the character or quality;
- (c) change the levels, lines, positions or dimensions;
- (d) carry out additional *work*;
- (e) demolish or remove material or *work* no longer required by the *Purchaser*.

36.2 Proposed variations

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

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

- (a) effect on the *program* (including the *date for practical completion*); and
- (b) cost (including all time-related costs, if any) of the proposed *variation*.

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

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

36.3 Variations for convenience of Contractor

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

36.4 Pricing

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

- (a) prior agreement;
- (b) applicable rates or prices in the *Contract*;
- (c) rates or prices in a *schedule of rates* or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- (d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

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

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

37 Payment

37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 31*.

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the *Superintendent* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

37.2 Certificates

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

- (a) a *progress certificate* evidencing the *Superintendent's* opinion of the moneys due from the *Purchaser* to the *Contractor* pursuant to the progress claim and reasons for any difference ('*progress certificate*'); and
- (b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Purchaser* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 31*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

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

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

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

37.3 Unfixed plant and materials

The *Purchaser* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 32* and the *Contractor*:

- (a) provides the additional *security* in *Item 14(e)*; and
- (b) satisfies the *Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Purchaser*.

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

37.4 Final payment claim and certificate

Within 28 days after the expiry of the last *defects liability period*, the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period*, the *Superintendent* shall issue to both the *Contractor* and the *Purchaser* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Purchaser* on any account whatsoever in connection with the subject matter of the *Contract*.

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

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

- (a) fraud or dishonesty relating to *WUC* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in *the Works* or any part thereof which was not apparent at the end of the last *defects liability period*, or which would not have been disclosed upon reasonable inspection at the time of the issue of the *final certificate*;
- (c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or an arithmetical error in any computation; and
- (d) unresolved issues the subject of any notice of *dispute* pursuant to clause 42, served before the 7th day after the issue of the *final certificate*.

37.5 Interest

Interest in *Item 33* shall be due and payable after the date of default in payment.

37.6 Other moneys due

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

38 Payment of workers and subcontractors

38.1 Workers and subcontractors

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

- (a) workers of the *Contractor* and of the subcontractors; and
- (b) subcontractors,

in respect of *WUC* the subject of that claim.

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

Documentary evidence, except where the *Contract* otherwise provides, shall be to the *Superintendent's* satisfaction.

38.2 Withholding payment

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

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

38.3 Direct payment

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

- (a) permitted by law;
- (b) given a court order in favour of the worker or subcontractor; or
- (c) requested in writing by the *Contractor*.

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

39 Default or insolvency

39.1 Preservation of other rights

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

39.2 Contractor's default

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

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide *security*;
 - (ii) provide evidence of insurance;
 - (iii) comply with a *direction* of the *Superintendent* pursuant to subclause 29.3; or
 - (iv) use the materials or standards of *work* required by the *Contract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *program* without reasonable cause or the *Superintendent's* approval;
- (d) where there is no *program*, failing to proceed with due expedition and without delay; and
- (e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement.

39.3 Purchaser's notice to show cause

A notice under subclause 39.2 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Contractor* is required to show cause in writing why the *Purchaser* should not exercise a right referred to in subclause 39.4;
- (d) the date and time by which the *Contractor* must show cause (which shall not be less than 7 clear days after the notice is received by the *Contractor*); and
- (e) the place at which cause must be shown.

39.4 Purchaser's rights

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

- (a) take out of the *Contractor's* hands the whole or part of the *work* remaining to be completed and suspend payment until it becomes due and payable pursuant to subclause 39.6; or
- (b) terminate the *Contract*.

39.5 Take out

The *Purchaser* shall complete *work* taken out of the *Contractor's* hands and may:

- (a) use materials, equipment and other things intended for *WUC*; and
- (b) without payment of compensation to the *Contractor*:
 - (i) take possession of, and use, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*; and
 - (ii) contract with such of the *Contractor's* subcontractors and consultants,

as are reasonably required by the *Purchaser* to facilitate completion of *WUC*.

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

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

39.6 Adjustment on completion of work taken out

When *work* taken out of the *Contractor's* hands has been completed, the *Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Contractor* if the *work* had been completed by the *Contractor*.

If the *Contractor* is indebted to the *Purchaser*, the *Purchaser* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Contractor* fails to pay the debt, the *Purchaser* may sell the *construction plant* or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the *Contractor*.

39.7 Purchaser's default

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

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) provide *security*;
 - (ii) produce evidence of insurance;
 - (iii) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 34*; or
 - (iv) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (b) the alleged substantial breach;
- (c) that the *Purchaser* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- (d) the date and time by which the *Purchaser* must show cause (which shall not be less than 7 clear days after the notice is received by the *Purchaser*); and
- (e) the place at which cause must be shown.

39.9 Contractor's rights

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

The *Contractor* shall remove the suspension if the *Purchaser* remedies the breach.

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

- (a) to remedy the breach; or
- (b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the *Superintendent*, who shall certify them as moneys due and payable to the *Contractor*.

39.10 Termination

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

39.11 Insolvency

If:

- (a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or

- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) it enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for its winding up and not stayed within 14 days;
 - (v) a winding up order is made in respect of it;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or
 - (vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

- (A) the *Purchaser*, the *Purchaser* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
- (B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.9.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

40 Termination by frustration

If the *Contract* is frustrated:

- (a) the *Superintendent* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Purchaser* shall pay the *Contractor*:
 - (i) the amount due to the *Contractor* evidenced by all unpaid certificates;
 - (ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Purchaser's* property upon payment; and
 - (iii) the costs reasonably incurred:
 - (A) removing *temporary works* and *construction plant*;
 - (B) returning to their place of engagement the *Contractor*, subcontractors and their respective employees engaged in *WUC* at the date of frustration; and
 - (C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

41 Notification of claims

41.1 Communication of claims

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

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

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

41.2 Liability for failure to communicate

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

41.3 Superintendent's decision

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

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

42 Dispute resolution

42.1 Notice of dispute

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

- (a) a *Superintendent's direction*; or
 - (b) a claim:
 - (i) in tort;
 - (ii) under statute;
 - (iii) for restitution based on unjust enrichment or other quantum meruit; or
 - (iv) for rectification or frustration,
- or like claim available under the law governing the *Contract*,

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

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

42.2 Conference

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

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

42.3 Arbitration

If within a further 14 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in *Item* 35(a). The arbitration shall be conducted in accordance with the rules in *Item* 35(b).

42.4 Summary relief

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

* 43 General limitation of liability

43.1 Limitation of liability

Subject to subclause 43.2, the total liability of each party arising in connection with the subject matter of the *Contract*, including a claim:

- (a) in tort;
- (b) under statute; or
- (c) for rectification or frustration,

or like claim available under the law governing the *Contract*, is limited to the amounts stated in *Item* 36 or 37, as the case may be.

This limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

43.2 Exclusion of limitation of liability

The limitation of liability under subclause 43.1 shall not apply to:

- (a) liability to pay the *contract sum* as adjusted pursuant to the *Contract*;
- (b) liability to account for *security* under clause 5;
- (c) liability for infringement of *intellectual property rights*;
- (d) the extent that liability is otherwise limited by another provision of the *Contract*; and
- (e) liability out of which by law the party liable cannot contract.

Amounts payable in respect of subclauses 43.2 (a) to (e) inclusive shall not be included in the limitation of liability under subclause 43.1.

* See Preface

44 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the provisions of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

ANNEXURE to the Australian Standard
General conditions of contract for the
supply of equipment with installation
AS 4910—2002

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

Item

- | | | |
|---|--|---|
| 1 | <i>Purchaser</i> (clause 1) | ACN.....ABN..... |
| 2 | <i>Purchaser's address</i> | Phone Fax |
| 3 | <i>Contractor</i> (clause 1) | ACN.....ABN..... |
| 4 | <i>Contractor's address</i> | Phone Fax |
| 5 | <i>Superintendent</i> (clause 1) | ACN.....ABN..... |
| 6 | <i>Superintendent's</i> address | |
| 7 | <i>Delivery place</i> (clause 1 and subclause 34.1) | Site/premises Place/section..... |

- † 8 a) *Date for delivery*
(clause 1 and subclause 34.1)
OR
b) *Period of time for delivery*
(clause 1 and subclause 34.1)
- † 9 (a) *Date for practical completion*
(clause 1 and subclause 34.1))
OR
(b) *Period of time for*
practical completion
(clause 1 and subclause 34.1))
- 10 *Governing law*
(clause 1(h)) If nothing stated, that of the jurisdiction where the *site* is located
- 11 (a) *Currency*
(clause 1(g)) If nothing stated, that of the jurisdiction where the *site* is located
(b) *Place for payments*
(clause 1(g)) If nothing stated, the *Purchaser's* address
(c) *Place of business of bank*
(clause 1(d)) If nothing stated, the place nearest to where the *site* is located
- 12 *Quantities in schedule of rates,* Upper Limit
limits of accuracy Lower Limit
(subclause 2.3(b))
- 13 *Provisional sum,* %
percentage for profit and
attendance
(clause 3)
- † 14 *Contractor's security*
(a) *Form*
(clause 5)
(b) *Amount or maximum percentage* \$..... OR.....% of the *contract sum*
of contract sum If nothing stated, 5% of the *contract sum*
(clause 5)

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A.

- (c) If retention moneys, percentage %, until the limit in *Item 14(b)*
of each *progress certificate*
(clause 5 and subclause 37.2) If nothing stated, 10%, until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) within days after the *date of acceptance of tender*
(clause 5) If nothing stated, 28 days
- (e) Additional *security* for unfixed
plant and materials\$.....
(subclauses 5.4 and 37.3)
- (f) *Contractor's security* upon % of amount held
certificate of practical If nothing stated, 50% of amount held
completion is reduced by
(subclause 5.4)
- † 15 *Purchaser's security*
- (a) Form
(clause 5)
- (b) Amount or maximum
percentage of *contract sum* If nothing stated, nil
(clause 5)
- (c) Time for provision within days after *date of acceptance of tender*
(clause 5) If nothing stated, 28 days
- (d) *Purchaser's security* % of amount held
upon *certificate of practical* If nothing stated, 50% of amount held
completion is reduced by
(subclause 5.4)
- 16 *Purchaser-supplied documents*
- | | Document | No. of copies |
|---|----------|---------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
- If nothing stated,
5 copies
- 17 Time for *Superintendent's* days
direction about documents If nothing stated, 14 days
(subclause 8.3)

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A.

- 18 Subcontract *work* requiring approval
 (subclause 9.2)

- 19 Novation
 (subclause 9.4)
- | Subcontractor | Particular part of <i>WUC</i> |
|-------------------------------|-------------------------------|
| | |
| | |
| | |
| <i>Selected subcontractor</i> | Particular part of <i>WUC</i> |
| | |
| | |
| | |
- 20 *Legislative requirements*
- (a) Those excepted
 (subclause 11.1)

- (b) Identified *WUC*
 (subclause 11.2(a)(ii))

- 21 Time for insurance of undelivered
Equipment days after the *date of acceptance of tender*
 (subclause 16.1) If nothing stated, 14 says
- 22 *Insurance of the Works* (other
 than undelivered *Equipment*)
 (subclause 16.2)
- a) Alternative applying
 If nothing stated, Alternative 1 applies
- If Alternative 1 applies
- b) Provision for demolition and
 removal of debris
 \$.....
- OR
- % of the *contract sum*

- c) Provision for consultants' fees
 \$.....
 OR
 % of the *contract sum*
- d) Value of materials or things to
 be supplied by the *Purchaser* \$.....
- e) Additional amount or percentage
 \$.....
 OR
 % of (a) to (d) in subclause 16.2
- 23 Public liability insurance
 (clause 17)
 (a) Alternative applying
 If nothing stated, Alternative 1 applies
 If Alternative 1 applies
 (b) Amount per occurrence shall
 be not less than \$.....
 If nothing stated, then not less than the \$10 000 000
- 24 Time for giving possession of *site*
 (subclause 24.1) If nothing stated, the *date for delivery*
- 25 *Tests*
 (clause 30)
- | | <i>Tests</i> | <i>Times</i> |
|---|--------------|--------------|
| 1 | | |
| 2 | | |
| 3 | | |
- 26 *Qualifying causes of delay,*
causes of delay for which EOTs
will not be granted
 (paragraph (b)(iii) of clause 1 and
 subclauses 34.3)

- † 27 Liquidated damages
(subclause 34.7)
- a) for *delivery*, rate
per day \$.....per day
- (b) for *practical completion*, rate
per day \$.....per day
- † 28 Bonus for early *practical completion*
(subclause 34.8)
- (a) Rate
per day \$.....per day
- (b) Limit
\$.....
- OR
- % of *contract sum*
 If nothing stated, there is no waiver
- † 29 Other *compensable causes*
(paragraph (b) of clause 1)

- 30 *Defects liability period*
(clause 35)
 If nothing stated, 12 months
- 31 Progress claims
(subclause 37.1)
- (a) Times for progress claims day of each month for *WUC*
 done to the day of that month
- OR
- (b) Stages of *WUC* for progress
claims

† If applicable, delete and instead complete equivalent *Item* in the *separable portions* section of the Annexure Part A.

| | | |
|----|--|---|
| 32 | Unfixed plant and materials for which payment claims may be made (subclause 37.3) | |
| 33 | Interest rate on overdue payments (subclause 37.5) | % per annum If nothing stated, 18% per annum |
| 34 | Time for <i>Purchaser</i> to rectify inadequate possession (subclause 39.7(a)(iii)) | days If nothing stated, 14 days |
| 35 | Arbitration (subclause 42.3) | |
| | (a) Person to nominate an arbitrator | If no-one stated, the President of the Institute of Arbitrators & Mediators Australia |
| | (b) Rules for arbitration | If nothing stated: (a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations; OR (b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in <i>Item</i> 35(c) |
| | (c) Appointing Authority under UNCITRAL Arbitration Rules | If no-one stated, the President of the Institute of Arbitrators & Mediators Australia |

- ‡ 36 The *Contractor's* liability is limited as follows (clause 43)

The respective limits apply to the sum of the respective claims and not to each claim.

- | | |
|--|---|
| a) for claims in respect of or arising out of death or personal injury | Unlimited |
| b) for loss of rents, income (other than arising out of death or personal injury) and the opportunity to earn profits, and indirect and consequential loss | \$..... If not amount stated, \$1 |
| c) for all other claims whatsoever | \$..... If no amount stated, the <i>contract sum</i> as adjusted pursuant to the <i>Contract</i> |

- ‡ 37 The *Purchaser's* liability is limited as follows (clause 43) \$.....
If no amount stated, the *contract sum* as adjusted pursuant to the *Contract*

‡ Delete if clause 43 is deleted.

Part A

Separable Portions

Annexure to AS 4910—2002

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

| | |
|--|---|
| <i>Separable portion</i> (clause 1) | No. |
| Description of <i>separable portion</i> (clause 1) | |
| <i>Item</i> | |
| 8 (a) <i>Date for delivery</i> (clause 1 and subclause 34.1) | |
| OR | |
| (b) Period of time for <i>delivery</i> (clause 1 and subclause 34.1) | |
| 9 (a) <i>Date for practical completion</i> (clause 1 and subclause 34.1) | |
| OR | |
| (b) Period of time for <i>practical completion</i> (clause 1 and subclause 34.1) | |
| 14 <i>Contractor's security</i> | |
| (a) Form (clause 5) | |
| (b) Amount or maximum percentage value of this <i>separable portion</i> (clause 5) | \$.....OR% of the value of this <i>separable portion</i> If nothing stated, 5% of value of this <i>separable portion</i> |
| (c) If retention moneys, percentage of each <i>progress certificate</i> applicable to this <i>separable portion</i> (clause 5 and subclause 37.2) |%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i> |
| (d) Time for provision (except for retention moneys) (clause 5) | within days after the <i>date of acceptance of tender</i> If nothing stated, 28 days |
| (e) Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3) | \$..... |

- (f) *Contractor's security* upon % of amount held
certificate of practical completion is reduced by
 (subclause 5.4) If nothing stated, 50% of amount held
- 15 *Purchaser's security*
- (a) Form
 (clause 5)
- (b) Amount or maximum percentage
 of value of this *separable portion* If nothing stated, nil
 (clause 5)
- (c) Time for provision within days after the *date of acceptance of tender*
 (clause 5) If nothing stated, 28 days
- (d) *Purchaser's security* upon % of amount held
certificate of practical completion is reduced by
 (subclause 5.4) If nothing stated, 50% of amount held
- 27 Liquidated damages
 (subclause 34.7)
- (a) for *delivery*, rate
per day \$.....per day
- (b) for *practical completion*, rate
per day \$.....per day
- 28 Bonus for early *practical completion*
 (subclause 34.8)
- (a) Rate
per day \$.....per day
- (b) Limit
\$
- OR
- % of value of this *separable portion*
 If nothing stated, there is no waiver
- 29 Other *compensable causes*
 (paragraph (b) of clause 1)

Annexure to the Australian Standard
General conditions of contract for the
supply of equipment with installation
AS 4910—2002

Part B

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

Approved form of unconditional undertaking

(clause 1 – security)

At the request of
ACN..... ABN(the *Contractor*) and in consideration of
ACN..... ABN(the *Purchaser*) accepting this undertaking
in respect of the *Contract* for
..... (the *Project*)
..... ACN ABN
(‘the *Financial Institution*’) unconditionally undertakes to pay on demand any sum or sums which may from time
to time be demanded by the *Purchaser* to a maximum aggregate sum of
..... (\$)

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

Should the *Financial Institution* be notified in writing, purporting to be signed by
..... for and on behalf of the *Purchaser* that the *Purchaser* 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 *Purchaser* 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
Purchaser 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 *Purchaser* and thereupon the liability of the *Financial Institution* hereunder shall
immediately cease.

Dated at this day of20.....

Part C

The following changes have been made to AS 4910—2002

[illegible]

† INDEX

| Clause | Clause |
|--|--|
| Acceleration..... 32, 34.4(c) | errors in setting out26.2 |
| Acceptance (see Approval) | fees and charges11.2 |
| Acceptance of tender | interest37.5 |
| date of, defined..... 1 | liquidated damages34.7 |
| formal instrument of agreement..... 6 | minerals, fossils and relics24.3 |
| security – time for..... 5.1, <i>Items</i> 14(d) & 15(d) | omitted items..... 2.3 |
| Access (see also possession of Site) | on completion of work taken out of the |
| during defects liability period 35 | hands of the Contractor39.6 |
| for Purchaser and others24.2 | pricing36.4 |
| for testing.....30.1 | protection of people and property12 |
| to quality system.....29.2 | provisional sums..... 3 |
| Accident (see also Insurance, Urgent protection and | quantities2.2 |
| Protection of persons and property) | set-offs by the Purchaser..... 37.2, 37.6 |
| reinstatement of damage14.2 | urgent protection13 |
| to employees 18 | |
| to third parties 15, 17 | Agreement |
| to WUC..... 14, 16 | Contract in absence of formal instrument 6 |
| Actions | formal instrument of 6 |
| arbitration.....42 | interpretation of1, 8.1 |
| indemnification of Contractor 10, 15.2, 17 | rectification when dispute42.1 |
| indemnification of Purchaser 10, 12, 15.1, 17 | Alignments (see Survey mark) |
| Acts, (of Parliament) (see Legislative requirements) | Alternative clauses..... 16.2, 17 |
| Additions and/or deductions | Ambiguity in documents8.1 |
| adjustment generally..... 2 | Appliances (see Construction plant) |
| care of survey marks 26.3 | Approval |
| changes in legislative requirements..... 11.2 | effect of certificates37.2 |
| contract sum definition, excluded in..... 1 | examination and testing.....30 |
| direction on programming 32 | extension of time..... 34.4, 34.5 |
| discrepancies in documents..... 8.1 | of defective material or work29.4 |
| error in setting out..... 26.2 | of documents8.3 |
| generally..... 2.1 | of form of security..... 1 |
| legislative requirements..... 11.2 | of insurance policies..... 16.1, 16.2, 17 |
| minerals, fossils and relics 24.3 | of media releases8.6 |
| order of work32 | of municipal and statutory authorities |
| pricing variations generally 36.4 | (see Legislative requirement) |
| programming 32 | of subcontracting9.2 |
| provisional sums 3 | of variations of convenience36.3 |
| suspension33.4 | to suspension by Contractor.....33.2 |
| Address for service (see also Service)..... 7 | working days 31 |
| change of..... 7 | working hours31 |
| Contractor 7, <i>Item</i> 4 | Approved form of unconditional undertaking |
| Purchaser 7, <i>Item</i> 2 | security1 |
| Superintendent..... 7, <i>Item</i> 6 | form of Annexure Part B |
| Adjustment (for) | Arbitration |
| actual quantities.....2.3 | agreement to arbitrate42.2 |
| bonus 34.8, <i>Item</i> 29 | ambit of.....42.1 |
| cost of suspension.....33.4 | nomination of arbitrator.....42.3, <i>Item</i> 35(a) |
| cost of tests 30.7 | rules of..... 42.3, <i>Item</i> 35(b) |
| defective material and work 29.3 | Assessment (see Superintendent, assessments by) |
| delay damages 34.9 | Assignment |
| directions on order of work32 | of Contract 9.1 |
| errors in documents..... 8.1 | of subcontract 9.2(a) |
| | by subcontractor 9.2(b) |

† References to *Items* are to *Items* in Annexure Part A

| <i>Clause</i> | <i>Clause</i> |
|--|---|
| Asterisk clauses.....8.6, 29.2, 43 | settlement of claims under policy of insurance 19.5 |
| Australasian Dispute Centre <i>Items</i> 35(a), (c) | settlement of disputes42 |
| Authorisation (see Direction) | Superintendent' s decision on 41.3 |
| Awards (see Legislative requirements) | valuation of 37.2, 41.3 |
| Bank guarantee (see Unconditional undertaking) | Clause headings — effect 1(c) |
| Bank — place of business..... 1, <i>Item</i> 11(c) | Cleaning up.....27 |
| Bankruptcy | Commencement of WUC |
| of Contractor39.11 | generally 16.2, 17, 18, 19.1 |
| of Purchaser39.11 | insurance, proof of 19.1 |
| Basis of payment 2.1 | possession of site24.1 |
| Bench mark (see Survey mark) | production of policies before 19.1 |
| Bonus | Communications between parties 1(e) |
| for early practical completion 34.8, <i>Item</i> 29(a) | Compensable cause |
| limit of34.8, <i>Item</i> 29(b) | defined 1 |
| rate of 34.8, <i>Item</i> 29(a) | others listed <i>Item</i> 29 |
| waiver of part of bonus34.8, <i>Item</i> 29(b) | Completion |
| where separable portions 4(c) | by Purchaser on default 39.4, 39.5, 39.6 |
| Breach of Contract | final certificate37.4 |
| claims for41 | practical (see Practical completion) |
| default of the Contractor39.2 | Compliance |
| default of the Purchaser.....39.7 | with legislative requirements 11.1 |
| limitation of liability for43.1 | with Superintendent' s interpretation8.1 |
| liquidated damages 34.7, <i>Item</i> 28(a) & (b) | Compromise |
| preservation of other rights39.1 | in respect to defective work29.3 |
| substantial breaches39.2, 39.7 | Concurrent delay34.4 |
| By-laws (see Legislative requirements) | Conditions, waiver of43 |
| Calendar days 1(a) | Confidential information |
| Care of WUC | agreement as to 8.5 |
| cleaning up.....27 | generally8.5 |
| Contractor' s obligations for.....14.1 | Construction of Contract1, 8.1 |
| excepted risks14.3 | Construction plant |
| generally 14.1 | care of14.1 |
| reinstatement of loss or damage 14.2 | Contractor to supply.....28 |
| urgent protection of.....13 | defined 1 |
| Certificate(s) (see also Direction and Payment) | insurance of 16.2, 17 |
| effect of37.2 | not to be removed 28 |
| final certificate 37.4 | removal of27, 39.6, 40 |
| of cost to complete on default by Contractor.....39.6 | use by Purchaser 39.5, 39.6 |
| of municipal and statutory authorities | WUC includes.....1 |
| (see Legislative requirements) | Construction program |
| practical completion 34.6 | defined 1 |
| progress certificate 37.2 | departure from 32 |
| Certificate of Practical Completion | direction as to 32 |
| defined..... 1 | failing to adhere to 39.2(d) |
| issue of.....34.6 | meaning of32 |
| meaning of34.6 | Consultant fees |
| non-issue of34.6 | in Contract works policy.....16.2, <i>Item</i> 22(c) |
| request for34.6 | Contingency sum (see Provisional sum) |
| Claims (see also Adjustment) | Contract |
| arbitration of42.3 | assignment9.1 |
| compensation to third party 12 | breach of (see Breach of Contract) |
| failure to notify, effect.....41.2 | construction of.....1 |
| for damages.....41.1, 42.1 | defined 1 |
| for extension of time for practical completion34.3 | disputes under42 |
| for final payment37.4 | documents8 |
| for progress payment..... 37.1, <i>Item</i> 31 | evidence of6 |
| indemnity by Contractor..... 10, 15.1 | formal instrument of.....6 |
| indemnity by Purchaser 10, 15.2 | frustration of.....40, 42.1 |
| limitation of liability for43.1 | governing law of 1(h), <i>Item</i> 10 |
| notice of dispute 41.1, 41.3, 42.1 | interpretation of.....1 |
| notice of potential claims on insurance policies19.4 | nature of2 |
| notification of.....41 | |

| | <i>Clause</i> |
|--|--------------------------|
| proper law of | 1(h), <i>Item</i> 10 |
| rectification of | 42.1 |
| subcontracting | 9.2 |
| termination — effect of | 39.10 |
| termination of | |
| by Purchaser | 39.4, 39.11 |
| by Contractor | 39.9, 39.11 |
| work under the (WUC) | 1 |
| Contract documents | 8 |
| ambiguities in | 8.1 |
| construction of | 8.1 |
| discrepancies in | 8.1 |
| inconsistencies in | 8.1 |
| interpretation of | 8.1 |
| Contract sum | |
| defined | 1 |
| insurance of WUC | 16.2(a) |
| Contract works insurance | |
| amount of cover of | 16.2, <i>Item</i> 22 |
| Contractor controlled | 16.2, Alt 1 |
| exclusions in | 16.2 |
| in joint names | 16.2 |
| length of cover | 16.2 |
| policy | 16.2 |
| Purchaser controlled | 16.2 Alt 2 |
| Contractor | |
| appointment of representative | 22 |
| default by | 34.2 |
| defined | 1 |
| named | <i>Item</i> 3 |
| rights of | 34.9, 34.11 |
| security by | 5, <i>Item</i> 14 |
| service on | 7 |
| to insure | 16.1, 16.2 Alt 1, 17, 18 |
| use of site by | 24.1 |
| Contractor-supplied documents | |
| approval of | 8.3(b) |
| availability of | 8.4 |
| checking of | 8.3(a) |
| copies of | 8.3 |
| rejection of | 8.3(c) |
| responsibility for | 8.3 |
| submission of | 8.3 |
| suitability of | 8.3(c) |
| supply of | 8.3 |
| Contractor's all risk insurance (see Contract works insurance) | |
| Contractor's employees | |
| accident or injury | 18 |
| control of | 23 |
| insurance of | 18 |
| payment of | 38 |
| removal of, from site | 23 |
| Contractor's representative | 22 |
| Contractor's responsibility (see also Contractor and Care of WUC) | |
| for employees (see Contractor's employees) | |
| for payment of workers and subcontractors | 38 |
| for selected subcontractors | 9.5 |
| for subcontractors | 9.5 |
| to carry out WUC | 2.1 |
| Contributory negligence | |
| indemnity as to | 15.1 |
| reduction of liability for | 14.2, 15.1 |

| | <i>Clause</i> |
|--|---|
| Copyright (see Intellectual property right) | |
| Corporation (also see Person) | 1(a), 5.6 |
| Corporations Law | 5.6, 38.3 |
| Cost(s) (see also Adjustment) | |
| added to contract sum | 24.3, 26.2, 26.3 |
| completion of work taken out of the hands of the Contractor | 3 |
| complying with legislative requirements | 11.2 |
| examination and testing | 30.7 |
| latent conditions | 25.3 |
| protection of person, etc | 12 |
| provisional sums | 3 |
| reinstatement | 14.2 |
| set-offs by Purchaser | 37.6 |
| setting out | 26.3 |
| urgent protection | 13 |
| variations | 36.4 |
| Covering up of WUC | 30.2 |
| Cross liability clause | 19.6 |
| Currency | 1(g), <i>Item</i> 11(a) |
| Damage (see also care of the Works and Insurance) | |
| prevention of | 12 |
| protection of property, etc | 12 |
| reinstatement of | 14.2 |
| to persons and property other than WUC | 15.1 |
| to WUC | 14.1 |
| urgent protection | 13 |
| Damages (see also Adjustment and Claims) | |
| for delay by Contractor | 34.7, <i>Item</i> 27(a) & (b) |
| for delay due to compensable cause | 34.9 |
| liquidated | 34.7, <i>Item</i> 27(a) & (b) |
| on termination of the Contract | 39.10 |
| Date | |
| for delivery | 1, <i>Item</i> 8, 32, 34.1 |
| for practical completion | 1, <i>Item</i> 9, 34.7, 34.8 |
| of acceptance of tender | 1 |
| of delivery | 1, 34.7 |
| of practical completion | 1, 34.6, 34.7, 34.8 |
| Date of acceptance of tender | |
| defined | 1 |
| Date of delivery | |
| defined | 1 |
| Date for delivery | |
| defined | 1 |
| generally | 34.1, <i>Item</i> 8 |
| liquidated damages | 34.7, <i>Item</i> 27(a) & (b) |
| period of time | 1 |
| separable portion | 4 |
| Date for practical completion | |
| defined | 1, <i>Item</i> 9 |
| effect of proposed variation on | 36.2(a) |
| period of time for | 1, <i>Item</i> 9(b) |
| Date of practical completion | |
| defined | 1 |
| Days | |
| mean calendar days | 1(a) |
| working | 31 |
| Daywork (see Pricing) | |
| Debt due to the Purchaser | 12, 13, 19.2, 27, 29.3, 34.7, 35, 37.6, 39.6 |

| <i>Clause</i> | <i>Clause</i> |
|---|---|
| Decision (see also Direction) | |
| Deed of guarantee, undertaking and substitution | |
| defined..... 1 | includes material 29.3 |
| provision of..... 5.6 | quality assurance 29.2 |
| requirement for 5.6 | reimbursement of 29.3 |
| Deed of novation..... 9.4 | removal of 29.3 |
| Deemed variation | replacement of 29.3 |
| as to acceptance of defective work 29.4 | time of notice of 29.5 |
| for latent condition..... 25.3 | |
| omission in schedule of rates 2.3 | Defects |
| reinstatement of damage 14.2 | costs of rectification 29.3, 35 |
| Default by Purchaser | defined 1 |
| Contractor' s rights on 39.9 | direction to rectify 35 |
| Contractor' s show cause notice 39.8 | examination and testing for 30 |
| generally 39.7 | in design - excepted risk 14.3(f) |
| in making due payment 39.7(a) | length of liability period 35, <i>Item</i> 31 |
| in providing evidence of insurance 39.7(a) | material and work 29.3, 29.4, 35 |
| in providing security 39.7(a) | minor, practical completion 1 |
| in rectifying inadequate possession 39.7(a), <i>Item</i> 34 | remedying 29.3, 35 |
| in Superintendent not issuing | removal and replacement 29.3 |
| certificate of practical completion 39.7(b) | times for rectification 35 |
| on termination 39.10 | work 29.3, 29.4, 35 |
| rights of the Contractor 39.7, 39.8, 39.9 | Defects liability period |
| where to show cause on 39.7, 39.8 | defined 1 |
| Default by the Contractor..... 39.2, 39.3 | duration of 35, <i>Item</i> 31 |
| adjustment of costs on 39.6 | generally 35, <i>Item</i> 31 |
| assessment of cost to complete on 39.6 | Definitions (generally) 1 |
| failing to comply with a direction of the | dispute 42.1 |
| Superintendent 39.2(a) | Delay |
| failing to proceed with due expedition | concurrent 34.4 |
| and without delay 39.2(d) | construction program 32, 39.2(c) |
| failing to provide evidence of insurance 39.2(a) | damages 4(c), 34.9 |
| failing to use materials or standards of | further delay 34.3 |
| workmanship 39.2(a) | in giving possession 24.1 |
| in providing documentary evidence 39.2(e) | notice of 34.2 |
| in providing security 39.2(a) | rate of progress 34.1 |
| may use plant and materials on 39.5 | Delay damages |
| on termination 39.10 | certified by Superintendent 34.9 |
| possession of plant and materials 39.5 | claim for 34.9 |
| procedure on 39.2, 39.3, 39.4, 39.5, 39.6 | due and payable 34.9 |
| records of cost to complete 39.5 | for compensable cause 34.9 |
| retention of plant and materials 39.6 | other compensable causes 1, 34.9, <i>Item</i> 30 |
| show cause notice to 39.3 | where separable portions 4(c) |
| substantial breach by 39.2 | Deletion of clauses, etc. — effect 1(i) |
| substantial departure from construction | Deletions, amendments and |
| program 39.2(c) | additions (generally) Annexure Part B |
| suspension of payment on 39.4 | Delivery |
| when the Purchaser takes work | date for 1, <i>Item</i> 8 |
| out of hands of Contractor 39.5, 39.6 | date for, defined 1 |
| Default of subcontractor 9.5 | date of 34.1 |
| Default or insolvency | date of, defined 1 |
| by Contractor 39.2, 39.11 | defined 1 |
| by Purchaser 39.7, 39.11 | delay 34.2 |
| generally 39 | insurance of Equipment prior to 16.1 |
| preservation of other rights 39.1 | EOT for 34.5 |
| substantial breaches 39.2, 39.7 | EOT for delivery of Equipment 34.3, 34.4 |
| show cause notices 39.3, 39.8 | liquidated damages 34.7, <i>Item</i> 27(a) |
| Defective work | loss or damage before 16.1 |
| acceptance of 29.4 | place 34.1, <i>Item</i> 7 |
| compromise in respect of 29.3 | programming 32 |
| correction of 29.3 | release of security <i>Item</i> 14(e) |
| cost of rectification 29.3 | Demand (see also Direction) |
| delivery of 29.3 | Demolition and removal of debris |
| demolition of 29.3 | in Contract works policy 16(b), <i>Item</i> 21(b) |
| examination and testing 30 | Deposit (see Security) |
| generally 29.3 | Determination (see also Direction) |
| | defined in direction 1 |

| <i>Clause</i> | <i>Clause</i> |
|---|--|
| disputes42 | responsibility for9.5 |
| interpretation of discrepancy 8.1 | English language 1(e) |
| pricing of variation 36.4 | EOT (extension of time) |
| value of work37.2 | application for34.3 |
| Determination of Contract (see Termination of Contract) | assessment of 34.4, 34.5 |
| Dimensions | claim for 34.3 |
| figured 8.1 | deemed assessment34.5 |
| scaled 8.1 | defined 1 |
| Direct payment to subcontractor38.3 | exclusions 1, 34.3, <i>Item</i> 26 |
| Direction | grant of34.5 |
| construction program 32 | in event of further delay34.3 |
| covering up of work30.2 | partial grant of34.5 |
| defective materials or work29.3, 29.4 | qualifying cause of delay 1, 34.3 |
| defined 1 | refusal of34.5 |
| dissatisfaction with 42.1(a) | time for applying for34.3 |
| examination and testing 30 | Superintendent may direct34.5 |
| oral, to be confirmed in writing 20 | Equipment |
| order of work32 | date for1, 34.1, <i>Item</i> 8 |
| notice of tests30.4 | date of delivery 1 |
| relating to Contractor's employees 23 | defined 1 |
| relating to subcontractors23 | excepted risk14.3 |
| suspension of WUC33.1 | included in WUC1 |
| written 20 | insurance of16.1 |
| Discrepancies | place for delivery 34.1, <i>Item</i> 7 |
| Contract documents 8.1 | reduction in security5.4 |
| dimensions 8.1 | unloading 34.1 |
| Dispute (see Dispute resolution) | Equipment to be provided by Contractor |
| Dispute resolution | (see Construction plant)28 |
| after final certificate37.4(d) | Errors |
| ambit of42.1 | Contract documents8.1 |
| arbitration42.3 | in schedule of rates2.3 |
| conference42.2 | setting out 26.2 |
| continue performance of Contract42.1 | Escrow |
| dispute defined 1, 42.1 | security transferred in 5.1 |
| includes difference42.1 | Examination and testing30 |
| meaning of dispute 1, 42.1 | Excepted risk |
| notice of dispute42.1 | defined 1 |
| summary relief42.4 | meaning14.3 |
| Documents | Explanation (see also Direction) |
| ambiguities in 8.1 | Extension of time (see EOT) |
| approval of the Superintendent 8.3 | Failure of Contractor (see also Delay and Default of |
| availability of8.4 | Contractor) |
| confidential information8.5 | to arrange urgent protection13 |
| construction of8.1 | to lodge security 5.1, 39.2(a) |
| Contractor-supplied8.3 | to make claims41.1 |
| discrepancies in 8.1 | to produce proof of insurance 19.2, 39.2(a) |
| evidencing Contract6 | to show cause39.3 |
| generally 8 | Failure of Purchaser (see also Default of Purchaser) |
| inconsistencies in 8.1 | rights of the Contractor on 39.9 |
| interpretation of8.1 | to give possession of Site 24.1, 39.7(a) |
| property in 8.2, 8.3 | to insure 19.2, 39.2(a) |
| Purchaser-supplied 8.2 | to make payment 37.5, 39.7(a) |
| results of tests30.6 | Faulty work (see Defective material or work) |
| service of 7 | Fees and charges (see Legislative requirements) |
| Due (see Moneys due) | Figured dimensions 8.1 |
| Due and owing (see Moneys due and owing) | Final certificate |
| Due and payable (see Moneys due and payable) | accord and satisfaction 37.4 |
| Emergency work13 | defined 1 |
| Employees | effect of 37.4 |
| control of23 | final payment claim for 37.4 |
| insurance of17(c), 18 | generally 37.4 |
| of Contractor (see Contractor's employees) | |
| of subcontractor23 | |

| <i>Clause</i> | <i>Clause</i> |
|---|--|
| meaning 37.4 | results of tests 30.6 |
| release of security 5.4 | to media 8.6 |
| Final payment (see also Final certificate) | working hours 31 |
| defined 1 | Injury to persons 12 |
| meaning 37.4 | indemnity by Contractor 15.1 |
| Final payment claim | insurance 17, 18 |
| defined 1 | measures to prevent 12 |
| endorsement of 37.4 | Insolvency |
| includes all claims 37.4 | bankruptcy 39.11(c) |
| meaning 1, 37.4 | Contractor rights on 39.11(B) |
| time for 37.4 | deed of arrangement 39.11(d) |
| Financial institution | generally 39.11 |
| form of unconditional | meeting of creditors 39.11(d) |
| undertaking by Annexure Part B | mortgagee in possession 39.11(e) |
| security provided by 1 | Purchaser's rights on 39.11(A) |
| Finding of minerals, fossils and relics 24.3 | voluntary winding up 39.11(d) |
| Float 34.4(a) & (b) | when corporation 39.11(d) |
| Formal instrument of agreement | when exercisable 39.11 |
| execution of 6 | when individual 39.11(c) |
| generally 6 | Inspection |
| stamping of 6 | access for testing 30.1 |
| Form of unconditional | access to Purchaser and others 24.2 |
| undertaking Annexure Part B | insurance policies 19.1 |
| Fossils 24.3 | testing 30.1 |
| Fundamental breach | Institute of Arbitrators & Mediators, Australia |
| limitation of liability for 43.1 | rules of <i>Item</i> 35(b) |
| breach of term 43.1 | Instruction (see also Direction) |
| Frustration | Insurance |
| generally 40 | cross-liability 19.6 |
| limitation of liability 43.1 | failure to provide proof of 19.2, 39.2(a), 39.7(a) |
| notice of dispute when 42.1(b) | inspection of policies 19.1 |
| payment on 40 | notice of potential claims 19.4 |
| release and return of security 40 | notices to and from insurer 19.3 |
| termination by 40 | of employees 18 |
| Gender includes every gender 1(d) | of Equipment before delivery 16.1, <i>Item</i> 21 |
| Goods | of Works 16.2, <i>Item</i> 22 |
| part of Equipment, defined 1 | proof of insurance 19.1 |
| Governing law 1, <i>Item</i> 10 | provisions of policies 19.3 |
| Guarantee, etc. deed of 5.6 | public liability 17 |
| Headings of clauses 1(c) | settlement of claims 19.5 |
| Hours of work 31 | workers' compensation 18 |
| Incompetence of employees, etc 23 | Intellectual property rights |
| Indemnity | Contractor's warranty as to 10 |
| by Contractor 15.1 | defined 1 |
| by Purchaser 15.2 | indemnity as to 10 |
| care of work 14 | Purchaser's warranty as to 10 |
| damage to persons and property 15 | Interpretation of Contract documents 1, 8.1 |
| infringement of intellectual property rights 10 | Interest |
| Information to be supplied | on security 5.5 |
| advance notice 32 | overdue payments 37.5, <i>Item</i> 33 |
| by Purchaser 32 | rate of 37.5, <i>Item</i> 33 |
| confidential information 8.5 | Issue of |
| Contract documents 8 | certificate of practical completion 34.6 |
| examination of information made available | final certificate 37.4 |
| for tendering 25.1(a) | payment certificate 37.2 |
| examination of information relevant to | <i>Item</i> |
| risks, contingencies, etc. 25.1(b) | defined 1 |
| for setting out the Works 26.1 | Labour |
| latent conditions 25 | provision by Contractor 28 |
| particulars of materials and plant 28(a) | Language of Contract 1(e) |
| | Latent conditions |
| | costs of 25.3 |
| | deemed variation on 25.3 |

| <i>Clause</i> | <i>Clause</i> |
|---|---|
| defined 1, 25.1 | possession on default 39.5 |
| meaning 1, 25.1 | provision of by Contractor 28 |
| notification of 25.2 | quality of 29.1 |
| scope of 25.1 | supply of 28 |
| Law | testing of 30 |
| compliance with legislative requirements 11.1 | unfixed 37.3 |
| Corporations 5.6, 38.3 | upon frustration of Contract 40 |
| giving of notices 11.1 | use of new materials 29.1 |
| governing the Contract 1(h), <i>Item</i> 10 | Measurement |
| Legislative requirements | generally 37.2 |
| changes in 11.2 | of quantities 1(f) |
| changes to WUC 11.2(a) | Media releases 8.6 |
| changes to the Works 11.2(a) | Minor defects |
| compliance with 11.1 | practical completion, in definition of 1 |
| cost of 11.2(c) | remedying 29.3, 35 |
| defined 1 | Misconduct of employee 23 |
| excepted 11.1, <i>Item</i> 20(a) | Monetary sum (see Provisional sum) |
| fees and charges 1, 11.2(a) | Moneys due |
| identified WUC 11.2, <i>Item</i> 20(b) | cleaning up costs 27 |
| payment to subcontractor under 38.3 | cost of proposed variation 36.2 |
| payment to worker under 38.3 | cost of protection 12 |
| provision of services 11.2(a) | cost of remedying defective work 29.4 |
| satisfaction of 11.1, <i>Item</i> 20(a) | cost of urgent protection 13 |
| time of effect of 11.2(b) | moneys certified due to Purchaser 37.2(b) |
| variance in 11.1 | on frustration 40(b) |
| Level mark (see Survey mark) | other moneys due 37.6 |
| Liability of the Contractor | progress certificate 37.2(a) |
| for care of WUC 14 | progress claim 37.1 |
| for compliance with legislative requirements 11 | Moneys due and owing |
| for selected subcontractors 9.5 | to Purchaser otherwise 37.6 |
| for subcontractors 9.5 | Moneys due and payable |
| Licences (see Legislative requirements) | bonus 34.8 |
| Limitation of liability | claims generally 41.3 |
| generally 43, <i>Items</i> 36, 37 | cost of defect rectification 35 |
| exclusions 43.2 | costs of suspension on breach 39.9 |
| Limits of accuracy 2.3(b), <i>Item</i> 12 | delay damages 34.9 |
| Liquidated damages | final certificate 37.4 |
| certifying of 34.7 | interest 37.5 |
| rate of 34.7, <i>Item</i> 27(a) & (b) | liquidated damages 34.7 |
| repayment of 34.7 | on work taken out of the hands of Contractor 39.6 |
| separable portions 4(d) | substantial breach 39.7(a) |
| Litigation 42.4 | to workers and subcontractors 38.2 |
| Local authorities 11 | unpaid insurance premium 19.2 |
| Loss or damage to WUC | Nature of Contract 2 |
| care of WUC 14.1 | Negligence of employee 23 |
| excepted risks 14.3 | Nominated subcontractor |
| generally 14 | (see Novation) 9.3, 9.4 |
| protection 12, 13 | Notice (see also Direction, Notice of dispute) |
| reinstatement 14.2 | for testing 30.4 |
| urgent protection 13 | for urgent protection 13 |
| Loss of profits | from or to insurer 19.3 |
| limitation of liability for <i>Item</i> 37(b) | of availability of site 27.1 |
| Lump sum 2.1 | of claim for EOT 34.3 |
| Making good (see also Reinstatement) 14.2, 29.3, 35 | of claims generally 41 |
| Materials (see also Work) | of default by the Contractor 39.3 |
| acceptance of defective 29.4 | of default by the Purchaser 39.8 |
| defective 29.3, 29.4 | of delay 34.2 |
| examination and testing of 30 | of discovery of minerals, fossils or relics 24.3 |
| failure to use proper materials 39.2(a) | of dispute 42.1 |
| manufacture and supply of 28 | of errors in setting out 26.2 |
| not to remove from site 28 | of latent conditions 25.1 |
| particulars of 28 | of names of persons entitled to access 24.2 |
| | of potential insurance claims 19.4 |
| | of working hours 31 |

| <i>Clause</i> | <i>Clause</i> |
|---|--|
| oral or written.....20 | of balance after set off.....37.2 |
| prescribed.....41.1 | of security and retention moneys.....5.1 |
| service of.....7 | of workers and subcontractors.....38 |
| to statutory authorities.....11.1 | on completion by Purchaser.....39.6 |
| to suspend work.....33.1 | on final certificate.....37.4 |
| Notice of dispute | on payment certificate.....37.2 |
| arbitration.....42.3 | on practical completion.....37.2 |
| concerning claims.....41.1, 41.3 | payment on account.....37.2 |
| conference following.....42.2 | place for.....1(g), <i>Item</i> 11(b) |
| generally.....42 | provisional sums.....3 |
| how served.....42.1 | retention moneys.....5.1, 37.2, <i>Item</i> 14(c) |
| includes difference.....42.1 | set-offs by Purchaser.....37.2, 37.6 |
| when final certificate.....37.4(d) | suspension of by Purchaser.....39.4 |
| Notification of claims (see also Claims) | to subcontractors.....38 |
| failure to supply.....41.2 | to workers.....38 |
| generally.....41 | urgent protection.....13 |
| notice of dispute concerning.....41.1, 41.3 | within 7 days of certificate.....37.2 |
| prescribed notice.....41.1 | within 21 days of claim.....37.2 |
| Superintendent's decision on.....41.3 | withholding by Purchaser.....38.2 |
| Novation | Payment to workers and subcontractors |
| deed of.....9.4 | direct payment to.....38.3 |
| selected subcontractor.....9.4, <i>Item</i> 19 | documentary of.....38.1 |
| subcontractor.....9.4, <i>Item</i> 19 | Purchaser may withhold payment.....38.2 |
| Omissions (see also Defects and Minor defects) | where required by law.....38.3 |
| at final certificate.....37.4(b) | withholding of payment.....38.2 |
| schedule of rates.....2.2, 2.3 | Performance and payment.....2.1 |
| Opening up for examination and testing.....30.1 | Permission (see also Direction) |
| Oral direction.....20 | Permits (see Legislative requirements) |
| Order (see also Direction) | Person, meaning.....1(a) |
| Order of work.....32 | Persons |
| Orders (see Legislative requirements) | death of.....15.1 |
| Ordinances (see Legislative requirements) | indemnity by Purchaser.....15.1 |
| Ordinary working days.....31 | injury to.....15.1 |
| Ordinary working hours.....31 | insurance of.....17, 18 |
| Other moneys due.....37.6 | protection of.....12 |
| Ownership of documents | suspension to protect.....33.1 |
| supplied by Contractor.....8.3 | unavoidable damage to.....15(d) |
| supplied by Purchaser.....8.2 | Place for payment.....1(g), <i>Item</i> 11(b) |
| Patent, (see Intellectual property right) | Place of business of bank.....1, <i>Item</i> 11(c) |
| Payment(s) (see also Adjustments) | Plant (see Construction plant).....1, 28, 39.5, 39.6 |
| adjustment for actual quantities.....2.3 | Plant and materials |
| adjustment for fees to statutory authorities.....11.2 | security for.....5.4, 37.3, <i>Item</i> 14(e) |
| and performance.....2.1 | unfixed.....37.3, <i>Item</i> 32 |
| basis of.....2.1 | Possession of site (see also Access).....24.1 |
| bonus.....34.8 | Practical completion |
| calculated by rates.....2.1 | certificate of.....34.6 |
| calculation of.....37.2 | date for.....1, 34.1, 34.3, 34.6, 34.7 |
| certificates.....37.2 | date of.....1, 34.7 |
| claims for.....37.1 | defined.....1 |
| currency of.....1(g), <i>Item</i> 11(a) | early practical completion.....34.8 |
| deductions.....37.2 | extension of time for.....34.3 |
| default by Purchaser.....39.7(a) | request for certificate of.....34.6 |
| delay damages.....34.9 | separable portions.....4 |
| during arbitration.....42.1 | Prescribed notice |
| for defective materials and work.....29.3, 35 | defined.....1 |
| for progress certificates.....37.2 | meaning.....1, 41.1 |
| for unfixed plant and materials.....37.3 | Pricing |
| insurance premiums, proof of.....19.2 | variations.....36.4 |
| interest on overdue.....37.5 | Prime cost item (see Provisional sum) |
| liquidated damages.....34.7 | Proclamation (see Legislative requirements) |
| not evidence of satisfactory WUC.....37.2 | |

| <i>Clause</i> | <i>Clause</i> |
|--|--|
| Profit and overheads/attendance in pricing variations.....36.4 on provisional sums 3 | excludes those in..... <i>Item</i> 26 EOT for 34.3 further delay due to 34.3 |
| Programming (see Construction program) | Quality29 |
| Progress certificate deemed37.2 defined..... 1 issue of.....37.2 meaning 1, 37.2 not evidence WUC is satisfactory37.2 on account only37.2 | Quality assurance.....29.2 |
| Progress claims generally..... 37.1 time for 37.1, <i>Item</i> 31 | Quality of materials and work defective materials and work29.3 examination and testing of 30 generally 29.1 |
| Progress, failure to maintain..... 39.2(c), 39.2(d) | Quality system..... 29.2 |
| Prompt payment discount 3(b) | Quantities, errors in2.3 |
| Proper law of Contract..... 1(h), <i>Item</i> 10 | Rates (see also Schedule of rates) adjustment of.....2.3 limits of accuracy..... 2.3(b), <i>Item</i> 12 payment of2.1 provisional sums..... 3 valuation of variations 36.4(c) |
| Property damage to..... 12 indemnity as to 15 insurance of..... 17 loss of15.1 protection of..... 12 unavoidable damage to15.1(d) | Receiver.....39.11 |
| Protected right (see Intellectual property right) | Rectification defects 29.3 during defects liability period35 dispute includes.....42.1 limitation of liability.....43.1 |
| Protection of persons and property..... 12 of WUC14 suspension due to.....33.1 urgent, by Purchaser..... 13 | Reference mark (see also Survey marks) defined 1 survey mark, included in..... 1, 26.1 |
| Provisional sum.....3 defined..... 1 included in contract sum 1 included in schedule of rates. 1 meaning 1, 3 percentage for profit and attendance.....3, <i>Item</i> 13 | Registered post service by 39.2, 39.7, 42.1 |
| Public authorities 5.5, 11 | Registered design (see Intellectual property right) |
| Public liability policy Alternative applying <i>Item</i> 23(a) amount of 17, <i>Item</i> 23(b) defined..... 1 meaning 1, 17 | Regulations (see Legislative requirements) |
| Purchaser address of..... <i>Item</i> 2 certificate to 37.2 default of39.7 defined..... 1 dispute with Contractor..... 42.1 named <i>Item</i> 1 rights of 39.2, 39.3, 39.4, 39.5 security by5, <i>Item</i> 15 set off by 37.6 | Reinstatement of damage excepted risks14.3 generally 14.2 |
| Purchaser-supplied documents availability of8.4 copies of 8.2, <i>Item</i> 16 copying of.....8.2 details of.....8.2 number of.....8.2 property in.....8.2 supply of 8.2, <i>Item</i> 16 | Rejection (see also Direction) |
| Qualifying cause of delay defined..... 1 | Rejection of materials or work29.3 |
| | Relation-back day concerning direct payment to workers and subcontractors38.3 |
| | Release of security.....5.4 |
| | Remedial work generally 29.3, 35 included in definition of WUC1 |
| | Removal of construction plant.....28 materials28 |
| | Removal of Contractor's employees, and subcontractors23 |
| | Rents limitation of liability for <i>Item</i> 37(b) |
| | Repairs, urgent (see Urgent protection)13 |
| | Replacement (see Reinstatement) |
| | Replacement of defective materials or work 29.3 |
| | Representative of Contractor.....22 Superintendent21 |

| | <i>Clause</i> |
|---|---------------------------|
| Repudiation of Contract | |
| parties rights on | 39.1, 39.10 |
| limitation of liability for | 43.1 |
| Request (see also Direction) | |
| Requirement (see also Direction) | |
| Requirements of legislation | 11.1 |
| Rescission | |
| limitation of liability for | 43.1 |
| Responsibility | |
| of Contractor for subcontractors | 9.5 |
| for performance | 2.1 |
| Retention moneys (see Security) | |
| Risks | |
| excepted..... | 1, 14.3 |
| Royalties (see Intellectual property rights) | |
| Schedule of prices | |
| included in definition of schedule of rates | 1 |
| valuation of variations by | 36.4(c) |
| Schedule of rates | |
| defined..... | 1 |
| generally | 2.2, 2.3 |
| limits of accuracy of | 2.3(b), <i>Item</i> 12 |
| omitted items in..... | 2.3 |
| payment by | 2.1 |
| quantities in..... | 2.2 |
| valuation of variations..... | 36.4(c) |
| Security (includes Retention moneys) | |
| change of..... | 5.3 |
| Contractor' s | <i>Item</i> 14 |
| defined..... | 1 |
| form of..... | 5.1 |
| generally..... | 5 |
| include retention moneys..... | 1 |
| interest earned on | 5.5 |
| Purchaser' s..... | <i>Item</i> 15 |
| provision of..... | 5.1, <i>Items</i> 14 & 15 |
| purpose of | 5.1 |
| recourse to | 5.2 |
| reduction of..... | 5.4, <i>Items</i> 14 & 15 |
| release of | 5.4 |
| return of..... | 5.4 |
| substitution of..... | 5.3 |
| time of lodgement of..... | 5.1, <i>Items</i> 14 & 15 |
| trust..... | 5.5 |
| unfixed plant and materials..... | 5.4 |
| upon frustration of the Contract | 40(c) |
| Selected subcontract work | |
| defined..... | 1 |
| meaning | 9.3 |
| Selected subcontractor | |
| defined..... | 1 |
| meaning | 1, 9.3 |
| Separable portion(s) | 4, Annexure Part A |
| date for practical completion | 4(b) |
| defects liability | 35 |
| defined..... | 1 |
| directed by Superintendent | 4 |
| liquidated damages | 4(c) |
| security in | 4(c) |
| Service | |
| by registered post | 39.2, 39.7, 42.1 |
| by fax | 7(b)(ii) |

| | <i>Clause</i> |
|---|--------------------------|
| by hand | 39.2, 39.7, 42.1 |
| by post | 7(b)(iii) |
| by the Contractor on the Purchaser | 39.7, 39.11 |
| by the Purchaser on the Contractor | 39.2, 39.11 |
| from or to the insurer | 19.3 |
| notification of latent conditions..... | 25.1 |
| of appointment of Superintendent..... | 1 |
| of appointment of Superintendent' s | 21 |
| Representative | 41.1 |
| of claims to the Superintendent | 24.3 |
| of finding of minerals, fossils and relics..... | 42.1 |
| of notice of dispute | 7 |
| of notice(s) (see also Notices) | 19.4 |
| of potential (insurance) claims | 39.4 |
| of taking the work out of the hands | 39.4, 39.9 |
| of Contractor | 7 |
| of terminating the Contract | 37.2, 37.6 |
| personal service..... | 37.2 |
| Set-off | |
| by Purchaser | 37.6 |
| election by Purchaser | 37.6 |
| generally | 37.6 |
| Setting out the Works | |
| care of | 26.3 |
| disturbance to..... | 26.3 |
| errors in..... | 26.2 |
| generally | 26 |
| survey marks for | 26.1 |
| Settlement | |
| arbitration..... | 42.3 |
| notice of dispute | 42.1 |
| of disputes | 42.1 |
| Signal (see Survey mark) | |
| Site | |
| access to by Purchaser, etc..... | 24.2 |
| access to by Superintendent | 24.2 |
| cleaning up..... | 27 |
| commencement of work on | 24.1 |
| defined | 1 |
| delay in making available | 24.1 |
| generally | 24 |
| latent conditions on | 25 |
| materials, delivery to | 24.1 |
| minerals, fossils, relics, etc. on | 24.3 |
| possession of | 24.1 |
| substantial breach in giving | 39.7(a), <i>Item</i> 34 |
| possession of | 34 |
| Statutory requirements (see Legislative requirements) | |
| Subclause headings — effect | 1(c) |
| Subcontract work | |
| generally | 9 |
| requiring approval | 9.2, <i>Item</i> 18 |
| Subcontractor | |
| approval of | 9.2 |
| Contractor' s responsibility for | 9.5 |
| novation of | 9.4, <i>Item</i> 19 |
| removal of..... | 22 |
| selected | 9.3, 9.4, <i>Item</i> 19 |
| terms of approval | 9.2 |
| when Contract frustrated..... | 40(b) |
| Subcontractors' employees (see also Employees) | 23 |
| control of..... | 23 |
| insurance of..... | 18 |
| responsibility for..... | 9.5 |
| Substantial breach..... | 39.2, 39.7 |

| <i>Clause</i> | <i>Clause</i> |
|---|--|
| Superintendent (see also Directions) | procedure if delayed 30.5 |
| address of..... <i>Item</i> 6 | results of 30.6 |
| appointment of 20 | Superintendent may direct 30.1, <i>Item</i> |
| appointment of Superintendent's | who conducts..... 30.3 |
| representative..... 21 | Tests (see definition of Practical completion) |
| assessments by 3, 8.1, 11.2, 14.2, 24.3, 26.2, | Third party insurance |
| 26.3, 32, 33.4, 34.5, 39.6, 39.9, 41.3 | (see Public liability insurance) 17 |
| certifications by 12, 13, 19.2, 19.5, 27, 29.3, 34.7, | Time (see also EOT) |
| 34.8, 34.9, 35, 36.2, 37.2, 37.4, | acceleration of work 32, 34.4(c) |
| 39.6, 39.9, 40(a), 41.3 | construction program 32 |
| defined 1 | Contractor's float 34.4(a) & (b) |
| directions of 20 | defects liability period 35, <i>Item</i> 30 |
| generally 20 | delay damages..... 34.9 |
| includes Superintendent's representative 1 | for approval of Contractor's |
| named <i>Item</i> 5 | drawings 8.3(c), <i>Item</i> 17 |
| notice to in relation to dispute 42.1 | for arbitration 42.2 |
| obligations of 20 | for carrying of work 32 |
| pricing by 3, 14.2, 25.3, 36.4 | for claiming extensions of time 34.3 |
| to confirm oral directions 20 | for cleaning up 27 |
| valuations by 4 | for completing WUC 34.1 |
| Superintendent's representative 1 | for delivery 34.1, <i>Item</i> 8 |
| appointment of 21 | for doing any act 1(b) |
| defined 1 | for effecting insurance 16, 17, 18 |
| functions of 21 | for executing formal instrument of agreement 6 |
| notice of appointment of 21(c) | for final payment 37.4 |
| objection to appointment of 21(d) | for granting an extension of time 34.5 |
| termination of appointment of 21(c) | for lodging security 5.1, <i>Items</i> 14 & 15 |
| Survey mark | for making claims 41 |
| care of 26.3 | for notice of latent condition 25.2 |
| defined 1 | for notice of tests 30.4 |
| supply of 26.1 | for notice to show cause 39.3, 39.8 |
| Survey peg (see Survey mark) | for notification of claims 41 |
| Suspension | for possession of Site 24.1, <i>Item</i> 24 |
| by the Contractor 33.2, 39.9 | for practical completion 34.1, <i>Item</i> 9 |
| by the Superintendent 33.1 | for progress claims 37.1, <i>Item</i> 31 |
| cost of 33.4, 39.9 | for progress payments 37.2 |
| due to acts, etc. of Contractor 33.1(a) | for release of security or retention 5.4 |
| due to acts, etc. of Purchaser 33.1(a) | for service of notices 7 |
| effect of 33.4 | for Superintendent to confirm oral direction 20 |
| end of 33.3 | for Superintendent's direction |
| generally 33 | about documents 8.3, <i>Item</i> 17 |
| to comply with court order 33.1(c) | for supply of construction program 32 |
| Suspension of payment by Purchaser 38.2, 39.4 | for testing 30.1 |
| Taking over of work by Purchaser 39.5 | for urgent protection 13 |
| Temporary works | suspension of work 33.1 |
| care of 14.1 | variations after practical completion 40.1 |
| defined 1 | Tort |
| insurance of 16 | limitation of liability 43.1 |
| removal of 27 | included in dispute 42.1 |
| Tender (see Acceptance of tender) | Trademark or name (see Intellectual property right) |
| date of acceptance, defined 1 | Unconditional undertaking (see Security) |
| Termination of the Contract (see Default, Frustration) | approved form Annexure Part B |
| by frustration 40 | UNCITRAL Rules <i>Items</i> 35(b), (c) |
| by the Contractor 39.9, 39.10 | Unfixed plant and materials |
| by the Purchaser 39.4, 39.10 | additional security for 37.3(a), <i>Item</i> 14(e) |
| insolvency 39.11 | generally 37.3, <i>Item</i> 32 |
| limitation of liability for 43.1 | labelled 37.3(b) |
| rights of parties on 39.10 | payment for 37.3 |
| Test | Purchaser's liability for 37.3 |
| completion of 30.6 | security for 5.4, 37.3, <i>Item</i> 14(e) |
| costs of 30.7 | stored and protected 37.3(b) |
| covering up of work 30.2 | unencumbered property of Purchaser 37.3 |
| defined 1 | Unpaid moneys 42.11 |
| delay in testing 30.5 | Urgent protection 13 |
| notice of 30.4 | Urgent relief 47.4 |

| | <i>Clause</i> |
|--|--------------------------|
| Valuation | |
| of final payment claims..... | 37.4 |
| of progress payment claims | 37.2 |
| of variations | 36.4 |
| Variation | |
| character and extent of..... | 36.1 |
| cost of complying | 36.2 |
| cost of proposed..... | 36.2 |
| deductions – valuing | 36.4 |
| deemed | 2.3(b), 14.2, 25.3, 29.4 |
| defined..... | 1 |
| directing of..... | 36.1 |
| direction by Superintendent..... | 36.1 |
| for convenience of Contractor..... | 36.3 |
| generally..... | 36 |
| indispensable | 36.1 |
| meaning | 1, 36.1 |
| measurements | 36.2 |
| notice of proposed | 36.2 |
| order of precedence in pricing..... | 36.4 |
| pricing of..... | 36.4 |
| proposed | 36.2 |
| quotation for..... | 36.2 |
| scope of | 36.1 |
| valuation of..... | 36.4 |
| Wages | |
| of workers | 38 |
| Waiver of conditions | |
| generally | 43 |
| in writing | 43 |
| Winding up | 39.11 |
| Words — singular includes plural and vice versa | 1(d) |
| Work (includes Materials) | |
| acceptance of defective work..... | 29.4 |
| care of..... | 14.1 |
| deemed variation as to defective work | 29.4 |
| defective | 29.3 |
| defined..... | 1 |
| examination and testing of | 30 |
| not complying with the Contract..... | 30.3 |
| order of work | 32 |
| outside working hours..... | 32 |
| progress of | 34 |
| quality of | 29.1 |
| remedial | 29.3, 35 |
| suspension of..... | 33 |
| testing of | 30 |
| times for work | 32 |
| under the Contract, defined (WUC)..... | 1 |
| variations (see Variations) | 36 |
| Work under the Contract (see WUC) | |
| Workers' compensation | 18 |
| Workers, payment of | 38 |
| Working days | 31 |
| Working hours..... | 31 |
| Works (see also care of WUC) | |
| defined..... | 1 |
| handing over | 24.1 |
| insurance of..... | 16 |
| setting out of..... | 26 |
| WUC (work under the Contract) | |
| acceleration of | 34.4 |

| | <i>Clause</i> |
|--|---------------------|
| care of | 14.1 |
| damage to property other than | 15 |
| defined | 1 |
| delay to | 34.2, 34.3 |
| excepted risks | 14.3 |
| insurance of property other than | 17 |
| novation relating to | 9.4, <i>Item</i> 19 |
| order and time of carrying out..... | 32 |
| programing of | 32 |
| progress of..... | 34.1 |
| recommencement of | 33.3 |
| reinstatement of | 14.2 |
| suspension of | 33 |
| urgent protection of..... | 13 |

AMENDMENT CONTROL SHEET

AS 4910—2002

Amendment No. 1 (2005)

SUMMARY: This Amendment applies to Clause 35 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

Standards Australia

Standards Australia is an independent company, limited by guarantee, which prepares and publishes most of the voluntary technical and commercial standards used in Australia. These standards are developed through an open process of consultation and consensus, in which all interested parties are invited to participate. Through a Memorandum of Understanding with the Commonwealth government, Standards Australia is recognized as Australia's peak national standards body. For further information on Standards Australia visit us at

www.standards.org.au

Australian Standards

Australian Standards are prepared by committees of experts from industry, governments, consumers and other relevant sectors. The requirements or recommendations contained in published Standards are a consensus of the views of representative interests and also take account of comments received from other sources. They reflect the latest scientific and industry experience. Australian Standards are kept under continuous review after publication and are updated regularly to take account of changing technology.

International Involvement

Standards Australia is responsible for ensuring that the Australian viewpoint is considered in the formulation of international Standards and that the latest international experience is incorporated in national Standards. This role is vital in assisting local industry to compete in international markets. Standards Australia represents Australia at both ISO (The International Organization for Standardization) and the International Electrotechnical Commission (IEC).

Electronic Standards

All Australian Standards are available in electronic editions, either downloaded individually from our web site, or via On-Line and DVD subscription services. For more information phone 1300 65 46 46 or visit Standards Web Shop at

www.standards.com.au



GPO Box 5420 Sydney NSW 2001

Administration Phone (02) 8206 6000 Fax (02) 8206 6001 Email mail@standards.com.au

Customer Service Phone 1300 65 46 46 Fax 1300 65 49 49 Email sales@standards.com.au

Internet www.standards.org.au

ISBN 0 7337 3531 2

Printed in Australia

This page has been left intentionally blank.