

AS 4000—1997
(Incorporating Amendment Nos. 1, 2 & 3)

Australian Standard™

Amended General Conditions of
Contract

DRAFT



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AS 4000 — 1997

General Conditions of Contract

Incorporating:
Amdt 1—1999
Amdt 2—2000
Amdt 3—2005

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Preface

This Standard was prepared by the Joint Standards Australia/Standards New Zealand Committee OB/3, General Conditions of Contract.

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

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

Subclauses 8.6 and 29.2 (prefixed by an asterisk) are optional, and may be omitted in the Contract, where necessary, without making consequential amendments but such omission should be clearly shown on the face of the document by striking out these subclauses or indicating clearly in clause 1 of Annexure Part B or elsewhere that they are *not to apply*. See paragraph (i) of clause 1 on page 5 for the effect of stating deletions in Annexure Part B.

Warning

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

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

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

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

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1 Interpretation and construction of Contract

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

<i>Item</i>	means an <i>Item</i> in Annexure Part A;
<u>authority</u>	means all Commonwealth, state, territorial and local government departments, bodies, municipalities, instrumentalities and public, statutory and other authorities having jurisdiction over <i>WUC</i> or any part of <i>the Works</i> and includes any Principal Certifier appointed pursuant to section 6.5 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW);
bill of quantities	means a document named therein as a bill of quantities issued to tenderers by or on behalf of the <i>Principal</i>, stating estimated quantities of work to be carried out;
<u>business day</u>	means a day other than a Saturday or a Sunday or a public holiday in the State of New South Wales or 27, 28, 29, 30 or 31 of December;
certificate of practical completion	has the meaning in subclause 34.6;
<u>claimed amount</u>	has the meaning in subclause 37.1;
compensable cause	means: <ol style="list-style-type: none"> any act, default or omission of the <i>Superintendent</i><i>Principal's Representative</i>, the <i>Principal</i> or its consultants, agents or other contractors (not being employed by the <i>Contractor</i>); or those listed in <i>Item 26</i>;
<u>Communication Management Plan</u>	means the communication management plan that sets out: <ol style="list-style-type: none"> details and processes for ensuring the necessary information flow and effective communications in relation to the <i>WUC</i>; the management of all internal and external communications in relation to the <i>WUC</i>; and any other details or information reasonably required by the <i>Principal</i>;
<u>construction certificate</u>	has the same meaning as in the <i>Environmental Planning and Assessment Act 1979</i> (NSW);
<u>Construction Co-ordination Group</u>	has the meaning in clause 23B;
<u>Construction Management Plan</u>	means the document at Annexure Part C;
construction program	has the meaning in clause 32;
construction plant	means appliances and things used in the carrying out of <i>WUC</i> but not forming part of <i>the Works</i> ;
Contract	has the meaning in clause 6 means the agreement between the <i>Principal</i> and the <i>Contractor</i> evidenced by the <i>contract documents</i> ;
<u>contract documents</u>	means the <i>formal instrument of agreement</i> and these General Conditions of Contract including its Annexures and any attachments and further documents referred to or incorporated by reference in any of those documents.
contract sum	means:

	a) where the <i>Principal</i> accepted a lump sum, the lump sum;
	b) where the <i>Principal</i> accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the priced <i>bill of quantities</i> or <i>schedule of rates</i> ; or
	c) where the <i>Principal</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> <u>(ex GST)</u> ;
Contractor	means the person bound to carry out and complete WUC;
<u>Council</u>	<u>has the same meaning as <i>Principal</i>;</u>
<u>Council's Representative</u>	<u>has the same meaning as the <i>Principal's Representative</i>;</u>
date of <u>Contract acceptance of tender</u>	means the date which appears on the <u>formal instrument of agreement written notice of acceptance of the tender</u> ;
date for practical completion	means: a) where <i>Item 7(a)</i> provides a date for <i>practical completion</i> , the date; b) where <i>Item 7(b)</i> provides a period of time for <i>practical completion</i> , the last day of the period, but if any <i>EOT</i> for <i>practical completion</i> is directed by the <u>Superintendent <i>Principal's Representative</i></u> or allowed in any arbitration or litigation, it means the date resulting therefrom;
date of practical completion	means: a) the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or b) where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date;
deed of guarantee, undertaking and substitution	has the meaning in subclause 5.6;
defects	has the <u>its ordinary</u> meaning in clause 35 and includes omissions;
defects liability period	has the meaning in clause 35;
<u>design documents</u>	<u>means any design or further design undertaken by or on behalf of the <i>Principal</i> in performing the WUC;</u>
<u>development consent</u>	<u>means any consent that is obtained for the <i>Works</i> under the <i>Environmental Planning and Assessment Act 1979 (NSW)</i>;</u>
dispute	has the meaning in clause 42;
direction	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
EOT (from 'extension of time')	has the meaning in subclause 34.3;
excepted risk	has the meaning in subclause 14.3;
final certificate	has the meaning in subclause 37.4;
final payment	has the meaning in clause 37;
final payment claim	means the final payment claim referred to in subclause 37.4;

<u>final payment schedule</u>	means the final <u>payment schedule</u> referred to in subclause 37.4;
<u>formal instrument of agreement</u>	means the formal instrument of agreement to which these General Conditions of Contract are attached;
<u>good industry practice</u>	means that degree of skill, care, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced contractor, engaged in the same type (including as to scope and complexity) of project as the <i>Contractor</i> , under the same or similar circumstances;
<u>GST Law</u>	means the same as “GST law” in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> ;
<u>initial program</u>	means the program (if any) included at Annexure Part D;
<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 in connection with the carrying out of <i>WUC</i>; and c) fees and charges payable in connection with the foregoing;
<u>Moral Right</u>	means a moral right as defined in the <i>Copyright Act 1968 (Cth)</i> ;
<u>neighbour</u>	means the owners and/or occupiers of properties adjacent to, adjoining or in the vicinity of the <i>site</i> ;
<u>off-site overheads</u>	means the cost necessarily and reasonably incurred by the <i>Contractor</i> related to elements of the <i>WUC</i> that do not form part of the <i>Works</i> and which are not <i>on-site overheads</i> ;
<u>on-site overheads</u>	means the costs necessarily and reasonably incurred by the <i>Contractor</i> relating to elements of the <i>WUC</i> that do not form part of the <i>Works</i> and for which the related goods and services are performed or located on the <i>site</i> at all times during the actual working hours;
<u>payment claim</u>	has the meaning given to it in subclause 37.1;
<u>payment schedule</u>	has the meaning given to it in subclause 37.2;
<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) the <i>Works</i> are complete except for minor defects: <ul style="list-style-type: none"> i) which do not prevent the <i>Works</i> from being reasonably capable of being used for their stated purpose; ii) which the Superintendent <i>Principal's Representative</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 the <i>Works</i>; b) those tests which are required by the <i>Contract</i> to be carried out and passed before the <i>Works</i> reach <i>practical completion</i> have been carried out and passed; and c) documents and other information required under the <i>Contract</i> which,

	in the <u>Superintendent's Principal's Representative</u> opinion, are essential for the use, operation and maintenance of <i>the Works</i> have been supplied; <u>and</u>
	d) <u>subject to clause 27, all debris, rubbish, construction materials, temporary works and construction plant has been removed from the site.</u>
<u>Preliminaries</u>	<u>means the document at Annexure Part E;</u>
prescribed notice	has the meaning in subclause 41.1;
Principal	means the Principal stated in <i>Item 1</i> ;
<u>principal contractor</u>	<u>has the meaning given to it in the Work Health and Safety Regulation 2017 (NSW) as amended or replaced from time to time;</u>
<u>Principal's Representative</u>	<u>means the person stated in Item 5 as the Principal's representative or other person from time to time appointed by the Principal to exercise delegated Principal's functions;</u>
progress certificate	has the meaning in subclause 37.2;
provisional sum	has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;
public liability policy	has the meaning in clause 17;
qualifying cause of delay	means <u>a delay to the WUC or affecting the site caused by:</u> <u>a) any act, default or omission of the SuperintendentPrincipal's Representative, the Principal or its consultants, agents or other contractors (not being employed by the Contractor) excluding variations (other than as provided for in (b) below); or</u> <u>b) variations which the Contractor demonstrates to the Principal's Representative's satisfaction will;</u> <u>i) affect the completion of an activity or activities which lie on the critical path outlined in the current approved construction program; and</u> <u>ii) actually prevent the Contractor from reaching practical completion by the date for practical completion;</u> <u>c) a material breach of the Contract by the Principal; or</u> <u>d) anything stated in Item 23;</u> <u>a) other than:</u> <u>i) a breach or omission by the Contractor;</u> <u>ii) industrial conditions or inclement weather occurring after the date for practical completion; and</u> <u>iii) stated in Item 23;</u>
<u>Schedule of Key Personnel</u>	<u>means Annexure Part F;</u>
schedule of rates	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, <i>provisional sums</i> , other sums, quantities and prices;
<u>scheduled amount</u>	<u>has the meaning in subclause 37.2;</u>
security	means <u>the security provided by the Contractor to the Principal pursuant to subclause 5.1 of the Contract;</u>

cash;

retention moneys;

bonds or inscribed stock or their equivalent issued by a national, state or territory government;

interest bearing deposit in a bank carrying on business at the place stated in *Item 9(c)*;

an approved unconditional undertaking (the form in Annexure Part C is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or

other form approved by the party having the benefit of the security;

Security of Payment Act

means the *Building and Construction Industry Security of Payment Act 1999* (NSW) as amended or replaced from time to time;

selected subcontract work

has the meaning in subclause 9.3;

selected subcontractor

has the meaning in subclause 9.3;

separable portion

means a portion of *the Works* identified as such in the *Contract* or by the ~~Superintendent~~ *Principal's Representative* pursuant to clause 4;

site

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

~~Superintendent~~

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

~~Superintendent's Representative~~

~~means an individual appointed in writing by the Superintendent under clause 21;~~

survey mark

in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;

temporary works

means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;

test

has the meaning in subclause 30.1 and includes examine and measure;

the Works

means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;

variation

~~has the meaning in clause 36~~ means any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract*:

a) increase, decrease or omit any part of the *WUC*;

b) change the character or quality of any material or *work*;

c) change the levels, lines, positions or dimensions of any part of the *WUC*;

d) carry out additional *work*; and/or

demolish or remove material or *work* no longer required by the *Principal*;

WHS Legislation

means the *Work Health and Safety Act 2011* (NSW) and the *Work*

	<u>Health and Safety Regulation 2017 (NSW), and all applicable codes as amended or replaced from time to time;</u>
<u>WHS Management Plan</u>	means the work health and safety management plan described in clause 23A prepared by the <i>Contractor</i> ;
work	includes the provision of materials;
WUC (from 'work under the Contract')	means the <i>work</i> which the <i>Contractor</i> is or may be required to carry out and complete under the <i>Contract</i> and includes <i>variations</i> , remedial <i>work</i> , <i>construction plant</i> and <i>temporary works</i> , and like words have a corresponding meaning.
	In the <i>Contract</i> :
	a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
	b) time for doing any act or thing under the Contract shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday if an act must be done on a specified day which is not a <i>business day</i> , it must be done instead on the next <i>business day</i> ;
	c) clause headings and subclause headings in these General Conditions of Contract shall not form part of these General Conditions and shall not be used in the interpretation of the <i>Contract</i> ;
	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 <i>Principal</i> , the Superintendent <i>Principal's Representative</i> and the <i>Contractor</i> shall be in the English language;
	f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in <i>Item 8</i> ;
	g) unless otherwise provided, prices are in the currency in <i>Item 9(a)</i> and payments shall be made in that currency at the place in <i>Item 9(b)</i> ;
	h) the law governing the <i>Contract</i> , its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in <i>Item 8</i> ; and
	i) if pursuant to Annexure Part B to these General Conditions of Contract, clauses or their parts in these General Conditions are deleted, the Contract shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions a provision of the <i>Contract</i> must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the <i>Contract</i> or the inclusion of the provision in the <i>Contract</i> ;
	j) an amendment to the Contract is not effective unless it is in writing and signed by the parties;
	k) 'including' and other similar expressions are not words of limitation;
	l) any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent

necessary to make the *Contract* enforceable unless this would materially change the intended effect of the *Contract*; and

m) if any term in the *Contract* is unenforceable, illegal or void, then it is severed and the rest of the *Contract* remains in force.

2 Nature of Contract

2.1 Performance and payment

The *Contractor* shall carry out and complete *WUC* in accordance with the *Contract*, the development consent, the construction certificate and directions authorised by the *Contract*.

~~a) — The *Principal* shall pay the *Contractor* the contract sum (subject to clause 3) which is exclusive of GST in accordance with the requirements of the *Contract*,~~

~~b) — a) — for work for which the *Principal* accepted a lump sum, the lump sum; and~~

~~b) — for work for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of work actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item,~~

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

2.1A Condition Precedent

The rights and obligations of the parties under this *Contract* (other than this clause 2.1A, which commences operation on *date of the contract*) will not commence unless and until the following condition precedent has been satisfied or waived:

(a) the *Principal* has obtained the construction certificate in accordance with clause 11.3 (the ‘condition precedent’).

If the *condition precedent* has not been satisfied or waived by midnight on the date which is three (3) months after the *date of the Contract*, then unless that date is extended by prior written agreement of the parties, either party may, in its absolute discretion, terminate this *Contract* at any time and no party will have any obligations to the other party arising on or out of such termination or otherwise out of this *Contract*, except in relation to rights and obligations arising prior to such termination.

2.1B Obligation to Act in Good Faith

Each of the parties shall act in the utmost good faith in the performance of their respective obligations under the *Contract* and shall do all such acts and things and execute such deeds, documents and other instruments and otherwise conduct themselves in such a manner as to enable them to meet their respective obligations under the *Contract*.

2.2 ~~Bill of quantities~~ The contract sum

The contract sum is a fixed lump sum price for the WUC and, except as is expressly contemplated by the Contract, is not subject to adjustment or recalculation if the actual quantities of any WUC differs from any estimates used by the Contractor in the calculation of the contract sum or any estimates which may be set out in the contract documents.

The Contractor acknowledges and agrees that:

- a) the Contract and the contract sum are not subject to any cost adjustment or rise and fall for any reason including, without limitation:
 - i) any site allowances or industrial agreements;
 - ii) fluctuations in exchange rates; or
 - iii) changes in the cost of labour and materials; and
- b) the Contractor is not entitled to claim and the Principal is not obliged to pay the Contractor any reimbursement for payments which the Contractor may be obliged to make on behalf of its employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or otherwise which is in existence at the date of Contract or which comes into existence after the date of Contract.

~~The Alternative in Item 10(a) applies.~~

~~Alternative 1~~

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

~~Alternative 2~~

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

2.3 ~~Priced bill of quantities~~ Schedule of rates

If a schedule of rates is included in the Contract, the schedule of rates may only be used by the Principal's Representative for the purpose of valuing variations or assessing payment claims.

The rates and prices in the schedule of rates include all direct and indirect costs and expenses to be incurred or likely to be incurred in the execution of the Works or the provision of the item the subject of the rate or price (as the case may be).

~~Where a bill of quantities is to be priced:~~

- ~~a) all items included in the bill of quantities shall be priced and extended by the Contractor and the prices as extended shall on addition equal the sum accepted by the Principal for carrying out the whole of the work to which the bill of quantities relates;~~
- ~~b) the Contractor shall lodge the bill of quantities so priced and extended with the Superintendent before the expiration of the time for lodgement stated in Item 10(c) or such further time as may be directed by the Superintendent from time to time;~~

- ~~e) notwithstanding any other provision of the Contract, the Contractor shall not be entitled to payment until the Contractor has lodged the bill of quantities so priced and extended.~~

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

2.4 Quantities

Quantities in ~~a bill of quantities or any~~ schedule of rates are estimated quantities only.

The ~~Superintendent~~ Principal's Representative is not required to give a direction by reason of the actual quantity of an item required to perform the Contract being greater or less than the quantity shown in ~~a bill of quantities which forms part of the Contract or any~~ schedule of rates.

Obligations

2.5 ~~Adjustment for actual quantities~~ General Construction

The Contractor must perform the WUC:

- a) in accordance with the Contract and the contract documents (including the Construction Management Plan);
- b) so as to achieve practical completion by each of the date for practical completion;
- c) by independently planning and executing the WUC in a manner that is safe, efficient and effective;
- d) in a sound and workmanlike manner and so as to be free from defects and that the final product is fit for its intended purpose;
- e) with due care and skill in applying nationally accepted building design, engineering and construction procedures;
- f) with due expedition and without unnecessary or unreasonable delays having regard to the excepted risks;
- g) in a manner which allows for the WUC to be efficiently performed;
- h) in accordance with all applicable legislative requirements;
- i) so as to satisfy the requirements of any and all authorities; and
- j) so as to ensure that all defects have been rectified prior to the date for practical completion.

The Contractor is responsible for determining the appropriate construction processes and methods and sequencing and programming of the Works subject to clause 32

2.6 Payment Verification

- (a) To improve internal payment processes, the Principal has engaged EFTsure™ (www.eftsure.com.au) to provide payment authentication services.
- (b) Promptly after the date of Contract, the Contractor must register, if not already registered, with EFTsure™. The Contractor must comply with any registration requirements specified by EFTsure™.

2.7 Contractor Compliance

- (a) Promptly after the *date of Contract* the *Contractor* must register, if not already registered, with the *Principal's* appointed provider for contractor compliance, BNG Conserve, for the life of the *Contract*.
- (b) All costs, fees and expenses payable to comply with this clause 2.7 shall be at the expense of the *Contractor*.

2A GST

The parties acknowledge and agree that:

- (a) except where the context suggests otherwise, terms used in this clause 2A have the meanings given to those terms by *GST Law*;
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 2A; and
- (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 2A.

If GST is payable by a supplier on any supply made under this *Contract*, the recipient, upon receiving a tax invoice from the supplier, will pay to the supplier an amount equal to the GST payable on the supply. This amount will be paid in addition to, and at the same time as, the consideration for the supply is to be provided.

3 Provisional sums

A *provisional sum* included in the *Contract* shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*, the *work* or item shall be priced by the ~~*Superintendent*~~*Principal's Representative*, 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*~~*Principal's Representative* shall allow the amount payable by the *Contractor* to the subcontractor for the *work* or item, disregarding:

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

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 12* or elsewhere in the *Contract*, or, if not so stated, as assessed by the ~~*Superintendent*~~*Principal's Representative*.

4 Separable portions

Separable portions may be directed by the ~~*Superintendent*~~ *Principal's Representative*, who shall clearly identify for each, the:

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

~~Superintendent's~~ Principal's Representative valuation of the separable portion to the contract sum).

5 Security

5.1 Provision

The Contractor must provide security in accordance with Item 13.

~~Security shall be provided in accordance with Item 13 or 14. All delivered security, other than cash or retention moneys, shall be transferred in escrow.~~

5.2 Recourse

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

5.3 ~~Change of security~~ Failure to provide required 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. If there is a delay in the Contractor providing security as required by clause 5.1, then without waiver of any other rights the Principal may have under this Contract, the Principal may deduct 10% of the scheduled amount payable in any payment schedule as retention moneys up to the limit in Item 13(b). For the avoidance of doubt, the deduction of retention moneys by the Principal pursuant to this subclause does not limit or affect any other right the Principal may have under the Contract in relation to non-provision of security by the Contractor.~~

5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to security (other than in Item 13(e)) shall be reduced by the percentage or amount in Item 13(f) or 14(d) as applicable, and the reduction shall be released and returned within ~~14 days~~ 10 business days to the other party.

The Principal's entitlement to security in Item 13(e) shall cease ~~14 days~~ 10 business days after incorporation into the Works of the plant and materials for which that security was provided.

A party's entitlement otherwise to security shall cease ~~14 days~~ 10 business 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 within 10 business days.

5.5 Trusts and interest

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

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

5.6 Deed of guarantee, undertaking and substitution

Where:

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

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

5.7 Security on variations

Where the *contract sum* has increased by adjustments under this *Contract* by 10% or more, the *Principal* may request additional *security* in the same form as the *security* provided in accordance with *Item 13* and in an amount calculated pro-rata according to the ratio of the initial *security* to the *contract sum* as at the date of *Contract*. Such *security* shall be provided by the *Contractor* within 7 days of the *Principal's* request.

5.8 No caveat

The *Contractor* must not lodge a caveat on any title forming part of the *site*.

6 Evidence of Contract

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

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

The ~~*Superintendent-Principal's Representative*~~ 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~~ and delivered to the ~~relevant-business~~ address or email address of the recipient stated in the *Contract* or last communicated in writing by the recipient to the person giving the notice; and
- b) on the earliest date of:
 - i) actual receipt in readable form. For the avoidance of doubt, if an 'undeliverable' or 'out of office' return email is sent to the sender, the notice shall be deemed not to have been validly delivered;

- ii) personal delivery to the recipient; confirmation of correct transmission of fax; or
- iii) 3 days- business 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-Principal's Representative written notice of it. The Superintendent-Principal's Representative, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed.

If the Contractor considers that the Principal's Representative's direction as to the inconsistency, ambiguity or discrepancy involves a variation:

- a) the Contractor must, before proceeding (but in any event, not later than 5 business days after receipt of the direction) notify the Principal's Representative of this together with a detailed explanation of the basis for the Contractor's view including a description of the varied works; and
- b) the Contractor must not proceed with the work the subject of the response unless it has received a direction either:
 - i) pursuant to subclause 36.1; or
 - ii) indicating the Principal's Representative's opinion that there is no variation to the Works as a result of the direction as to a document discrepancy.

The Principal's Representative must provide the direction under subclause 8.1(b) within such time as is reasonable in the circumstances, but not exceeding 20 business days, following the provision of adequate information by the Contractor pursuant to subclause 8.1(a).

If the Contractor fails to comply with either subclause 8.1(a) or 8.1(b), the Contractor may not make any claim for additional payment of any kind or claim an EOT and any claims will be absolutely barred.

8.2 Principal-supplied documents

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

They shall:

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

8.3 Contractor-supplied documents

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

If the *Contractor* submits documents to the ~~*Superintendent*~~*Principal's Representative*, then except where the *Contract* otherwise provides:

- a) the ~~*Superintendent*~~*Principal's Representative* shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- b) notwithstanding clause 20, any ~~*Superintendent's*~~ *Principal's Representative* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- c) if the *Contract* requires the *Contractor* to obtain the ~~*Superintendent's*~~ *Principal's Representative* direction about such documents, the ~~*Superintendent*~~*Principal's Representative* shall give, within the time stated in *Item 16*, the appropriate direction, including reasons if the documents are not suitable.

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

8.4 Availability

The *Contractor* shall keep available to the ~~*Superintendent*~~*Principal's Representative* and the *Principal*:

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

8.5 Confidential information

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

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

8.5A Disclosure of information

Notwithstanding any other provision of the *Contract*, the *Contractor* acknowledges and agrees that the *Principal* may disclose the *Contract* (and information concerning the terms of the *Contract*) under or in accordance with any legislative requirement, including the *Government Information (Public Access) Act 2009 (NSW)*.

***8.6 Media**

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

8.7 Shop and Working Drawings Generally

In the absence of a contrary statement in the contract documents, the treatment for shop and working drawings will be as set out in this subclause 8.7.

The Contractor shall submit shop and work drawings as necessary and as specified in the various trade specifications set out in the Contract.

The Contractor shall:

- a) provide complete manufacturing and installation shop and working drawings and all necessary technical data covering the Works of the subcontractors for those services required; and
- b) submit shop and working drawings, bound in sets, complete for all services in each phase or area, checked and coordinated with the work of any other trade involved and stamped by the Contractor to this effect.

8.8 Contractor to check drawings before submitting for approval

Prior to submitting drawings to the Principal's Representative for approval, the Contractor shall check all such drawings and associated documents and ensure that:

- a) the work described in such drawings meets the requirements of the Contract;
- b) the work described in such drawings conforms to the requirements of the relevant authorities;
- c) the work described in such drawings is coordinated with the work of all other trades and/or subcontracts;
- d) dimensions shown in such drawings correspond with actual size or as-built dimensions; and
- e) erection sequences planned by the Contractor are not adversely affected by anything indicated therein or implied thereby.

8.9 Time for submission of drawings

The Contractor shall ensure that shop drawings are submitted to the Principal's Representative:

- a) at such times as to permit the necessary approval (or amendment, re-submission and approval) to be obtained or made and the consequent ordering, fabrication or manufacture to commence in accordance with the construction program; and
- b) in sufficient time so as to allow the examination, re-submission and re-examination of such drawings. Without limiting the preceding sentence, the Contractor shall allow a period of not less than 10 business days for the examination of all drawings.

The Contractor shall prepare and submit to the Principal's Representative for its approval within 15 business days of the date of the Contract a schedule of submission dates for all shop drawings required or specified under the Contract. The Contractor agrees to review and update the schedule of submission dates at the reasonable direction, and to the reasonable satisfaction of, the Principal's Representative.

The Contractor shall not be entitled to any:

- c) extension of time to the date for practical completion;
- d) any adjustment to the construction program; and

e) any variation,

as a consequence of any delay caused or contributed to by late submission of drawings or the submission of inadequate or incorrect drawings.

The Contractor shall not commence any work defined by a shop drawing before it has received written approval of the drawing from the Principal's Representative.

If the Contractor considers that the WUC is likely to be delayed if work does not commence prior to approval of drawings then the Contractor shall notify the Principal's Representative accordingly and may request permission from the Principal's Representative to proceed. Granting of such permission by the Principal's Representative will not relieve the Contractor from its obligation to complete the WUC in accordance with the approved drawings and any work necessary to comply with subsequent approval shall be the responsibility of the Contractor.

8.10 Format and number of copies

Unless directed otherwise, the Contractor shall initially submit to the Principal's Representative two (2) hardcopies of the drawings, one (1) of which will be returned marked 'examined' or marked-up for amendment and resubmission.

Unless directed otherwise, upon final approval, the Contractor shall submit four (4) copies of revised drawings to the Principal's Representative.

8.11 Endorsement

The review and approval by the Principal's Representative of any drawings shall not:

- a) be construed as permitting any departure from the Contractor's obligations under the Contract;
- b) relieve the Contractor from responsibility for any omissions or errors; or
- c) relieve the Contractor of responsibility for the correctness of the documents.

Shop drawings may be checked by the relevant consultant or the Principal for design suitability only. The Contractor shall remain responsible for all dimensional accuracy and general coordination.

9 Assignment and subcontracting

9.1 Assignment

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

9.2 Subcontracting generally

The Contractor may subcontract any part of the Works, but not the whole of the Works.

The Contractor must ensure that any subcontractor engaged by it for any part of the Works is suitably qualified and experienced that such subcontractor exercises due skill, care and diligence in the execution and completion of the Works.

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

- a) subcontract or allow a subcontractor to subcontract any *work* described in *Item 17*; or
- b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

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

Within ~~14 days~~ 10 business days of the *Contractor's* request for approval, the Superintendent Principal's Representative shall give the *Contractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the subcontract including:

- a) provision that the subcontractor shall not assign nor subcontract without the *Contractor's* written consent; ~~and~~
- b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*; ~~and~~
- b)c) a provision that the subcontractor shall provide for the benefit of the Principal any manufacturer warranties and guarantees for any equipment supplied by the subcontractor.

9.3 Selected subcontract work

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

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

9.4 Novation

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

9.5 Contractor's responsibility

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

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

The parties agree that:

- a) Part 4 of the *Civil Liability Act 2002* (NSW) will not have any application to this *Contract*, the performance of the *Works*, or any of the obligations of the *Contractor* under this *Contract* or otherwise at law; and
- b) their rights, obligations and liabilities will be those which would exist if Part 4 of the *Civil Liability Act 2002* (NSW) did not apply.

The provisions of this subclause 9.5 will survive the expiration or any termination of this *Contract*.

10 Intellectual property rights

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

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

Each party shall indemnify the other against such respective infringements.

The *Contractor* acknowledges and agrees that the *Principal* owns all *intellectual property rights* in the *design documents* and all things produced or developed by the *Contractor* in the course of performing or as a result of the design or construction of the *Works*.

The *Principal* grants to the *Contractor* an irrevocable licence to use the *design documents* for the *WUC*.

10.3 Moral Rights

To the extent that the *Contractor* or a person engaged by the *Contractor* has a *Moral Right* in any reports, specifications, programs and other documents provided by the *Contractor* in connection with the *design documents* or the *Works* the *Contractor* consents, and will obtain the consent of any person engaged by it, to the *Principal* doing or omitting to do anything that, but for the consent, would constitute an infringement of those *Moral Rights*.

10.4 Survival of rights

The rights and obligations of the parties under this clause 10 survive expiry or termination of the *Contract*.

11 Legislative requirements

11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those:

- a) in Item 19(a);
- b) to be satisfied by the *Principal* pursuant to subclause 11.3(b); and/or
- c) directed by the ~~Superintendent~~*Principal's Representative* to be satisfied by or on behalf of the *Principal*.

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

11.2 Changes

If a *legislative requirement*:

- a) necessitates a change:
 - i) to the *Works*;
 - ii) to so much of *WUC* as is identified in *Item 19(b)*;
 - iii) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
 - iv) in a fee or charge or payment of a new fee or charge;
- b) comes into effect after the 14th day before the ~~closing of tenders~~*date of the Contract* 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~~*Principal's Representative* and added to or deducted from the *contract sum*.

11.3 Construction Approval

- a) The parties acknowledge that the *Principal* has obtained the *development consent* required for the project.
- b) Each of the *Principal* and the *Contractor* will be responsible for satisfying, including paying any fees and charges, in respect of the conditions of the *development consent* as allocated to them in the Consent Responsibility Matrix at Annexure Part G.
- c) The parties must use best endeavours to satisfy the activities allocated to them in the Consent Responsibility Matrix and must notify the other party when it considers it has completed an activity. The parties acknowledge that completion of these activities may be a pre-requisite to the *Principal* obtaining a *construction certificate* under clause 11.3(d).
- d) Subject to the parties complying with clause 11.3(c), the *Principal* must obtain the *construction certificate* required to commence the *Works*. The *Principal* must promptly provide a copy of the *construction certificate* to the *Contractor* upon its receipt.
- e) The *Contractor* must comply with all conditions set out in the *development consent* or *construction certificate* applying to it, the *site* or the *Works*.

12 Protection of people and property

If required by the contract documents, prior to commencing the performance of the WUC, the Contractor shall prepare a full dilapidation report in consultation with, and in the form required by, the Principal's Representative which shall record the existing state and condition of all the properties and structures whose boundaries or structural elements adjoin or are supported by the site, including all streets adjacent to the site, any nearby properties likely to be affected by the Works having regard to the nature of the Works and anything else required by the development consent or construction certificate. The report must:

- a) be in duplicate with each copy signed by the Contractor and the Principal's Representative;
- b) include clear, high quality photographs as necessary; and
- c) be updated by the Contractor in the event of an allegation or complaint of any damage or potential damage occurring to any property, structure or street adjacent to the site.

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

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

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

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

13 Urgent protection

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

If time permits, the ~~Superintendent~~Principal's Representative shall give the Contractor prior written notice of the intention to take action pursuant to this clause.

14 Care of the work and reinstatement of damage

14.1 Care of WUC

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

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

Without limiting the generality of paragraph (a), the *Contractor* shall be responsible for the care of unfixed items accounted for in a *progress certificate* and the care and preservation of things entrusted to the *Contractor* by the *Principal* or brought onto the *site* by subcontractors for carrying out *WUC*. The *Contractor* shall provide storage and protection necessary to preserve such items, the *Works*, the temporary works and construction plant.

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*~~*Principal's Representative*, rectify the loss or damage and such rectification shall be a deemed variation which must then be claimed and assessed in accordance with clause 36. If loss or damage is caused by a combination of *excepted risks* and other risks, the ~~*Superintendent*~~*Principal's Representative* in pricing the *variation* shall assess the proportional responsibility of the parties.

14.3 Excepted risks

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

- a) any negligent act or omission of the ~~*Superintendent*~~*Principal's Representative*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*), not including:
 - i) any document discrepancy in relation to which the *Contractor* is precluded from making any claim by subclause 8.1; and
 - ii) defective works the subject of subclause 29.3 or clause 35, or in breach of subclauses 29.1 or 11.1;
- b) any risk specifically excepted elsewhere in the *Contract*;
- c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;

- d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its subcontractors or either's employees or agents;
- e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); and
- f) *defects* in the design of *WUC*, other than design provided by the *Contractor* not including:
 - i) any document discrepancy in relation to which the *Contractor* is precluded from making any claim by subclause 8.1; and
 - ii) defective works the subject of subclause 29.3 or clause 35, or in breach of subclauses 29.1 or 11.1.

15 Damage to persons and property other than *WUC*

15.1 Indemnity by Contractor

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

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

- a) loss of or damage to the *Principal's* property; and
- b) claims by any person against the *Principal* in respect of personal injury, illness or death of any person or loss of, or damage to, any other property; and
- ~~b)c)~~ all loss and damage (subject to an obligation to mitigate) arising from a breach of the *Contract* by the *Contractor*.

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

This subclause shall not apply to:

- a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- c) ~~things for the care of which the *Contractor* is responsible under subclause 14.1 not used;~~
- d) damage which is the unavoidable result of the construction of the *Works* in accordance with the *Contract*; and
- e) claims in respect of the *Principal's* right to have *WUC* carried out.

This indemnity operates to the exclusion of section 36 of the *Civil Liability Act 2002 (NSW)*.

15.2 Indemnity by Principal

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

16 Insurance of the Works

~~The Alternative in Item 20(a) applies.~~

Alternative 1: Contractor to insure

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

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

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

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

- a) *contract sum*;
- b) provision in *Item 20(b)* to provide for costs of demolition and removal of debris;
- c) provision in *Item 20(c)* for consultants' fees;
- d) value in *Item 20(d)* of any materials or things to be supplied by the *Principal* for the purposes of *WUC*; and
- e) additional amount or percentage in *Item 20(e)* of the total of the items referred to in sub-paragraphs (a) to (d) of this paragraph.

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

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

Alternative 2: Principal to insure

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

16A Professional indemnity insurance

Before commencing WUC, the Contractor shall effect and maintain professional indemnity insurance with levels of cover not less than stated in Item 20A(a).

The insurance shall be maintained until the final certificate is issued and thereafter for the period as stated in Item 20A(b).

17 Public liability insurance

~~The Alternative in Item 21(a) applies.~~

~~Alternative 1: Contractor to insure~~

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

The policy shall:

- a) be in the ~~joint names~~ of the ~~parties~~ Contractor and note the interests of the Principal;
- b) cover the:
 - i) respective rights and interests; and
 - ii) liabilities to third parties,of the parties, the ~~Superintendent~~ Principal's Representative and subcontractors from time to time, whenever engaged in WUC;
- c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Item 21(b); and
- f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

~~Alternative 2: Principal to insure~~

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

18 Insurance of employees

A1

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~~ the expiry of the defects liability period.

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

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

18A Motor Vehicle Insurance

Before commencing WUC, the Contractor shall effect and maintain comprehensive motor vehicle insurance in respect of any vehicles that are or will be used in any way in connection with the WUC.

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~~ *Principal, the Contractor* 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~~ *the Contractor* fails promptly to provide satisfactory evidence of insurance as required by the Contract, compliance with clause 16, 17 or 18, then without prejudice to other rights or remedies, the ~~other party~~ *Principal* may insure and the cost thereof shall be certified by the ~~Superintendent~~ *Principal's Representative* —as moneys due and payable from the ~~party in default~~ *Contractor* to the ~~other party~~ *Principal*. ~~Where the defaulting party is the Contractor, the Principal may refuse payment until such evidence is produced by the Contractor.~~

19.3 Notices from or to insurer

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

- a) requires the insurer to inform ~~both parties~~ *the Contractor*, 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~~ *Principal's Representative* or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties, the ~~Superintendent~~ *Principal's Representative* and the subcontractor; and
- c) requires the insurer, whenever the ~~party~~ *Contractor* fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

19.4 Notices of potential claims

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

19.5 Settlement of claims

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

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

19.6 Cross liability

Any insurance required to be effected ~~in joint names noting the interests of the Principal~~ 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).

19.7 Excesses

~~The Contractor must pay any excess or deductible payable under the policies of insurance it is required to effect under the Contract.~~

20 ~~Superintendent~~*Principal's Representative*

The *Principal* shall ensure that at all times there is a ~~*Superintendent*~~*Principal's Representative*, and that the ~~*Superintendent*~~*Principal's Representative* fulfils all assessment and certification functions assigned to it under the Contract; ~~reasonably and in good faith.~~

- a) honestly and fairly; and
- b) arriving at a reasonable measure or value of work, quantities or time.

The Contractor acknowledges and agrees that in all other functions under the Contract the Principal's Representative may act in its sole and unfettered discretion and/or at the direction of the Principal.

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

Subject to this clause 20, if pursuant to a provision of the Contract enabling the Principal's Representative to give a direction, the Principal's

Representative gives such a direction, the Contractor must comply with that direction.

If the Contractor considers that any direction given by the Principal's Representative is given in error or, although not stated to involve a variation under subclause 36.1, in fact involves a variation, the Contractor must, before complying with the direction (but in any event, not later than 10 business days after the direction) notify the Principal's Representative of this.

If the Contractor does not give the notice to the Principal's Representative within the time specified, the Contractor may not make any claim for additional payment of any kind or EOT in respect of the direction and any such claims by the Contractor will be absolutely barred.

The Principal shall ensure that the Principal's Representative acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time.

21 **Superintendent's Representative**~~Not Used~~

~~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**

22.1 Generally

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~~Principal's Representative written notice of the representative's name and any subsequent changes. The Contractor must ensure that its representative can be contacted by telephone at all times during the course of the WUC and during the defects liability period, including after hours to deal with emergencies.

If the ~~Superintendent~~Principal's Representative makes a reasonable objection to the appointment of a representative, the Contractor shall terminate the appointment and appoint another representative.

22.2 Attendance at meetings

If requested by the *Principal's Representative*, either the *Contractor's* representative or a senior management representative of the *Contractor* must attend such meetings in relation to the project as set out in the *contract documents* (or as otherwise requested from time to time) and provide such information and assistance as may be reasonably required.

The *Contractor* must meet all costs of its involvement in such meetings.

The *Contractor* acknowledges that minutes of such meetings or matters discussed at any such meeting will not constitute instructions or written confirmation of a *direction* to the *Contractor* for the purposes of the *Contract*.

23 Contractor's employees and subcontractors

23.1 Contractor's Personnel on site

The ~~*Superintendent*~~ *Principal's Representative* 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*~~ *Principal's Representative* opinion, is incompetent, negligent or guilty of misconduct.

Unless the *Principal's Representative* directs otherwise, within 5 business days of access to any part of the *site* being given to the *Contractor*, the *Contractor* will provide to the *Principal's Representative* a labour histogram detailing personnel numbers for each week of the *Contract*.

The *Contractor* will update the histogram each week with actual personnel numbers for past periods and adjusted forecasts for future periods and lodge it with the *Principal's Representative* within 5 business days of lodging the next payment claim.

23.2 Key Personnel

Notwithstanding the provisions of subclause 23.1, the *Contractor* shall:

- a) ensure that each of the key personnel listed in the *Schedule of Key Personnel* are engaged in the provision of the *WUC*:
 - i) in the capacity set out in the *Schedule of Key Personnel*; and
 - ii) for the average number of hours indicated in the *Schedule of Key Personnel* in respect of each person (if so indicated);
- b) always have employed during the performance of the *WUC*, persons in the positions of the key personnel who are approved by the *Principal's Representative* and who have at least the equivalent skill and experience of those persons listed in the *Schedule of Key Personnel*; and
- c) only replace the key personnel in circumstances of death, serious illness, change of employment or a request by the *Principal's Representative*.

23.3 Industrial Relations

The *Contractor* is responsible for industrial relations with all persons for whom it is responsible and must implement and maintain a best practice workplace relations program.

The *Contractor* must promptly inform the *Principal's Representative* of any industrial action or industrial dispute, or potential industrial action or industrial dispute involving employees of the *Contractor* which will or

could affect the Works and take all steps to minimise the consequences of industrial action or industrial disputes.

Subject to clause 34:

- a) the Contractor shall have no entitlement to additional time or costs in respect of industrial action or industrial disputes;
- b) any cost and time consequences of industrial action or industrial disputes will be deemed to be included in the contract sum and the date for practical completion; and
- c) the Contractor indemnifies the Principal in respect of any loss, costs, liability or expenses which the Principal incurs as a result of any industrial action or industrial dispute which affect the Works and for which the Contractor is responsible or which is caused by an act or omission of the Contractor. The loss, costs, liability or expenses will be recoverable by the Principal from the Contractor as a debt due and payable.

23A Work Health & Safety

- a) Without limiting or in any way affecting the duty of the Contractor to carry out the WUC, the Contractor must:
 - i) strictly comply with all legislative requirements relating to the safety of persons on or about the site, and the carrying out of the WUC, including without limitation any WHS Legislation; and
 - ii) do all things necessary to assist the Principal, and refrain from doing anything that may impede the Principal in discharging its obligations under any WHS Legislation;
 - iii) on and from the date of Contract, to the extent permitted by law, indemnify the Principal and keep the Principal always indemnified against all costs, expenses, fines, losses or damages, which the Principal may become liable for, suffer or incur in respect of or arising directly or indirectly out of the failure by the Contractor to comply with its obligations pursuant to this clause 23A.
- b) The Contractor is appointed by owner of the site as the Principal Contractor in connection with the Works for the purposes of any WHS Legislation, and must:
 - i) complete all forms (if any) and attend to all statutory requirements (if any) to ensure it is appointed as the Principal Contractor;
 - ii) pay all fees and charges payable under the WHS Legislation which the site is situated in connection with the execution and performance of the Works;
 - iii) comply with its obligations as Principal Contractor at its own cost; and
 - iv) accept that it is the 'person conducting a business or undertaking' for the purposes of the WHS Legislation.
- c) The Contractor must within 24 hours inform the Principal's Representative of any notice or correspondence received by the Contractor, including from any authority, in relation to all work health and safety matters and WHS Legislation and provide copies of such notices or correspondences

- d) Before commencing any work on the site, the Contractor must provide to the Principal's Representative a WHS Management Plan and ensure that such WHS Management Plan:
 - i) meets any requirements for a WHS Management Plan under the WHS Legislation;
 - ii) includes (at a minimum) risk assessments and work method statements (including safe work method statements) for all works to be carried out by or on behalf of the Contractor;
 - iii) meets any additional requirements of the Principal notified to the Contractor prior to tender; and
 - iv) is communicated to all relevant persons, is regularly monitored and kept up to date during the course of the Works.

23B Construction Co-ordination Group

- (a) Within one (1) month of the date of Contract, a Construction Co-ordination Group shall be established comprising:
 - (i) three (3) representatives of the Principal of which one (1) may be from the Principal's appointed architect; and
 - (ii) two (2) representatives of the Contractor;
- (b) Each party shall provide the names and contact details of its representatives to the other party, and provide updated details in the event of any replacement of a representative.
- (c) In the period commencing on the date of Contract and ending at the date of practical completion, the Construction Co-ordination Group must meet to discuss any matters relating to any of the Works including:
 - (i) design and construction issues;
 - (ii) the construction program;
 - (iii) issues of public concern;
 - (iv) quality management and safety issues;
 - (v) compliance with all applicable legislative requirements; and
 - (vi) any matters referred to the Construction Co-ordination Group by the Principal.
- (d) The Construction Co-ordination Group will meet at such times as the Principal and the Contractor agree (and at intervals of not less than 3 months, or such other period as agreed by the Principal and the Contractor) and conduct its meetings in such a manner and in accordance with such procedures as its members may from time to time agree provided that at least one representative from each of the Principal and the Contractor must be present in order for there to be a quorum at a meeting of the Construction Co-ordination Group.
- (e) The persons nominated under clause 23B(b) may appoint a delegate to attend a Construction Co-ordination Group meeting in their absence.
- (f) The Construction Co-ordination Group will not have any legal responsibility to either the Principal or the Contractor and will not have any power to require either the Principal or the Contractor to act or refrain from acting in any way.

- (g) The decisions of the Construction Co-ordination Group do not affect the rights or obligations of either the Principal or the Contractor under the Contract.
- (h) Members of the Construction Co-ordination Group may arrange for such other persons as they require from time to time to attend meetings of the Construction Co-ordination Group as observers.
- (i) The Contractor must provide to members of the Construction Co-ordination Group:
 - (i) an agenda at least 5 business days in advance of each meeting; and
 - (ii) minutes of each meeting within 3 business days after such meeting (whether or not the member has attended the relevant meeting).

24 Site

24.1 Possession

Provided the Contractor has complied with subclause 6.1 and 19.1, the Principal shall before the expiry of the time in Item 22, give the Contractor possession of sufficient of the site for commencement of WUC on site. If the Principal has not given the Contractor possession of the whole site, the Principal shall give the Contractor possession of such further portions of the site as may, from time to time, be necessary for carrying out WUC. Subject to subclause 39.7, delay by the Principal in giving possession shall not be a breach of the Contract.

Possession of any part 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~~Principal's Representative.

~~The Contractor must confine all activities in relation to the Works within the boundaries of the site and will not deposit or store materials, equipment, soil or any other substance near or on the boundaries of the site without prior approval of the Principal's Representative.~~

Unless otherwise stated in the contract documents, the Contractor must not without the prior written approval of the Principal erect, display, affix or exhibit or so allow on the site or the Works any sign, advertisement, name, notice or advertising structure.

24.2 Access for Principal and others

The Principal and the Principal's employees, consultants and agents may at any time after reasonable written notice to the Contractor (but at any time and without notice in the case of an emergency), have access to any part of the site for any purpose. The Contractor shall permit persons engaged by the Principal to carry out work on the site other than WUC and shall cooperate with them. The Principal shall give to the Contractor the names and roles of the persons so engaged.

The Contractor shall at all reasonable times give the ~~Superintendent~~Principal's Representative access to WUC.

The Principal ~~shall~~must use all reasonable endeavours to ensure that:

- a) none of the persons referred to in this subclause impedes the Contractor; and

- b) it and its employees and agents comply with the Contractor's site, safety and security requirements.

24.3 Minerals, fossils and relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the *site* shall as between the parties be and remain the property of the *Principal*. Within three (3) business days ~~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~~ Principal's Representative written notice of the discovery.

All costs so incurred by the *Contractor* shall be assessed by the ~~Superintendent~~ Principal's Representative and added to the *contract sum*.

24.4 Adjoining properties

Where the nature of the Works requires that the Contractor access or execute work over, on, to, under or near an adjoining site or property (including any part of the Parramatta River outside of the site) then, subject to subclause 11.3, the Contractor shall:

- a) do all things to assist the Principal and the Principal's Representative to obtain the written consent of authorities and neighbours listed in Section A of Item 22A (where required), which may be subject to conditions as to working space, period of time, hours of work or otherwise;
- b) comply with all conditions attaching to such consent which can only be complied with by the party with principal responsibility to carry out the WUC and are otherwise agreed between the parties to be the responsibility of the Contractor;
- c) shall make good to at least the standard and specification found before commencement of the Works, with the least possible delay, or at the option of the owner of the premises, meet the cost of making good, any damage to adjoining properties arising out of its operations; and
- d) procure all consents from any authority or neighbour listed in Section B of Item 22A that may be necessary to execute any work over, on, to, under or near an adjoining site or property and comply with all conditions attaching to such consent which can only be complied with by the party with principal responsibility to carry out the WUC and are otherwise agreed between the parties to be the responsibility of the Contractor.

If the Contractor considers that a condition it is required to comply with under 24.4(b) involves a variation:

- e) the Contractor not later than 20 business days after being advised in writing of the condition notify the Principal's Representative of this together with a detailed explanation of the basis for the Contractor's view including a description of the varied works sufficient to enable the Principal's Representative to issue a direction under subclause 24.4(f); and
- f) the Contractor must not proceed with the work the subject of the condition unless it has received a direction either:
 - i) pursuant to subclause 36.1; or

- ii) indicating the *Principal's Representative's* opinion that there is no *variation* as a result of the condition.

The *Principal's Representative* must provide the *direction* under subclause 24.4(f) within such time as is reasonable in the circumstances, but not exceeding 20 *business days*, following the provision of adequate information by the *Contractor* pursuant to subclause 24.4(e).

24.5 Contractor's responsibility for any nuisance

- a) Without limiting any other obligation under the *Contract*, the *Contractor* must perform the *WUC* so as to minimise in every reasonable practicable way any disturbance, nuisance and inconvenience to others, including *neighbours*.
- b) The *Contractor* is liable for and must comply with the reasonable requirements of the *Principal* and *authorities* in avoiding any disturbance, nuisance and inconvenience to others in performing the *WUC*.
- c) Compliance with the obligations set out in this subclause 24.5 does not of itself entitle the *Contractor* to an *EOT* or additional costs.
- d) The *Contractor* indemnifies the *Principal* against any cost, liabilities or expenses which the *Principal* may incur arising out of or as a result of non-compliance or breach by the *Contractor* of any requirement of this subclause 24.5.

24.6 Environment responsibilities

The *Contractor* must:

- (a) ensure that in performing *Works*:
 - (i) it complies with all *legislative requirements*, requirements of *authorities* and other requirements of this *Contract* for the protection of the environment; and
 - (ii) it does not pollute, contaminate or otherwise damage the *site* or the environment;
- (b) ensure any hazardous substance or industrial waste required for or produced by the *Works* is handled safely and in order to avoid injury or damage to any person or property or the environment generally;
- (c) not allow any hazardous substance or industrial waste to be abandoned or left on, or to be discharged from, the *site*;
- (d) make good any pollution, contamination or damage to the *site* or the environment caused by the performance of or required for the completion of the *Works*; and
- (e) bear all costs associated with, or in any way related to, such work, as part of the *contract sum*.

The *Contractor* indemnifies the *Principal* in respect of all claims, liabilities, fines penalties and other loss or damage suffered or incurred as a result of any failure by the *Contractor* or any of its subcontractors to comply with the requirements of clause 24.6.

24.7 Demolished material

The *Contractor* acknowledges and agrees that property in all refuse and debris produced during the execution of the *WUC* will vest in the *Contractor*.

The Contractor must comply with the requirements of the Contract and all legislative requirements for the removal and recycling of materials from the site.

25 Latent conditions

25.1 Scope

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

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

25.2 Notification

The *Contractor*, upon becoming aware of a *latent condition* while carrying out *WUC*, shall promptly, and where possible before the *latent condition* is disturbed, but no later than the 5 business days after the Contractor becomes aware of the latent condition, give the ~~Superintendent~~*Principal's Representative* written notice of the general nature thereof.

~~If required by the Superintendent promptly after receiving that notice, the Contractor shall, as soon as practicable must within 5 business days of the first notice in respect of a latent condition~~, give the ~~Superintendent~~*Principal's Representative* 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~~*Principal's Representative*.

25.3 Deemed variation

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

26 Setting out the Works

26.1 Setting out

~~The Principal shall ensure that the Superintendent gives the Contractor the data, survey marks and like information necessary for the~~ The Contractor ~~must have a licensed practising surveyor 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~~ Principal's Representative and unless the ~~Superintendent~~ Principal's Representative within 3 business days directs otherwise.

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

26.3 Care of survey marks

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

The Contractor shall reinstate any survey mark disturbed, after promptly notifying the ~~Superintendent~~ Principal's Representative and unless the ~~Superintendent~~ Principal's Representative within 3 business days directs otherwise.

If the disturbance was caused by the ~~Superintendent~~ Principal's Representative 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~~ Principal's Representative 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~~ Principal's Representative 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~~ Principal's Representative 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 business days after the Contractor receives written notice from the ~~Superintendent~~ Principal's Representative that the Principal intends to have the subject work carried out by others,

the Principal may have that work so carried out and the ~~Superintendent~~ Principal's Representative shall certify the cost incurred as moneys due

from the *Contractor* to the *Principal*. The rights given by this paragraph are additional to any other rights and remedies.

28 Materials, labour and construction plant

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

In respect of any materials, machinery or equipment to be supplied by the *Contractor* in connection with the *Contract*, the ~~Superintendent~~*Principal's Representative* 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~~*Principal's Representative*, the *Principal* and persons authorised by the *Principal*.

The ~~Superintendent~~*Principal's Representative* 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~~ *Principal's Representative'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 and shall comply with the current edition (incorporating current amendments) of all relevant standards, codes or specifications of Standards Australia. -

*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~~*Principal's Representative* 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~~*Principal's Representative* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the ~~Superintendent~~*Principal's Representative* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified within any period stated in the notice (which must be reasonable), the ~~Superintendent~~*Principal's Representative* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

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

If:

- a) the *Contractor* fails to comply with such a *direction*; and
- b) that failure has not been made good within ~~8 days~~ 6 business days after the *Contractor* receives written notice from the ~~Superintendent~~ Principal's Representative that the *Principal* intends to have the subject *work* rectified by others,
then the Principal:
- c) may have that work so rectified and the ~~Superintendent~~ Principal's Representative shall certify the cost incurred as moneys due from the Contractor to the Principal; or
- d) have the scope of rectification of that work valued pursuant to subclause 36.4, and the Principal's Representative shall certify that value as moneys due from the Contractor to the Principal.

29.4 Acceptance of defective work

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

29.5 Timing

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

30 Examination and testing

30.1 Tests

At any time before the expiry of the last *defects liability period*, the ~~Superintendent~~ Principal's Representative 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~~ Principal's Representative may direct that any part of *WUC* shall not be covered up or made inaccessible without the ~~Superintendent's~~ Principal's Representative's prior written *direction*.

30.3 Who conducts

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

30.4 Notice

The ~~Superintendent~~Principal's Representative 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~~Principal's Representative 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~~Principal's Representative.

30.7 Costs

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

31 Working hours

~~If the working hours and working days on the site are not stated elsewhere in the Contract, they shall be as notified by the Contractor to the Superintendent before commencement of work on site.~~ shall be as set out in the development consent unless directed otherwise by the Principal or the Principal's Representative. They shall not be varied without the Superintendent's prior written approval, except when, in the interests of safety of persons or property, If the Contractor finds it necessary in the interests of safety of persons or property, to carry out WUC otherwise, whereupon the Contractor shall give the ~~Superintendent~~Principal's Representative written notice of those circumstances as early as possible. As soon as practicable after receipt of a notice from the Contractor under this clause 31, the Principal's Representative must provide a direction to the Contractor as to any change to the working hours.

32 Programming

32.1 Generally

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

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

The ~~Superintendent~~Principal's Representative may direct in what order and at what time the various stages or portions of WUC shall be carried

out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the ~~*Superintendent*~~ *Principal's Representative* written notice of the reasons.

The power of the *Principal's Representative* to direct at what time the various stages or portions of the *WUC* shall be carried out includes a power to direct the *Contractor* to accelerate the progress of the *WUC* where the *Principal's Representative* reasonably considers it possible that the *Contractor* will not achieve practical completion by the date for practical completion.

32.2 Construction Program

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

The *initial program* is included at Annexure Part D and the *Contractor* acknowledges at the date of *Contract* that the *initial program* is the approved *construction program*.

The *Contractor* must give the *Principal's Representative* a further *construction program*:

- a) within 5 business days of the end of a delay;
- b) within 5 business days of the determination of an *EOT* claim by the *Principal's Representative*; and
- c) otherwise in accordance with the *contract documents* or as reasonably requested by the *Principal's Representative*.

A further *construction program* must be accompanied by a detailed schedule and activity list indicating the revisions to each activity and the critical path.

Within 15 business days of the provision of a *construction program* by the *Contractor* to the *Principal's Representative*, the *Principal's Representative* must in writing either:

- d) approve the *construction program*; or
- e) request amendments to the proposed *construction program*.

Without derogating from the *Contractor's* responsibility for programming the *WUC*, the *Contractor* must incorporate the *Principal's Representative's* requested amendments and resubmit the revised *construction program* within 5 business days of receipt of a notice under subclause 32.2(e).

No *construction program* other than the *initial program* is the approved *construction program* until a notice under subclause 32.2(d) is issued by the *Principal's Representative*.

The *Contractor* shall not, without reasonable cause, depart from ~~a~~ the approved *construction program*.

The furnishing of a *construction program* or of a further *construction program* shall not relieve the *Contractor* of any obligations under the *Contract* including the obligation not to depart, without reasonable cause, from the approved *construction program* and does not derogate from the *Contractor's* obligation to achieve practical completion by the date for practical completion

~~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.~~

32.4 Record keeping and reporting

The Contractor shall take a monthly photographic record of the site in a form acceptable to the Principal's Representative. The photographs shall be in colour, dated and of high quality, clearly depicting the subject. The Contractor shall provide a set of relevant photographs with each payment claim in an accessible digital format.

The Contractor must comply with the record keeping and reporting requirements set out in the contract documents or as reasonably directed by the Principal's Representative.

32.5 Communication Management Plan

Without limiting the Contractor's obligations under this Contract, promptly after the date of Contract, the Contractor shall develop, implement and maintain a Communication Management Plan approved by the Principal.

Despite any other provision of the Contract, the Contractor shall not be entitled to an EOT or additional costs for complying with this clause 32.5.

33 Suspension

33.1 Superintendent's/Principal's Representative's suspension

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

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

33.2 Contractor's suspension

Subject to subclause 33.5, If-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/Principal's Representative prior written approval. The Superintendent/Principal's Representative may approve the suspension and may impose conditions of approval.

33.3 Recommencement

As soon as the ~~Superintendent~~Principal's Representative becomes aware that the reason for any suspension no longer exists, the ~~Superintendent~~Principal's Representative 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~~Principal's Representative.

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 or suspension of work 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~~Principal's Representative and added to or deducted from the *contract sum*.

33.5 Suspension Pursuant to Security of Payment Act

Subject to clause 34 but notwithstanding any other subclause of the Contract, if the Contractor suspends the whole or part of the WUC pursuant to section 27 of the Security of Payment Act then to the extent permitted by the law, the Contractor:

- a) shall not be entitled to make any claim against the Principal for compensation of any costs, losses, expenses or damages incurred by the Contractor as a result (whether directly or indirectly) except as provided for in section 27 of the Security of Payment Act;
- b) shall not be entitled to an EOT in respect of any delay resulting from such suspension; and
- c) the Principal may direct the Contractor to omit the whole or any part of the suspended WUC and thereafter undertake such WUC itself or engage others to carry out the omitted WUC and the Principal shall make the payments for which the Principal is liable under the Security of Payment Act in respect of such omission.

33.6 Effect of Suspension

Suspension shall not of itself affect the date for practical completion but the cause of suspension may be a ground for an EOT under clause 34.

33.7 Appointment of Adjudicator

If an application for adjudication is made under the Security of Payment Act, the authorised nominating authority or the prescribed appointer under the Security of Payment Act (as the case may be in respect of the appointment of an adjudicator), shall be the New South Wales chapter of the Resolution Institute.

34 Time and progress

34.1 Progress

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

34.2 Notice of delay

A party becoming aware of anything which will probably cause delay to *WUC* shall promptly (within 5 business days) give the ~~Superintendent~~ *Principal's Representative* and the other party written notice of that cause and the estimated delay.

The written notice shall include details on:

- a) the cause of the delay;
- b) the effect or likely effect of the delay;
- c) the effect or likely effect on the date of practical completion; and
- d) the date on which the cause of the delay first arose.

34.3 Claim

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

- a) the *Contractor* is or will be delayed in reaching practical completion by a qualifying cause of delay; and
- a) b) the *Contract* does not prohibit the *Contractor* from claiming an *EOT*;
- c) the *Contractor* gives the ~~Superintendent~~ *Principal's Representative*:
 - i) a notice in accordance with subclause 34.2; and
 - ii) within 28-10 business days of when the *Contractor* should reasonably have become aware of that causation occurring the day upon which the cause of the delay ends, a written claim for an *EOT*:
 - A) evidencing the facts of causation and of the delay to *WUC*;
 - B) the time by which, in its opinion, the date for practical completion should be extended; and
 - C) the tasks or activities that are likely to be affected by the delay and the likely impact of the delay;
- d) the delay is beyond the control of, and is not due to any default by the *Contractor*; and
- e) the *Contractor* has:
 - i) not caused or contributed to the delay;
 - ii) taken proper and reasonable steps to preclude the occurrence of the delay and to minimise the consequences of the delay;
 - iii) complied with any instructions of the *Principal's Representative* with respect to the delay;
 - iv) demonstrated that the delay shall affect or has affected the completion of an activity or activities which lie on the critical path outlined in the approved construction program current for the period in which the delay occurred; and

v) has satisfied the Principal's Representative that the delay shall or has actually prevented the Contractor from reaching practical completion by the date for practical completion.

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (c**b**)(ii) of this subclause, the Contractor ~~shall~~ may claim an EOT for such delay by promptly giving the ~~Superintendent~~ Principal's Representative a written claim complying with the requirements of subclause 34.3(b)(ii)-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~~ Principal's Representative shall disregard questions of whether:

- a) WUC can nevertheless reach *practical completion* without an EOT; or
 - b) the Contractor can accelerate,
- but:*
- c) ~~shall~~ must have regard to what prevention and mitigation of the delay has not been effected by the Contractor; and
 - ~~e)d~~ d) must take into account any time bar or other provision of the Contract affecting the claim.

34.5 Extension of time

Within ~~28 days~~ 20 business days after receiving the Contractor's claim for an EOT, the ~~Superintendent~~ Principal's Representative shall give to the Contractor and the Principal a written direction evidencing the EOT so assessed. If the ~~Superintendent~~ Principal's Representative does not do so, there shall be a deemed assessment and direction for an EOT as claimed.

If the EOT assessed by the Principal's Representative is less than that claimed by the Contractor, the Principal's Representative is to provide the Contractor with a written assessment of reasons for the difference.

Nothing done or not done by the Principal's Representative or the Principal, under this clause 34 or any other clause of the Contract shall cause the date for practical completion to be set at large.

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.

Subject to subclause 34.9, the Contractor is not entitled to any additional payment because of the granting of an EOT.

34.6 Practical completion

The Contractor shall give the ~~Superintendent~~ Principal's Representative at least ~~14 days~~ 10 business 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~~ Principal's Representative to issue a *certificate of practical completion*. Within ~~14 days~~ 10 business days after receiving the request, the ~~Superintendent~~ Principal's Representative shall give the Contractor and

the *Principal* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

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

The issue of a *certificate of practical completion* does not constitute approval of any work or other matter, nor will it prejudice any claim by the *Principal*.

34.6A Post practical completion activities

Unless the *Principal's Representative* has given the *Contractor* written notice otherwise, the *Contractor* must perform the post practical completion activities set out in Annexure Part H.

34.7 Liquidated damages

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

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

34.8 Bonus for early practical completion

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

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

34.9 Delay damages

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

35 Defects liability

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

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

As soon as possible after the *date of practical completion*, the *Contractor* shall 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 27*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

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

36 Variations

36.1 Directing variations

The *Contractor* shall not vary *WUC* except as directed or approved in writing by the *Principal's Representative*.

~~†The *Superintendent/Principal's Representative*, before the date of practical completion, may direct the *Contractor* to perform a variation vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract*:~~

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

A direction under this subclause must expressly state that it is a *direction* pursuant to this subclause.

Except where a *direction* is given in conformance with this subclause, the *Contractor* will have no entitlement as a consequence of any variation.

Where the *Contractor* wishes to make a claim for an *EOT* as a consequence of a variation, in addition to any notice or other information or thing it is required to give under clause 36, the *Contractor* must give all notice required under clause 34.

Despite any provision of this *Contract* to the contrary, no variation shall invalidate or amount to a repudiation of this *Contract*.

For the avoidance of doubt, the *Principal* shall be entitled to have any omitted work carried out by others.

36.2 Proposed variations

The ~~*Superintendent/Principal's Representative*~~ may give the *Contractor* written notice of a proposed variation.

The *Contractor* shall as soon as practicable after receiving such notice, notify the ~~*Superintendent/Principal's Representative*~~ whether the proposed

variation can be effected, together with, if it can be effected, the Contractor's estimate of the:

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

The ~~Superintendent~~*Principal's Representative* 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~~*Principal's Representative* as moneys due to the Contractor.

36.3 Variations for convenience of Contractor

If the Contractor requests the ~~Superintendent~~*Principal's Representative* to direct a *variation* for the convenience of the Contractor, the ~~Superintendent~~*Principal's Representative* 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.

36.3A Restriction on the nature of variations

If the Contractor forms the view that a *variation* directed by the *Principal's Representative* would:

- a) materially affect the fitness for purpose of the completed Works; or
- b) cause the WUC to be in breach of any *approvals*.

the Contractor must within 5 business days (and in any event prior to commencement of the varied works) notify the *Principal's Representative* in writing of this view.

The *Principal's Representative* must, within 3 business days of receiving a notice from the Contractor under this subclause 36.3A, provide a further *direction* to the Contractor as to whether the *variation* or *alternative* is to be proceeded with.

36.4 Pricing

The ~~Superintendent~~*Principal's Representative* shall, as soon as possible, price each *variation* or any other claim, item or activity required by the Contract to be priced or valued under this subclause 36.4 using the following order of precedence:

- a) prior agreement;
- b) ~~applicable rates or prices in the Contract~~*not used*;
- c) rates or prices in the Contract (which may be contained in a priced bill of quantities, schedule of rates or schedule of prices, if included in the Contract), even though not contract documents, to the extent that it is reasonable to use them; and
- e)d) reasonable rates or prices, which shall

Where the variation is priced by the Principal's Representative under subclause (c) or (d) above:

- e) in the case of additions to the scope of works, include an reasonable amount for profit and all off-site overheads calculated at the rate specified in Item 27A; and
- f) in the case of deductions shall include a reasonable for profit but not overheads calculated at the rate in Item 27B, and applying any deductions required under the Contract.

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

The Contractor acknowledges and agrees that no variation claim may include any amount for on-site overheads.

36.5 Obligation to continue performance of the Works

The Contractor must comply with any direction given by the Principal's Representative under subclause 36.1 or 36.3 and continue to perform the Contract despite any dispute about extra time or extra money or the pricing of the variation.

37 Payment

37.1 Progress claims

The Contractor shall claim payment progressively in accordance with Item 28. The Contractor may submit to the Principal's Representative a claim for payment ('payment claim');

- a) at all times for payment claims stated in Item 28 up to the issuance of a certificate of practical completion;
- b) upon issue of a certificate of practical completion; and
- c) at the time for the final payment claim prescribed by subclause 37.4.

The payment claim must, amongst other things, include:

- a) the amount being claimed in the payment claim (the 'claimed amount');
- b) details of the WUC or part of the WUC executed by the Contractor, or related goods or services supplied, during the period to which the payment claim relates and the basis upon which the Contractor has calculated or assessed the value of the part of the WUC the subject of the claimed amount;
- c) details of all amounts that form part of the claimed amount and the basis upon which the Contractor believes it is entitled to claim such amounts;
- d) any document required to be provided with or in relation to a payment claim by any term of this Contract or otherwise at law; and
- e) any other information requested by the Principal's Representative which may be requested no later than 5 business days prior to the date the relevant payment claim is submitted or in the case of an early payment claim, deemed to be submitted in accordance with Item 28.

An early ~~progress-payment~~ claim shall be deemed to have been made on the date for making that claim in accordance with Item 28.

~~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~~Principal's Representative shall, within ~~14 days~~10 business days after receiving such a ~~progress-payment claim~~, issue to the Principal and the Contractor:

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

~~The net amount of the amount certified for payment in the progress certificate and the certificate issued in accordance with subparagraph (b) above (if any) is the 'scheduled amount'. Where the scheduled amount is less than the claimed amount (or is an amount payable by the Contractor to the Principal), the Principal's Representative must also provide a schedule setting out the scheduled amount and the reasons for the difference ('payment schedule').~~

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

If the ~~Superintendent~~Principal's Representative does not issue the progress certificate and (where necessary) a ~~payment schedule~~ within ~~14 days~~10 business days of receiving a ~~progress-payment claim~~ in accordance with subclause 37.1, subject to subclause 37.3A, the Principal is liable to pay the whole of the claimed amount that progress claim shall be deemed to be the relevant progress certificate.

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

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

37.3 Unfixed plant and materials

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

- a) provides the additional security in Item 13(e); and
- b) satisfies the Superintendent that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the Principal.

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

37.3A Time for payment

If the *scheduled amount* is an amount payable by the *Principal* to the *Contractor*, the *Principal* shall pay to the *Contractor* the *scheduled amount* within 15 *business days* of the date of the relevant *payment claim*.

If the *scheduled amount* is an amount payable by the *Contractor* to the *Principal*, the *Contractor* shall pay to the *Principal* the *scheduled amount* within 15 *business days* of issue by the *Principal's Representative* of the relevant *progress certificate* and *payment schedule*.

37.4 Final payment claim and certificate

Within ~~28 days~~ 20 *business days* after the expiry of the last *defects liability period*, the *Contractor* shall give the ~~*Superintendent*~~ *Principal's Representative* a written *final payment claim* endorsed 'Final Payment Claim' being a ~~*progress-payment claim*~~ together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within ~~42 days~~ 10 *business days* of receipt of the *final payment claim* or where no *final payment claim* is served by the *Contractor* at a time after the expiry of the last *defects liability period* determined in the sole and unfettered discretion of the *Principal's Representative*, the ~~*Superintendent*~~ *Principal's Representative* shall issue to both the *Contractor* and the *Principal* a *final certificate* and *final payment schedule* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*.

Those moneys certified as due and payable shall be paid by the *Principal* or the *Contractor*, as the case may be, within ~~7 days~~ 10 *business days* after the debtor receives the *final certificate* and *final payment schedule*.

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~~ 5th *business day* after the issue of the *final certificate*.

37.5 Interest

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

37.6 Other moneys due

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

37.7 Set off

The *Principal* may at any time deduct from, or set off against, any amounts due and payable to the *Contractor* under this *Contract* in respect of the *WUC* for amounts, damage, or losses which the *Contractor* is liable to pay to the *Principal* under the *Contract*.

Where the *Principal's Representative* is so directed it must certify such amounts, damages or losses against the *Contractor*.

Nothing in this subclause 37.7 limits any other right for the *Principal* to set off amounts under any other provision of this *Contract*.

37.8 Security of payment

To the extent that the *Security of Payment Act* applies to the *WUC*:

- a) in receiving *payment claims* or issuing *payment schedules* pursuant to the *Security of Payment Act*, the *Principal's Representative* acts as the agent of the *Principal*;
- b) a *payment claim* for the purposes of the *Security of Payment Act* is a valid claim for payment pursuant to subclause 37.1 and the date prescribed in subclause 23.1 as the time for *payment claims* is, for the purpose of the *Security of Payment Act*, the 'reference date';
- c) the *Contractor* acknowledges and agrees that:
 - i) failure by the *Principal's Representative* to set out in a *payment schedule* an amount which the *Principal* is entitled to retain, deduct, withhold or set-off (whether under the *Contract* or otherwise) from the amount which would otherwise be payable to the *Contractor* by the *Principal* will not prejudice the *Principal's* right to subsequently exercise that right to retain, deduct, withhold or set off any amount (whether under any subsequent *payment schedule* or subclause 37.7); and
 - ii) to the extent permitted by law, if an adjudication determination under the *Security for Payment Act* is given in connection with the *WUC* or the *Contract*, the *Principal's Representative* may, in any *payment schedule* issued following such adjudication determination, account to the parties for any monies then due and payable between the *Contractor* and the *Principal* on any account whatsoever arising out of or in any way in connection with the subject matter of the *Contract*.

Notwithstanding any other provision of this *Contract*:

- a) the *Contractor* must within 3 business days give the *Principal* a copy of any written communication of whatever nature in relation to the *Security of Payment Act* that the *Contractor* gives to or receives from a subcontractor; and
- b) the *Contractor* must use best endeavours to ensure that each subcontractor within 3 business days gives the *Principal* a copy of any written communication of whatever nature in relation to the *Security of Payment Act* that the subcontractor receives from another party.

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~~ *Principal's Representative's* satisfaction.

38.2 Withholding payment

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

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

38.3 Direct payment

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

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

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

38A Records and audit rights

38A.1 Contractor to maintain records

The *Contractor* must at all times maintain full, true and up-to-date accounts and records in relation to this *Contract* and the *Works* as may be requested by the *Principal*. Nothing in this clause 38A requires the *Contractor* to keep records for more than 7 years after the end of the financial year in which the record was created.

38A.2 Audits and access to records

- (a) Subject to subclause (b), the *Principal* may upon reasonable notice conduct an audit of the records maintained by the *Contractor* under clause 38A.1.
- (b) The *Principal* agrees that it will only exercise the access rights conferred on it by this clause 38A.2 for the purposes of:
 - (i) monitoring compliance with this *Contract*, including examination of work in progress;

- (ii) investigating the reasonableness of proposed prices or costs of any proposed variation; and
 - (iii) making payments in accordance with clause 37.
- (c) The exercise of any rights by the Principal under this clause 38A.2 does not reduce the Contractor's obligations to comply with this Contract.

39 Default or insolvency

39.1 Preservation of other rights

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

39.2 Contractor's default

If the *Contractor* commits a substantial breach of the *Contract*, the *Principal* may, by ~~hand or by certified post~~ any of the means set out in subclause 7.2, 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~~ Principal's Representative pursuant to subclause 29.3; or
 - iv) use the materials or standards of *work* required by the *Contract*;
- b) wrongful suspension of *work*;
- c) substantial departure from a *construction program* without reasonable cause or the ~~Superintendent~~ Principal's Representative approval;
- d) where there is no *construction program*, failing to proceed with due expedition and without delay; ~~and~~
- e) in respect of clause 38, knowingly providing documentary evidence containing an untrue statement; and
- f) breach of clause 23A and subclause 24.5.

39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

- a) that it is a notice under clause 39 of these General Conditions of *Contract*;
- b) the alleged substantial breach;
- c) that the *Contractor* is required to show cause in writing why the *Principal* should not exercise a right referred to in subclause 39.4;
- d) the date and time by which the *Contractor* must show cause (which shall not be less than ~~7 clear days~~ 5 clear business days after the notice is received by the *Contractor*); and
- e) the place at which cause must be shown.

39.4 Principal's rights

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

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

39.5 Take out

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

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

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

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

The ~~*Superintendent*~~*Principal's Representative* shall keep records of the cost of completing the *work*.

39.5A Additional obligations on the Contractor when the Principal takes over work

If the *Principal* takes *work* out of the hands of the *Contractor* under subclause 39.4(a) or terminates the *Contract* under subclause 39.4(b), the *Contractor* shall, in accordance with the *directions* of the *Principal's Representative*:

- a) assign or novate to the *Principal* or such other party designated by the *Principal* in writing those agreements made between the *Contractor* and any subcontractor, consultants, suppliers or other third parties as are designated by the *Principal's Representative*;
- b) assign or novate to the *Principal* any other rights, titles, and commitments relating to the *WUC* which the *Contractor* has acquired in its dealings with third parties in connection with the *WUC*;
- c) within 3 *business days* make available for collection or if required by the *Principal* deliver to the *site* or otherwise in accordance with the *directions* of the *Principal's Representative*, any plant or materials not incorporated into the *Works* regardless of whether they are located at or adjacent to or away from the *site*; and/or
- a)d) take any other action concerning the *work* taken out of the hands of the *Contractor* or the termination of the *Contract* (as the case may be) which the *Principal* may require.

39.6 Adjustment on completion of work taken out

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

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

39.7 Principal's default

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by ~~hand or by certified post~~*any of the means set out in subclause 7.2*, give the *Principal* a written notice to show cause.

Substantial breaches include, but are not limited to:

- a) failing to:
 - i) provide security;
 - ii) produce evidence of insurance;
 - iii) rectify inadequate *Contractor's* possession of the site if that failure continues for longer than the time stated in *Item 31*; or
 - iv) make a payment due and payable pursuant to the *Contract*; and
- b) the ~~Superintendent~~*Principal's Representative* not giving a certificate of practical completion or reasons as referred to in subclause 34.6.

39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

- a) that it is a notice under clause 39 of these General Conditions of *Contract*;
- b) the alleged substantial breach;
- c) that the *Principal* is required to show cause in writing why the *Contractor* should not exercise a right referred to in subclause 39.9;
- d) the date and time by which the *Principal* must show cause (which shall not be less than ~~7 clear days~~*5 clear business days* after the notice is received by the *Principal*); and
- e) the place at which cause must be shown.

39.9 Contractor's rights

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

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

The *Contractor* may, by written notice to the *Principal*, terminate the *Contract*, if within ~~28 days~~*20 business days* of the date of suspension under this subclause, the *Principal* fails:

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

Damages suffered by the *Contractor* by reason of the suspension shall be assessed by the ~~Superintendent~~*Principal's Representative*, 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.

Additionally, if the *Contract* is terminated pursuant to subclause 39.4(b):

- a) the *Principal* will:
 - i) be entitled to take possession of and use or require the *Contractor* to remove from the *site*, such of the *construction plant* and other things on or in the vicinity of the *site* as were used by the *Contractor*;
 - ii) be entitled to require the *Contractor* to novate to the *Principal* or its nominee any or all subcontracts between the *Contractor* and its subcontractors as required by the *Principal*; and
 - iii) not be obliged to make any further payments to the *Contractor*, including any money the subject of a *payment claim* or *payment schedule* under clause 37; and
- b) the *Contractor*:
 - i) must within 3 *business days* hand over to the *Principal* all copies of documents provided by the *Principal* or the *Principal's Representative* to the *Contractor* and all documents relating to *WUC* prepared by the *Contractor* to the date of termination (whether complete or not); and
 - ii) has no right or entitlement to submit further *payment claims*.

39.11 Insolvency

If:

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

sequestration order made, under Part X of the Bankruptcy Act 1966 (Cwlth) or like provision under the law governing the *Contract*; or

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

then, where the other party is:

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

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

39A Termination for convenience

39A.1 Principal may terminate

The *Principal* may (without prejudice to any of its other rights or entitlements under the *Contract*) and for its sole convenience terminate the *Contract* by written notice to the *Contractor*.

If the *Principal* terminates the *Contract* under this clause 39A, the *Contractor* must:

- a) cease the execution of the *WUC* within the time periods stipulated by the *Principal*;
- b) de-mobilise from the *site* in accordance with any *direction* of the *Principal's Representative*;
- c) ensure that the *site* is left in a safe condition and that the *WUC* is properly secured;
- d) hand over to the *Principal* all documentation and information in its possession or control relating to the *WUC* packaged and indexed as required by the *Principal's Representative*;
- e) novate or assign to the *Principal* or its nominee any subcontracts stipulated by the *Principal*; and
- f) otherwise mitigate the cost to the *Contractor* of such termination.

39A.2 Contractor's entitlement to payment

If the *Principal* terminates the *Contract* under this clause 39A, the *Contractor* shall be entitled to payment of the following amounts as determined by the *Principal's Representative*:

- a) the value of all *WUC* carried out in accordance with the *Contract* up to the date of termination assessed by reference to the *contract sum* as at the date of termination (less amounts previously paid to the *Contractor* in respect of such work);
- b) except to the extent already provided by subclause 39A.2(a), the cost of all material, plant, and equipment purchased or ordered by the *Contractor* for the *WUC* but only if:
 - i) upon payment by the *Principal* of such monies, the unencumbered title to the materials, plant and equipment passes to the *Principal*; and
 - ii) such materials, plant and equipment has been purchased or ordered in accordance with the *construction program* (and not in advance); and
- c) except to the extent already provided by subclause 39A.2(a) and (b), the direct, necessary and reasonable costs incurred by the *Contractor* (and evidenced to the *Principal* in writing) ('*actual other termination costs*') as a result of complying with its obligations under subclause 39A.1, but in no case shall the *Principal's* liability to the *Contractor* for such *actual other termination costs* exceed the amount identified in *Item 31A*.

The *Contractor* acknowledges and agrees that its sole remedy for the *Principal* terminating the *Contract* pursuant to clause 39A shall be the amount due to the *Contractor* under this clause 39A. The *Contractor* shall have no right to make any claim for compensation in respect of such termination other than in respect of the amount payable under this subclause 39A.2.

40 Termination by frustration

If the *Contract* is frustrated:

- a) the *Principal's Representative* 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~~ *payment claim* on the date of frustration;
- b) the *Principal* shall pay the *Contractor*:
 - i) the amount due to the *Contractor* evidenced by all unpaid certificates;
 - ii) the cost of materials and equipment reasonably ordered by the *Contractor* for *WUC* and which the *Contractor* is liable to accept, but only if they will become the *Principal's* property upon payment; and
 - iii) the costs reasonably incurred:
 - A) removing *temporary works* and *construction plant*;
 - B) returning to their place of engagement the *Contractor*, subcontractors and their respective employees engaged in *WUC* at the date of frustration; and

- C) by the *Contractor* in expectation of completing *WUC* and not included in any other payment; and
- c) each party shall promptly release and return all *security* provided by the other.

41 Notification of claims

41.1 Communication of claims

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

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party and to the ~~*Superintendent*~~*Principal's Representative* –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 claim*~~ (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*.

Notwithstanding any other provision in the *Contract*, the *Principal* shall not be liable upon any claim by the *Contractor* in respect of or arising out of a breach of *Contract* unless within 20 business days after the first day upon which the *Contractor* could reasonably have been aware of the breach, the *Contractor* has given to the *Principal's Representative* the *prescribed notice*.

If the *Contractor* is entitled to any extra costs or expense caused by or arising out of any direction or approval by the *Principal's Representative*, the entitlement will be barred unless within 20 business days after the direction or approval is given to the *Contractor* (or other such shorter period as required by the relevant clause of the *Contract*), the *Contractor* has given to the *Principal's Representative* the *prescribed notice*.

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*~~*Principal's Representative's* decision

If within ~~28 days~~*20 business days* of giving the *prescribed notice* the party giving it does not notify the other party and the ~~*Superintendent*~~*Principal's Representative* –of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within ~~56 days~~*40 business days* of receipt of the *prescribed notice* the ~~*Superintendent*~~*Principal's Representative* –shall assess the claim and notify the parties in writing of the decision. Unless a party within a further ~~28 days~~*20 business days* of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the ~~*Superintendent*~~*Principal's Representative* 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~~ *Principal's Representative'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, ~~subject to compliance with subclause 42.1A,~~ either party shall, by ~~hand or by certified mail~~ any of the means set out in subclause 7.2, give the other ~~and the Superintendent~~ a written notice of *dispute* ~~within 10 business days of the dispute first arising (or where a meeting under subclause 42.1A takes place within 5 business days of that meeting if the dispute is not resolved at the meeting)~~ 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*, ~~except that the Principal is not required to pay any amount that is disputed.~~

42.1A Pre dispute meeting

~~Before initiating the dispute procedure under this clause the aggrieved party must seek a meeting with the other to attempt to resolve the issue. If requested to attend the meeting contemplated by this clause, the other party must do so. The Contractor agrees that the Principal may be represented by the Principal's Representative at a meeting under this clause 42.1A. The parties may agree to a further meeting or meetings before the procedure under clause 42 is commenced.~~

42.2 Conference

Within ~~14 days~~ *10 business 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.

- a) If the *dispute* has not been resolved within ~~28 days~~ *20 business days* of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to arbitration.

42.3 Arbitration

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

42.4 Summary relief

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

43 Waiver of conditions

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

44 Prohibited Acts

The Contractor must not do and warrants that prior to the date of Contract, it has not done nor have any of its officers, employees or advisers done nor will they do any of the following (*Prohibited Acts*):

- (a) offer or give or agree to give any employee or representative of the Principal any gift or consideration of any kind as an inducement or reward for doing or for having done or forborne to do any act in relation to the obtaining or execution of this Contract or for showing or forbearing to show favour or disfavour to any person in relation to this Contract; or
- (b) enter into any agreement (including this Contract) with the Principal in connection with which commission has been paid or agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before such agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to a duly authorised representative of the Principal.

45 Limitation of Liability

- (c) Notwithstanding any other provision of the Contract to the contrary, but subject to the following provisions of this clause 45, the Contractor's liability to the Principal arising out of or in connection with the Contract will not exceed an amount (in aggregate) equal to ~~FTBCI~~ of the Contract Sum.
- (d) The liability limitations stipulated in subclause 45(a) does not apply to any liability of the Contractor for or in respect of:
 - (i) claims for amounts which are, or would have been, recovered under insurances required pursuant to the Contract, if the Contractor had:
 - (A) effected and maintained the insurances in accordance with the requirements of the Contract;
 - (B) fully complied with all relevant contracts of insurance;
 - (C) fully complied with the Contractor's obligations in relation to insurances; and
 - (D) diligently pursued claims under all relevant insurances,
 - (ii) claims which arise from or in connection with:

- (A) the Contractor's fraudulent, malicious or illegal acts or omissions;
- (B) the Contractor's deliberate breaches of contract;
- (C) any act or omission of the Contractor committed with a reckless disregard for their consequences;
- (D) personal injury or death;
- (E) loss or damage to any ~~third-party~~third-party property;
- (F) breach by the ~~Contractor~~ of Contractor of a confidentiality obligation;
- (G) infringement of Intellectual Property Rights or Moral Rights; and
- (H) any liability that cannot be limited at law.

Part A

Amended AS 4000 – 1997

This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to the General Conditions of Contract and shall be read as part of the *Contract*.

Item

- | | | |
|---|--|---|
| 1 | <i>Principal</i>
(clause 1) | Inner West Council.....
.....
ABN 19 488 017 987..... |
| 2 | <i>Principal's</i> address | 7-15 Wetherill Street, Leichhardt NSW 2040
.....
Phone: 02) 9392 5000 Fax: (02) 9392 5911
Email: council@innerwest.nsw.gov.au |
| 3 | <i>Contractor</i>
(clause 1) | {TBC} <u>BELMADAR Pty Ltd</u>
.....
ACN <u>ABN 53 156 053 351</u> {TBC} |
| 4 | <i>Contractor's</i> address | <u>214 Willoughby Road</u> {TBC}
<u>Naremburn NSW 2065</u> {TBC}
Phone: {TBC} <u>02 84363500</u> Fax: <u>02 8436 3555</u> {TBC}
Email <u>info@belmadar.com.au</u> {TBC} |
| 5 | <i>Superintendent</i> <u><i>Principal's</i></u>
<i>Representative</i>
(clause 1) | {TBC} <u>Ian Hosking</u>
.....
ACN |
| 6 | <i>Superintendent's</i> <u><i>Principal</i></u>
<i>Representative's</i> address | 7-15 Wetherill Street, Leichhardt NSW 2040
.....
Phone: {TBC} <u>02 9335 2288</u>
Fax:
Email {TBC} <u>ian.hosking@innerwest.nsw.gov.au</u> |
-

† 7	a) <i>Date for practical completion</i> (clause 1)	[TBC]
	OR	
	b) <i>Period of time for practical completion</i> (clause 1)	<u>27 weeks from PCA sign-off for commencement of demolition excl statutory holidays, Sundays and fixed RDO's</u>
8	Governing law (page 5, clause 1(h))	<u>New South Wales</u> If nothing stated, that of the jurisdiction where the <i>site</i> is located
9	a) <i>Currency</i> (page 5, clause 1(g))	<u>AUD</u> If nothing stated, that of the jurisdiction where the <i>site</i> is located
	b) <i>Place for payments</i> (page 5, clause 1(g))	<u>Principal's address</u> If nothing stated, the <i>Principal's</i> address
	c) <i>Place of business of bank</i> (page 3 <u>10</u> , clause 1(d))	..... If nothing stated, the place nearest to where the <i>site</i> is located
10	<i>Bills of quantities</i> <u>contract sum</u> (subclause 2.2)	<u>\$5,681,747.50 incl GST</u> [TBC]
	a) <i>Alternative applying</i> (subclause 2.2)	..... — If nothing stated, Alternative 1 applies
	b) <i>If Alternative 2 applies, is the bill of quantities to be priced?</i> (subclause 2.2)	..... — No/Yes (delete one) — If neither deleted, the bill of quantities shall not be priced
	e) <i>Lodgement time</i> (subclause 2.3(b))	..... — If nothing stated, 28 days after date of acceptance of tender
11	<i>Quantities in schedule of rates, limits of accuracy</i> (subclause 2.5(b)) <u>Not used</u>	<u>Upper Limit</u> <u>Lower Limit</u>
12	<i>Provisional sum, percentage for profit and attendance (clause 3)</i>	<u>12.5</u> [TBC] %

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

† 13 *Contractor's security*

- | | | |
|----|--|--|
| a) | Form
(clause 5) | <u>Approved unconditional bank guarantee</u> |
| b) | Amount or maximum
percentage of <i>contract sum</i>
(clause 5) | <u>5% of contract sum (comprised of 2 separate security's each of 2.5%) ..</u>
If nothing stated, 5% of the <i>contract sum</i> |
| c) | If retention moneys, percentage
of each <i>progress certificate</i>
(clause 5 and subclause 37.2) | <u>N/A</u>
If nothing stated, 10%, until the limit in <i>Item 13(b)</i> |
| d) | Time for provision (except for
retention moneys)
(clause 5) | <u>10 business days before taking possession of the site</u>
If nothing stated, within 28 days after <i>date of acceptance of tender</i> |
| e) | Additional <i>security</i> for unfixed
plant and materials
(subclauses 5.4 and 37.3) | <u>Unconditional bank guarantee in the amount of the value of the
unfixed plant and materials the subject of the <i>security</i></u>
..... \$ |
| f) | <i>Contractor's security</i> upon
<i>certificate of practical
completion</i> is reduced by
(subclause 5.4) | <u>2.5% of contract sum (being the one bank guarantee for 2.5%) which
is to be reduced upon certification by the <i>Principal's Representative</i>
% of amount held</u>
If nothing stated, 50% of amount held |

† 14 *Principal's security*

- | | | |
|----|--|---|
| | | <u>Not Used</u> |
| a) | Form
(clause 5) | |
| b) | Amount or maximum
percentage of <i>contract sum</i>
(clause 5) |
— If nothing stated, nil |
| e) | Time for provision
(clause 5) |
— If nothing stated, within 28 days after <i>date of acceptance of tender</i> |
| d) | <i>Principal's security</i> upon
<i>certificate of practical
completion</i> is reduced by
(subclause 5.4) |% of amount held
— If nothing stated, 50% of amount held |

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

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

15	<i>Principal-supplied documents</i> (subclause 8.2)	Document	No. of copies
		1 <u>Contract documents</u>	<u>1 electronic copy</u>
		2 <u>Attached Schedule</u>	
		3	
		4	
		5	
		If nothing stated, 5 copies of the drawings, specification, <i>bill of quantities</i> or <i>schedule of rates</i> (if any)	
16	Time for <u>Superintendent's Principal's Representative's</u> <i>direction</i> about documents (subclause 8.3)	<u>10 business days</u>	
		If nothing stated, 14 days	
17	Subcontract work requiring approval (subclause 9.2)	<u>All subcontract work</u>	
		
		
18	Novation (subclause 9.4)	Subcontractor	Particular part of WUC
		<u>TBC</u> <u>All</u>	
		
		
		<i>Selected subcontractor</i>	Particular part of WUC
		
		
19	<i>Legislative requirements</i>		
	a) Those excepted (subclause 11.1)	<u>The Principal's allocated obligations under the Consent Responsibility Matrix at Annexure Part G</u>	
		
		If nothing stated then no <i>legislative requirements</i> are excepted	
	b) Identified WUC (subclause 11.2(a)(ii))	.....
		
		If nothing stated then all of the WUC is identified for the purposes of subclause 11.2(a)(ii)	
20	Insurance of the Works (clause 16)		
	a) Alternative applying <u>Not used</u>	.....
		If nothing stated, Alternative 1 applies	
	<u>If Alternative 1 applies</u>		
	b) Provision for demolition and removal of debris	.....
		\$
		OR	

		.....<u>20</u> % of the <i>contract sum</i>
c)	Provision for consultants' fees\$
		OR
		.....<u>5</u> % of the <i>contract sum</i>
d)	Value of materials or things to be supplied by the <i>Principal</i>	<u>Nil</u>\$
e)	Additional amount or percentage	<u>TBC</u>\$
		OR
		.....<u>5</u> % of the total of paragraphs(a) to (d) in clause 16
<u>20A</u>	<u>Professional indemnity insurance</u> <u>(clause 16A)</u>	
21	(a) Levels of cover of Contractor's professional indemnity insurance shall be not less than Public liability insurance (clause 17)	<u>\$10,000,000</u>
	(b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the final certificate	<u>6 years</u> — If nothing stated, Alternative 1 applies
21	If Alternative 1 applies <u>Public liability Insurance (clause 17)</u>	<u>17)</u>
	b) Amount per occurrence shall be not less than	<u>\$20,000,000</u> If nothing stated, then not less than the <i>contract sum</i>
22	Time for giving possession (subclause 24.1)	within <u>within 10 business</u> days of date of <u>Contract acceptance of tender</u> If nothing stated, 14 days
<u>22A</u>	<u>Responsibility for consent of authorities and neighbours for the WUC (subclause 24.4)</u>	<u>Section A – Principal to procure consent</u> <u>Lot 1 DP 179092</u> <u>Lot 639 DP 752049</u> <u>Lot 1 DP 131599</u> <u>Lot 55 DP 1352</u> <u>Lot 54 DP 1352</u> <u>In addition to the above any conditions of consent as noted in the Development Consent Responsibility Matrix by the Principal and or</u>

		<u>its Consultants</u>	
		<u>If nothing stated the <i>Principal</i> is not required to procure any consents of <i>authorities</i> or <i>neighbours</i> pursuant to subclause 24.4</u>	
		<u>Section B – Contractor to procure consent</u>	
		<u>All other consents</u>	
		<u>.....</u>	
		<u>.....</u>	
		<u>If nothing stated the <i>Contractor</i> is required to procure all consents of <i>authorities</i> or <i>neighbours</i> pursuant to subclause 24.4</u>	
23	<u>Additional qualifying causes of delay</u> Causes of delay for which EOTs will not be granted (page 3, paragraph (b)(iii) of clause 1 and subclause 34.3)	TBC	
† 24	Liquidated damages, rate (subclause 34.7)	.....
		..... per day <u>\$2000 \$ per day per week</u>	
† 25	Bonus for early practical completion (subclause 34.8)		
	a) <u>Rate/Amount</u>	<u>No bonus is payable</u>	
		..... per day \$ per day	
	b) Limit	.....
	 \$	
		OR	
		..... % of contract sum	
		If nothing stated, there is no waiver	
† 26	Delay damages, other compensable causes (page 1, clause 1 and subclause 34.9)	<u>Delay in giving or a failure to give a direction under clause 14.2 to rectify loss or damage caused by an excepted risk</u> <u>Maximum \$4,537 per business day</u>	
		
27	Defects liability period (clause 35)	<u>12 months</u>	
		If nothing stated, 12 months	
27A	<u>Rate for profit and overhead (clause 36)</u>	TBC <u>15%</u>	
27B	<u>Rate for profit only</u>	TBC <u>3%</u>	

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

	<u>(clause 36)</u>	
28	Progress Claims (subclause 37.1)	
a)	Times for progress claims	<u>first</u> <u>business</u> day of each month for WUC done to the <u>last</u> day of that <u>the previous</u> month
	OR	
b)	Stages of WUC for progress claims	<u>N/A</u>
29	Unfixed plant and materials for which payment claims may be made (subclause 37.3)	<u>None</u>
30	Interest rate on overdue payments (subclause 37.5)	<u>Reserve Bank of Australia Cash Rate Target at the time sum becomes due and owing plus</u> <u>0</u> % per annum If nothing stated, 18% per annum
31	Time for <i>Principal</i> to rectify inadequate possession (subclause 39.7)	<u>20</u> <u>business</u> days If nothing stated, 14 days
<u>31A</u>	<u>Cap on payment to Contractor in respect of actual other termination costs in the event of termination for convenience of Principal</u> <u>(subclause 39A.2(c))</u>	<u>No additional amount payable pursuant to subclause 39A.2(c).....</u> <u>If nothing stated no additional amount is payable pursuant to subclause 39A.2(c)</u>
32	Arbitration (subclause 42.3)	
a)	Person to nominate an arbitrator	<u>Chairperson of the New South Wales Chapter of the Institute of Arbitrators and Mediators, Australia</u>
		If no-one stated, the President of the Institute of Arbitrators & Mediators Australia
b)	Rules for arbitration	<u>Rules 5 – 18 of the Rules of The Institute of Arbitrators, Australia for the Conduct of Commercial Arbitrations</u>

If nothing stated:

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

OR

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

A3

- c) Appointing Authority under UNCITRAL Arbitration Rules Not Applicable
If no-one stated, the President of the Institute of Arbitrators & Mediators Australia

Part B

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

Deletions, amendments and additions

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

See attached marked up version of the General Conditions of Contract

.....

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

See attached marked up version of the General Conditions of Contract

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

See attached marked up version of the General Conditions of Contract

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Part C

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

Construction Management Plan

Part C

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

Part D

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

Initial Program

Part E

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

Preliminaries

Part F

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

Key Personnel

Part G

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

Consent Responsibility Matrix

Part H

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

Post Practical Completion Activities

AMENDMENT CONTROL SHEET

AS 4000—1997

Amendment No. 1 (1999)

REVISED TEXT

SUMMARY: This Amendment applies to Clause 18.

Published on 5 August 1999.

Amendment No. 2 (2000)

REVISED TEXT

SUMMARY: This Amendment applies to the Preface.

Published on 11 October 2000.

Amendment No. 3 (2005)

REVISED TEXT

SUMMARY: This Amendment applies to Clause 32 (a) and (c) of Annexure Part A.

Published on 30 March 2005.

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