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## 1 Interpretation and construction of Contract

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

<b>Item</b>	means an <i>Item</i> in the Annexure;	
<b>certificate of practical completion</b>	has the meaning in subclause 20.4;	
<b>compensable cause</b>	means any act, default or omission of the <i>Principal</i> or its consultants, agents or other contractors (not being employed by the <i>Contractor</i> );	5
<b>construction program</b>	has the meaning in clause 19;	
<b>Contract</b>	means the agreement between the <i>Principal</i> and the <i>Contractor</i> ;	
<b>contract sum</b>	means:	
	a) where the <i>Principal</i> accepted a lump sum, the lump sum;	10
	b) where the <i>Principal</i> accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the schedule of rates; or	
	c) where the <i>Principal</i> accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),	15
	excluding any additions or deductions which may be required to be made under the <i>Contract</i> ;	
<b>Contractor</b>	means the person bound to carry out and complete <i>WUC</i> ;	
<b>date for practical completion</b>	means the date stated in <i>Item</i> 5(a) or the last day of the period of time stated in <i>Item</i> 5(b), but if any <i>EOT</i> for <i>practical completion</i> is directed or otherwise allowed, it means the date resulting therefrom;	20
<b>date of acceptance of tender</b>	means the date which appears on the written notice of acceptance of tender;	
<b>date of practical completion</b>	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	25
	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;	
<b>defects</b>	has the meaning in clause 21 and includes omissions;	
<b>direction</b>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;	30
<b>dispute</b>	has the meaning in clause 27;	
<b>EOT (from 'extension of time')</b>	has the meaning in subclause 20.2;	
<b>practical completion</b>	is that stage in the carrying out and completion of <i>WUC</i> when <i>the Works</i> are complete except for minor <i>defects</i> ;	35

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

**qualifying cause of delay** means:

- a) any act, default or omission of the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
- b) other than:
  - i) a breach or omission by the *Contractor*; and
  - ii) industrial conditions or inclement weather occurring after the *date for practical completion*;

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**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*;

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**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*;

**work** includes the provision of materials;

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

In the *Contract*:

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- a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*; and
- d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender.

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## 2 Nature of Contract

### 2.1 Performance and payment

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

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The *Principal* shall pay the *Contractor*:

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

- b) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item,  
adjusted by any additions or deductions made pursuant to the *Contract*. 5

## 2.2 Quantities

Quantities in a schedule of rates are estimated quantities only.

The *Principal* is not required to give a *direction* by reason of the actual quantity of an item required to perform the *Contract* being greater or less than the quantity shown in the schedule of rates. 10

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

## 3 Security

### 3.1 Provision

Security shall be provided in accordance with *Item 6*. All delivered security, other than cash or retention moneys, shall be transferred in escrow. 15

### 3.2 Recourse

Security shall be subject to recourse by the *Principal* who remains unpaid after the time for payment where at least 5 days have elapsed since the *Principal* has notified the *Contractor* of intention to have recourse. 20

### 3.3 Reduction and release

Upon the issue of a *certificate of practical completion*, the *Principal's* entitlement to security shall be reduced to 50 per cent thereof and the reduction shall be released and returned within 14 days to the *Contractor*. 25

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

### 3.4 Trusts and interest

Except where held by a government department or agency or a municipal, public or statutory authority, any portion of security (and interest earned thereon) which is cash or retention moneys, shall be held in trust for the *Contractor* until the *Principal* or the *Contractor* is entitled to receive them. 30

Interest earned on security not required to be held in trust shall belong to the party holding that security. 35

#### 4 Service of notices

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

- a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and 5
- b) on the earliest date of:
  - i) actual receipt;
  - ii) confirmation of correct transmission of fax; or
  - iii) 3 days after posting.

#### 5 Discrepancies 10

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 other party written notice of it. The *Principal*, thereupon, and upon otherwise becoming aware, shall direct the *Contractor* as to the interpretation and construction to be followed. 15

If compliance with any such *direction* under this subclause causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Principal* and added to or deducted from the *contract sum*. 20

#### 6 Assignment and subcontracting

##### 6.1 Assignment

Neither party shall, without the other's prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder. 25

##### 6.2 Subcontracting

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

## 7 Legislative requirements

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

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

## 8 Protection

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

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

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

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

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

## 9 Care of the work and reinstatement of damage

### 9.1 Care of WUC

Except as provided in subclause 9.3, the *Contractor* shall be responsible for the care of:

- a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of practical completion*, at which time the responsibility for the care of the *Works* (except to the extent provided in paragraph (b)) shall pass to the *Principal*; and
- b) outstanding *work* and items to be removed from the *site* by the *Contractor* after 4:00 pm on the *date of practical completion* until completion of outstanding *work* or compliance with the *Contractor's* obligations under clause 21.

**9.2 Reinstatement**

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

**9.3 Excepted risks**

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

- a) any negligent act or omission of the *Principal* or others for whom it is responsible;
- b) any risk specifically excepted elsewhere in the *Contract*; 10
- c) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- d) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or those for whom it is responsible; 15
- e) use or occupation of any part of *WUC* by the *Principal* or others for whom it is responsible; and
- f) defects in the design of *WUC*, other than design provided by the *Contractor*. 20

**10 Damage to persons and property other than WUC**

**10.1 Indemnity by Contractor**

Insofar as this subclause applies to property, it applies to property other than *WUC*. 25

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

- a) loss of or damage to the *Principal's* property. The limit of indemnity under this paragraph, in respect of such property, shall be the amount stated in *Item 7*; and
- b) claims in respect of personal injury or death or loss of, or damage to, any other property, 30

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 *Principal* or others for whom it is responsible may have contributed to the injury, death, loss or damage. 35

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*; 40
- c) things for the care of which the *Contractor* is responsible under subclause 9.1; and
- d) claims in respect of the right of the *Principal* to have *WUC* carried out.

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## 10.2 Indemnity by Principal

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

## 11 Insurance of the Works

Before the *Contractor* commences *WUC*, the *Contractor* shall insure all 5 things referred to in subclause 9.1 against loss or damage resulting from any cause until the *Contractor* ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance shall cover the *Contractor's* liability under subclause 9.2 and things in storage off *site* and in transit to the *site* but may exclude: 10

- 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 15 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 20 combustion of nuclear fuel resulting from any cause;
- f) loss or damage resulting from the excepted risks referred to in paragraphs (b) and (c) of subclause 9.3.

The insurance cover shall be for an amount not less than the sum stated in *Item 8*. 25

Insurance shall be in the joint names of the parties and shall cover the parties and all subcontractors whenever engaged in *WUC* for their respective rights, interests and liabilities.

## 12 Public liability insurance

Before commencing *WUC*, the *Contractor* shall effect and maintain for 30 the duration of the *Contract*, a public liability policy.

The policy shall:

- a) be in the joint names of the parties;
- b) cover the:
  - i) respective rights and interests; and 35
  - ii) liabilities to third parties,

of the parties 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 11) 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); 5
- 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 stated in *Item 9*; and
- f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld). 10

### 13 Insurance of employees

Before commencing *WUC*, the *Contractor* shall insure against statutory and common law liability for death of or injury to persons employed by the *Contractor*. The insurance cover shall be maintained until completion of all *WUC*. 15

Where permitted by law, such insurance 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. 20

### 14 Insurance provisions

#### 14.1 Proof of insurance

Before the *Contractor* commences *WUC* and whenever requested in writing by the *Principal*, the *Contractor* shall provide satisfactory evidence of such insurance effected and maintained. 25

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

#### 14.2 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby). 30  
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## 15 Principal's direction

Except where the *Contract* otherwise provides, the *Principal* may give a *direction* orally but shall as soon as practicable confirm it in writing. If the *Contractor* in writing requests the *Principal* to confirm an oral *direction*, the *Contractor* shall not be bound to comply with the *direction* until the *Principal* does so. 5

## 16 Representatives

The *Principal* may appoint a *Principal's* representative to exercise delegated *Principal's* functions. The name and functions of each *Principal's* representative shall be notified to the *Contractor* in writing. 10

The *Contractor* shall superintend *WUC* personally or by a competent representative.

If the *Contractor* appoints a representative, the *Contractor* shall forthwith give the *Principal* written notice of the representative's name.

## 17 Site

The *Principal* shall, on or before the expiry of the time stated in *Item 10*, 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 of the *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*. 15 20

Possession of the *site* shall confer on the *Contractor* a right to only such use and control as is necessary to enable the *Contractor* to carry out *WUC*.

The *Contractor* shall at all reasonable times give the *Principal* access to *WUC*. 25

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

## 18 Materials and work

### 18.1 Quality of material and work 30

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

### 18.2 Defective work

If the *Principal* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Principal* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Principal* may direct the *Contractor* to do any one or more of the following (including reasonable 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 the *Contractor* fails to comply with such a *direction* and that failure has not been made good within 5 days after the *Contractor* receives written notice that the *Principal* intends to have the subject *work* rectified by others, the *Principal* may have the *work* so rectified. The cost thereby incurred shall be moneys due to the *Principal*.

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

## 19 Programming and suspension

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

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

The *Principal* may direct the *Contractor* to suspend the carrying out of the whole or part of *WUC* for such time as the *Principal* thinks fit, if the *Principal*, acting reasonably, is of the opinion it is necessary.

If the suspension is due to an act or omission of the *Principal* or others for whom it is responsible and the suspension causes the *Contractor* to incur more or less cost than would otherwise have been incurred but for the suspension, the difference shall be assessed by the *Principal* and added to or deducted from the *contract sum*.

## 20 Time and progress

### 20.1 Progress

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

Each party shall promptly notify the other of delay to *WUC*.

**20.2 Claim**

If the *Contractor*:

- a) is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- b) gives the *Principal*, within 28 days of when the *Contractor* should reasonably have become aware of the causation occurring, a detailed written claim for an *EOT*,

the *Contractor* shall be entitled to such *EOT* for carrying out *WUC* (including reaching *practical completion*) as the *Principal*, acting reasonably, assesses.

**20.3 Extension of time**

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

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

**20.4 Practical completion**

Within 14 days after receiving a request by the *Contractor* for the issue of a *certificate of practical completion*, the *Principal* shall give to the *Contractor* either a *certificate of practical completion* evidencing the *date of practical completion* or written reasons for not doing so.

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

**20.5 Liquidated damages**

If *WUC* does not reach *practical completion* by the *date for practical completion*, liquidated damages in *Item 11(a)* shall be due and payable to the *Principal* 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 liquidated damages, the *Principal* shall forthwith repay to the *Contractor* such of those liquidated damages as represent the days the subject of the *EOT*.

The *Principal* hereby waives that part of liquidated damages exceeding the *Item 11(b)* amount.

**20.6 Delay damages**

For every day the subject of an *EOT* for a *compensable cause* and for which the *Contractor* gives the *Principal* a claim for delay damages, damages in accordance with *Item 12* shall be due and payable to the *Contractor*.

## 21 Defects liability

The defects liability period stated in *Item 13* shall commence on the *date of practical completion* at 4:00 pm.

The *Contractor* shall carry out rectification of *defects* at times and in a manner causing as little inconvenience to the occupants or users of the *Works* as is reasonably possible. 5

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 *Principal* may give the *Contractor* a *direction* to rectify a *defect*. The *direction* shall identify the *defect* and state reasonable dates for commencement and completion of its rectification. 10

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 moneys due and payable to the *Principal*. 15

## 22 Variations

### 22.1 Directing variations

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

The *Principal*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* or execute additional *work* but such variation shall be of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract*. 20

### 22.2 Pricing

The *Principal* shall, as soon as possible, price each variation using the following order of precedence: 25

- a) prior agreement;
- b) applicable rates or prices in the *Contract*;
- c) rates or prices in a schedule of rates or schedule of prices, even though not *Contract* documents, to the extent that it is reasonable to use them; and 30
- d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads. 35

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

## 23 Payment

### 23.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 14*.

An early progress claim shall be deemed to have been made on the date for making that claim. 5

Each progress claim shall be given in writing to the *Principal* and shall include details of the value of the *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*. 10

### 23.2 Certificates

The *Principal* shall, within 14 days after receiving such a progress claim, assess the claim and shall issue a progress certificate stating the moneys due to the *Contractor* or the *Principal*, as the case may be. The *Principal* shall set out in the progress certificate the calculations employed to arrive at the amount certified and, if the amount is more or less than the amount claimed by the *Contractor*, the reasons for the difference. 15

Within 21 days after receipt by the *Principal* of such a progress claim, the *Principal* or the *Contractor*, as the case may be, shall pay: 20

- a) the amount certified, if the *Principal* has issued a progress certificate with respect to the progress claim; or
- b) the amount of the progress claim, if the *Principal* has not so certified.

Neither a progress certificate nor a payment of moneys shall be evidence that the subject *WUC* has been carried out satisfactorily. Payment other than final payment shall be payment on account only. 25

Except as provided elsewhere in the *Contract*, the *Principal* shall not be obliged to pay for unfixed plant and materials.

### 23.3 Final payment claim and certificate

Within 28 days after the expiry of the defects liability period, the *Contractor* shall give the *Principal* a written final payment claim endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*. 30

Within 42 days after the expiry of the defects liability period, the *Principal* shall issue to the *Contractor* a final certificate evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject matter of the *Contract*. 35

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

The final certificate shall be conclusive evidence of accord and satisfaction, and in discharge of each party's obligations in connection with the subject matter of the *Contract* except for: 40

- 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 45

apparent at the end of the defects liability period, or which would not have been disclosed upon reasonable inspection at the time of the issue of the final certificate;

- c) any accidental or erroneous inclusion or exclusion of any *work* or figures in any computation or any arithmetical error in any computation; and 5
- d) unresolved issues the subject of any notice of *dispute* pursuant to clause 27, served before the 7th day after the issue of the final certificate.

**23.4 Interest** 10

Interest in *Item 15* shall be due and payable after the date of default in payment.

**24 Payment of workers and subcontractors**

**24.1 Workers and subcontractors**

The *Contractor* shall give in respect of a progress claim, documentary evidence of the payment of moneys due and payable to: 15

- 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. 20

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

**24.2 Withholding payment** 25

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 24.1.

The *Principal* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 24.1 as due and payable to workers and subcontractors. 30



## 25 Default or insolvency

### 25.1 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.

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### 25.2 Contractor's default

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

Substantial breaches include, but are not limited to:

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a) failing to:

i) provide security;

ii) provide evidence of insurance;

iii) comply with a *direction* of the *Principal* pursuant to subclause 18.2; or

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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 *Principal's* approval;

d) where there is no *construction program*, failing to proceed with due expedition and without delay; and

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e) in respect of clause 24, knowingly providing documentary evidence containing an untrue statement.

### 25.3 Principal's notice to show cause

A notice under subclause 25.2 shall state:

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a) that it is a notice under clause 25 of these Contract Conditions;

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 25.4;

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

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e) the place at which cause must be shown.

### 25.4 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*:

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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 25.6; or

b) terminate the *Contract*.

40

**25.5 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*: 5
  - 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, 10

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 reasonably maintain them and, subject to subclause 25.6, on completion of the *work*, shall return such of them as are surplus. 15

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

**25.6 Adjustment on completion of work taken out**

When *work* taken out of the *Contractor's* hands has been completed, the *Principal* 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*. 20

If the *Contractor* is indebted to the *Principal*, the *Principal* may retain construction plant or other things taken under subclause 25.5 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*. 25

**25.7 Principal's default**

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered post, give the *Principal* a written notice to show cause. 30

Substantial breaches include, but are not limited to:

- a) failing to make a payment due and payable pursuant to the *Contract*; and 35
- b) the *Principal* not giving a *certificate of practical completion* or reasons as referred to in subclause 20.4.

**25.8 Contractor's notice to show cause**

A notice given under subclause 25.7 shall state:

- a) that it is a notice under clause 25 of these Contract Conditions; 40
- 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 25.9;
- d) the date and time by which the *Principal* must show cause (which shall not be less than 7 clear days after the notice is received by the *Principal*); and 45
- e) the place at which cause must be shown.

**25.9 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. 5

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

- a) to remedy the breach; or 10
- b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Contractor*.

The *Contractor* shall be entitled to recover damages incurred by the *Contractor* by reason of the suspension.

**25.10 Termination** 15

If the *Contract* is terminated pursuant to subclause 25.4(b) or 25.9, 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. 20

**25.11 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; 25
- 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; 30
  - 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 35
- 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; 40
  - 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; 45

- 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, 5
- then, where the other party is:
- A) the *Principal*, the *Principal* may, without giving a notice to show cause, exercise the right under subclause 25.4(a); or
  - B) the *Contractor*, the *Contractor* may, without giving a notice to show cause, exercise the right under subclause 25.9. 10

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.

## 26 Notification of claims

### 26.1 Communication of claims 15

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract* the communication of which is not required by another provision of the *Contract*, that party shall give to the other party a written notice of claim with particulars or a notice of *dispute* under subclause 27.1. 20

### 26.2 Liability for failure to communicate 25

The failure of a party to comply with the provisions of this clause 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 the *Contract* but shall neither bar nor invalidate the claim.

### 26.3 Resolution

If the claim has not been resolved within 21 days of giving the notice of claim, that notice of claim shall be deemed to be a notice of *dispute* under subclause 27.1.

## 27 Dispute resolution 30

### 27.1 Notice of dispute 35

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 claim:

- a) in tort; 35
- b) under statute;
- c) for restitution based on unjust enrichment or other quantum meruit; or

d) for rectification or frustration,  
 or like claim available under the law governing the *Contract*,  
 then either party shall, by hand or by registered post, give the other a  
 written notice of *dispute* adequately identifying and providing details of  
 the *dispute*. 5

Notwithstanding the existence of a *dispute*, the parties shall, subject to  
 clause 25 and subclause 27.4, continue to perform the *Contract*.

### 27.2 Conference

Within 14 days after receiving a notice of *dispute*, the parties shall confer  
 at least once to resolve the *dispute* or to agree on methods of doing so. At 10  
 every such conference each party shall be represented by a person having  
 authority to agree to such resolution or methods. All aspects of every such  
 conference except the fact of occurrence shall be privileged.

If the dispute has not been resolved within 28 days of service of the notice  
 of *dispute*, that *dispute* shall be and is hereby referred to arbitration. 15

### 27.3 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 16(a)*. The  
 arbitration shall be conducted in accordance with the rules in *Item 16(b)*.

### 27.4 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. 20

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This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the *Contract*, is to be attached to these Minor works contract conditions and shall be read as part of the *Contract*.

*Item*

1 *Principal* .....  
(clause 1) .....

ACN ..... ABN .....

2 *Principal's address* .....

Phone ..... Fax .....

3 *Contractor* .....  
(clause 1) .....

ACN ..... ABN .....

4 *Contractor's address* .....

Phone ..... Fax .....

5 a) *Date for practical completion* ..... day of ..... 20.....  
(clause 1)

OR

b) *Period of time for practical completion* ..... days\* / weeks\* after *date of acceptance of tender*  
(clause 1)

\_\_\_\_\_

\* Delete one.

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- 6 *Contractor's security*
- a) Form (clause 3) Retention moneys\* / Bank guarantee\*  
If neither deleted, retention moneys
- b) Amount or maximum percentage of *contract sum* (clause 3) \$ ..... OR ..... % of the *contract sum*  
If nothing stated, 5% of the *contract sum*
- c) If retention moneys, percentage of each payment certificate (clause 3) .....%, until the limit in *Item 6(b)*  
If nothing stated, 10%, until the limit in *Item 6(b)*
- d) Time for provision (except for retention moneys) (clause 3) within .....days after *date of acceptance of tender*  
If nothing stated, 28 days
- 7 Amount of limit of indemnity for damage to other property of the *Principal* (subclause 10.1(a)) \$ .....  
If nothing stated, the amount of the public liability insurance cover in *Item 9*
- 8 The amount of contract works insurance cover (clause 11) \$ .....  
If nothing stated, the *contract sum* plus 20%
- 9 The amount of public liability insurance cover in respect of any one occurrence shall not be less than (clause 12) \$ .....  
If nothing stated, \$10 000 000
- 10 The time for giving possession of the *site* to the *Contractor* (clause 17) within .....days after *date of acceptance of tender*  
If nothing stated, 14 days
- 11 Liquidated damages (subclause 20.5)
- a) Rate \$ .....per day
- b) Limit \$ ..... OR ..... % of the *contract sum*  
If nothing stated, there is no limit
- 12 Delay damages, rate (subclause 20.6) \$ .....per day  
If nothing stated, as reasonably assessed by the *Principal*
- 13 *Defects liability period* (clause 21) .....weeks  
If no period stated, 26 weeks

\* Delete one.





14 Time for progress claims on the .....day of each month  
(subclause 23.1) If no time stated, then on the last day of each month

15 The rate of interest on overdue payments .....% per annum  
(subclause 23.4) If no rate stated, 18% per annum

16 Arbitration  
(subclause 27.3)

a) The person to nominate an arbitrator .....

.....  
If no-one stated, the President of the Institute of Arbitrators & Mediators

b) Rules for arbitration .....

.....  
If nothing stated, Rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations

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# Part B

Annexure to the Australian Standard  
Minor works contract conditions (Principal administered)  
AS 4906-2002

Clause	Clause
Ambiguities	Compensable cause
in documents . . . . . 5	defined. . . . . 1
Accident	Completion (see Practical Completion)
insurance for . . . . . 12, 13	Construction plant
liability for . . . . . 10	possession of on default . . . . . 25.5
Address	return of . . . . . 25.6
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Rules of . . . . . <i>Item</i> 16(b)	Contract sum
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Clause	Clause
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