

Australian Standard™

**General conditions of contract for the
supply of equipment with installation**

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

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Australian Standard™

General conditions of contract for the supply of equipment with installation

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PREFACE

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

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

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

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

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

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

Warnings

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

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

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

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

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STANDARDS AUSTRALIA

Australian Standard

General conditions of contract for the
supply of equipment with installation

1 Interpretation and construction of Contract

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

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

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

- latent condition*** has the meaning in subclause 25.1;
- legislative requirement*** includes:
- a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where *WUC* or the particular part thereof is being carried out;
 - b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction where *WUC* or the particular part thereof is being carried out; and
 - c) fees and charges payable in connection with the foregoing;
- practical completion*** is that stage in the carrying out and completion of *WUC* when:
- a) *the Works* are complete except for minor *defects*:
 - i) which do not prevent *the Works* from being reasonably capable of being used for their stated purpose;
 - ii) which the *Superintendent* determines the *Contractor* has reasonable grounds for not promptly rectifying; and
 - iii) the rectification of which will not prejudice the convenient use of *the Works*;
 - b) those *tests* which are required by the *Contract* to be carried out and passed before *the Works* reach practical completion have been carried out and passed; and
 - c) documents and other information required under the *Contract* which, in the *Superintendent's* opinion, are essential for the use, operation and maintenance of *the Works* have been supplied;
- prescribed notice*** has the meaning in subclause 41.1;
- program*** has the meaning in clause 32;
- progress certificate*** has the meaning in subclause 37.2
- provisional sum*** has the meaning in clause 3;
- public liability policy*** has the meaning in clause 17;
- Purchaser*** means the person stated in *Item 1*;
- qualifying cause of delay*** means:
- a) any act, default or omission of the *Superintendent*, the *Purchaser*, its consultants, agents or other contractors (not being employed by the *Contractor*); or
 - b) other than:
 - i) a breach or omission by the *Contractor*;
 - ii) industrial conditions or inclement weather occurring after the *date for practical completion*; and
 - iii) stated in *Item 26*;

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

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

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

In the *Contract*:

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

2 Nature of Contract

2.1 Performance and payment

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

The *Purchaser* shall pay the *Contractor*:

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

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

2.2 Quantities

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

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

2.3 Adjustment for actual quantities

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

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

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

3 Provisional sums

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

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

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

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

4 Separable portions

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

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

5 Security

5.1 Provision

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

5.2 Recourse

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

5.3 Change of Security

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

5.4 Reduction and release

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

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

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

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

5.5 Trusts and interest

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

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

5.6 Deed of guarantee, undertaking and substitution

Where:

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

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

6 Evidence of Contract

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

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

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

7 Service of notices

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

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

8 Contract documents

8.1 Discrepancies

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

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

8.2 Purchaser-supplied documents

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

They shall:

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

8.3 Contractor-supplied documents

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

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

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

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

8.4 Availability

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

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

8.5 Confidential information

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

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

*** 8.6 Media**

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

9 Assignment and subcontracting

9.1 Assignment

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

* See Preface

9.2 Subcontracting generally

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

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

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

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

Approval may be conditional upon the subcontract including:

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

9.3 Selected subcontract work

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

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

9.4 Novation

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

9.5 Contractor's responsibility

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

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

10 Intellectual property rights

10.1 Warranties

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

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

Each party shall indemnify the other against such respective infringements.

10.2 Ownership and licence

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

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

11 Legislative requirements

11.1 Compliance

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

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

11.2 Changes

If a *legislative requirement*:

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

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

12 Protection of people and property

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

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

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

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

13 Urgent protection

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

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

14 Care of the work and reinstatement of damage

14.1 Care of WUC

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

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

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

14.2 Reinstatement

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

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

14.3 Excepted risks

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

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

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

15 Damage to persons and property other than WUC

15.1 Indemnity by Contractor

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

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

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

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

This subclause shall not apply to:

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

15.2 Indemnity by Purchaser

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

16 Insurance of Equipment and the Works

16.1 Insurance of Equipment

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

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

16.2 Insurance of the Works

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

Alternative 1: Contractor to insure

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

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

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

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

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

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

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

Alternative 2: Purchaser to insure

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

17 Public liability insurance

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

Alternative 1: Contractor to insure

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

The policy shall:

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

Alternative 2: Purchaser to insure

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

18 Insurance of employees

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

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

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

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

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

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

19.2 Failure to produce proof of insurance

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

19.3 Notices from or to insurer

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

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

19.4 Notices of potential claims

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

19.5 Settlement of claims

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

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

19.6 Cross liability

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

20 Superintendent

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

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

21 Superintendent's Representative

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

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

22 Contractor's representative

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

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

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

23 Contractor's employees and subcontractors

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

24 Site

24.1 Possession

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

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

24.2 Access for Purchaser and others

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

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

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

24.3 Minerals, fossils and relics

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

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

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

25 Latent conditions

25.1 Scope

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

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

25.2 Notification

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

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

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

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

25.3 Deemed variation

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

26 Setting out the Works

26.1 Setting out

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

26.2 Errors in setting out

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

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

26.3 Care of survey marks

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

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

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

27 Cleaning up

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

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

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

If:

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

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

28 Materials, labour and construction plant

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

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

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

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

29 Quality

29.1 Quality of material and work

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

* 29.2 Quality assurance

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

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

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

29.3 Defective work

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

* See Preface

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

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

If:

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

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

29.4 Acceptance of defective work

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

29.5 Timing

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

30 Examination and testing

30.1 Tests

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

30.2 Covering up

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

30.3 Who conducts

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

30.4 Notice

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

30.5 Delay

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

30.6 Completion and results

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

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

30.7 Costs

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

31 Working hours

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

32 Programming

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

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

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

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

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

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

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

33 Suspension

33.1 Superintendent's suspension

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

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

33.2 Contractor's suspension

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

33.3 Recommencement

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

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

33.4 Cost

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

34 Time and progress

34.1 Delivery and progress

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

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

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

34.2 Notice of delay

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

34.3 Claim

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

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

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

34.4 Assessment

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

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

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

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

34.5 Extension of time

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

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

34.6 Practical completion

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

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

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

34.7 Liquidated damages

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

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

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

34.8 Bonus for early practical completion

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

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

34.9 Delay damages

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

35 Defects liability

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

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

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

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

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

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

36 Variations

36.1 Directing variations

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

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

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

36.2 Proposed variations

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

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

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

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

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

36.3 Variations for convenience of Contractor

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

36.4 Pricing

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

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

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

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

37 Payment

37.1 Progress claims

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

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

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

37.2 Certificates

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

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

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

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

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

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

37.3 Unfixed plant and materials

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

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

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

37.4 Final payment claim and certificate

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

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

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

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

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

37.5 Interest

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

37.6 Other moneys due

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

38 Payment of workers and subcontractors

38.1 Workers and subcontractors

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

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

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

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

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

38.2 Withholding payment

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

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

38.3 Direct payment

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

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

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

39 Default or insolvency

39.1 Preservation of other rights

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

39.2 Contractor's default

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

Substantial breaches include, but are not limited to:

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

39.3 Purchaser's notice to show cause

A notice under subclause 39.2 shall state:

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

39.4 Purchaser's rights

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

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

39.5 Take out

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

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

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

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

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

39.6 Adjustment on completion of work taken out

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

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

39.7 Purchaser's default

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

Substantial breaches include, but are not limited to:

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

39.8 Contractor's notice to show cause

A notice given under subclause 39.7 shall state:

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

39.9 Contractor's rights

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

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

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

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

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

39.10 Termination

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

39.11 Insolvency

If:

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

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

then, where the other party is:

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

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

40 Termination by frustration

If the *Contract* is frustrated:

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

41 Notification of claims

41.1 Communication of claims

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

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

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

41.2 Liability for failure to communicate

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

41.3 Superintendent's decision

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

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

42 Dispute resolution

42.1 Notice of dispute

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

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

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

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

42.2 Conference

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

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

42.3 Arbitration

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

42.4 Summary relief

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

* 43 General limitation of liability

43.1 Limitation of liability

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

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

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

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

43.2 Exclusion of limitation of liability

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

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

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

* See Preface

44 Waiver of conditions

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

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

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

- (c) If retention moneys, percentage of each *progress certificate* (clause 5 and subclause 37.2) %, until the limit in *Item 14(b)*
If nothing stated, 10%, until the limit in *Item 14(b)*
- (d) Time for provision (except for retention moneys) (clause 5) within days after the *date of acceptance of tender*
If nothing stated, 28 days
- (e) Additional *security* for unfixed plant and materials (subclauses 5.4 and 37.3)
\$.....
- (f) *Contractor's security* upon *certificate of practical completion* is reduced by (subclause 5.4) % of amount held
If nothing stated, 50% of amount held

† 15 *Purchaser's security*

- (a) Form (clause 5)
- (b) Amount or maximum percentage of *contract sum* (clause 5)
If nothing stated, nil
- (c) Time for provision (clause 5) within days after *date of acceptance of tender*
If nothing stated, 28 days
- (d) *Purchaser's security* upon *certificate of practical completion* is reduced by (subclause 5.4) % of amount held
If nothing stated, 50% of amount held

16 *Purchaser-supplied documents* (subclause 8.2)

Document	No. of copies
1
2
3
4
5
	If nothing stated, 5 copies

17 Time for *Superintendent's direction* about documents (subclause 8.3)

..... days
If nothing stated, 14 days

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

18 Subcontract *work* requiring approval
 (subclause 9.2)

19 Novation Subcontractor Particular part of *WUC*
 (subclause 9.4)

Selected subcontractor Particular part of *WUC*

20 *Legislative requirements*
 (a) Those excepted
 (subclause 11.1)

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

21 Time for insurance of undelivered days after the *date of acceptance of tender*
Equipment If nothing stated, 14 says
 (subclause 16.1)

22 *Insurance of the Works* (other than undelivered *Equipment*)
 (subclause 16.2)
 a) Alternative applying
 If nothing stated, Alternative 1 applies
 If Alternative 1 applies
 b) Provision for demolition and
 removal of debris \$

OR
% of the *contract sum*

c) Provision for consultants' fees
..... \$

OR

.....% of the *contract sum*

d) Value of materials or things to
be supplied by the *Purchaser* \$

e) Additional amount or percentage
..... \$

OR

.....% of (a) to (d) in subclause 16.2

23 Public liability insurance
(clause 17)

(a) Alternative applying
If nothing stated, Alternative 1 applies

If Alternative 1 applies

(b) Amount per occurrence shall
be not less than \$
If nothing stated, then not less than the \$10 000 000

24 Time for giving possession of *site*
(subclause 24.1)

.....
If nothing stated, the *date for delivery*

25 *Tests*
(clause 30)

Tests

Times

1	.....	.....
2	.....	.....
3	.....	.....

26 *Qualifying causes of delay*,
causes of delay for which *EOTs*
will not be granted
(paragraph (b)(iii) of clause 1 and
subclauses 34.3)

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

† 27 Liquidated damages (subclause 34.7)

a) for *delivery*, rate
 per day \$.....per day

(b) for *practical completion*, rate
 per day \$.....per day

† 28 Bonus for early *practical completion* (subclause 34.8)

(a) Rate
 per day \$.....per day

(b) Limit
 \$.....

OR

.....% of *contract sum*
 If nothing stated, there is no waiver

† 29 Other *compensable causes* (paragraph (b) of clause 1)

30 *Defects liability period* (clause 35)
 If nothing stated, 12 months

31 Progress claims (subclause 37.1)

(a) Times for progress claimsday of each month for *WUC*
 done to the day of that month

OR

(b) Stages of *WUC* for progress claims

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

32 Unfixed plant and materials for which payment claims may be made (subclause 37.3)

33 Interest rate on overdue payments (subclause 37.5)% per annum
 If nothing stated, 18% per annum

34 Time for *Purchaser* to rectify inadequate possession (subclause 39.7(a)(iii)) days
 If nothing stated, 14 days

35 Arbitration (subclause 42.3)

(a) Person to nominate an arbitrator

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

A1 |

(b) Rules for arbitration

If nothing stated:
 (a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;
 OR
 (b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item* 35(c)

(c) Appointing Authority under UNCITRAL Arbitration Rules

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

A1 |

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

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

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

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

‡ Delete if clause 43 is deleted.

Part A

Separable Portions Annexure to AS 4910—2002

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

Separable portion
(clause 1)

No.

Description of *separable portion*
(clause 1)

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

Item

8 (a) *Date for delivery*
(clause 1 and subclause 34.1)

.....

OR

(b) *Period of time for delivery*
(clause 1 and subclause 34.1)

.....

9 (a) *Date for practical completion*
(clause 1 and subclause 34.1)

.....

OR

(b) *Period of time for practical completion*
(clause 1 and subclause 34.1)

.....

14 *Contractor's security*

(a) *Form*
(clause 5)

.....

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

\$..... OR.....% of the value of this *separable portion*
If nothing stated, 5% of value of this *separable portion*

(c) *If retention moneys, percentage of each progress certificate applicable to this separable portion*
(clause 5 and subclause 37.2)

..... %, until the limit in *Item 14(b)*
If nothing stated, 10%, until the limit in *Item 14(b)*

(d) *Time for provision (except for retention moneys)*
(clause 5)

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

(e) *Additional security for unfixed plant and materials*
(subclauses 5.4 and 37.3)

.....
..... \$.....

(f) *Contractor's security upon certificate of practical completion is reduced by (subclause 5.4)* % of amount held
 If nothing stated, 50% of amount held

15 *Purchaser's security*

(a) Form
 (clause 5)

(b) Amount or maximum percentage of value of this *separable portion*
 (clause 5) If nothing stated, nil

(c) Time for provision within days after the *date of acceptance of tender*
 (clause 5) If nothing stated, 28 days

(d) *Purchaser's security upon certificate of practical completion is reduced by (subclause 5.4)* % of amount held
 If nothing stated, 50% of amount held

27 Liquidated damages (subclause 34.7)

(a) for *delivery*, rate
 per day \$.....per day

(b) for *practical completion*, rate
 per day \$.....per day

28 Bonus for early *practical completion* (subclause 34.8)

(a) Rate
 per day \$.....per day

(b) Limit
 \$.....

OR

..... % of value of this *separable portion*
 If nothing stated, there is no waiver

29 Other *compensable causes* (paragraph (b) of clause 1)

.....

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

Part B

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

Approved form of unconditional undertaking

(clause 1 – *security*)

At the request of
ACN..... ABN (the *Contractor*) and in consideration of

.....
ACN..... ABN(the *Purchaser*) accepting this undertaking
in respect of the *Contract* for
..... (the *Project*)
..... ACN ABN

(‘the *Financial Institution*’) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Purchaser* to a maximum aggregate sum of
..... (\$)

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

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

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Purchaser* the sum of
..... (\$)

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

Dated at this day of 20.....

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AMENDMENT CONTROL SHEET

AS 4910—2002

Amendment No. 1 (2005)

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

Published on 30 March 2005.

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