



# New South Wales Government GC21 (Edition 1) RTA General Conditions of Contract

for Design (to the extent specified) and Construction

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Preface

GC21 (Edition 1) General Conditions of Contract

- Contract framework
- Carrying out the Works
- Claim and Issue resolution
- Termination
- Meanings

Deed of Contract Agreement

Contract Information

Schedules

Attachments

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**GC21 (Edition 1) General Conditions of Contract**

July 2003  
Report number 03048

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RTA specific changes from GC21 (Edition 1), {excluding Contract Information, Schedules and Attachments,} are marked with | in the right margin eg

Principal Arranged Insurance |

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## Acknowledgments

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GC21 (Edition 1) General Conditions of Contract was developed in consultation with representatives of:

- Department of Commerce (formerly Department of Public Works and Services)
- Department of Housing
- Roads and Traffic Authority
- State Rail Authority
- Sydney Water

Legal advice was provided by Baker & McKenzie, Solicitors and Attorneys.

## Government Codes and Guidelines

Copies of the Code referred to in the GC21 (Edition 1) General Conditions of Contract may be obtained from the NSW Treasury's web-site as follows:

Copies of the Guidelines referred to in the GC21 (Edition 1) General Conditions of Contract may be obtained from the NSW Construction Agency Committee's web-site as follows:

Code of Practice for Procurement  
[www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_practice.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_practice.pdf)

Occupational Health and Safety Management Systems  
[www.construction.nsw.gov.au/ohs/#publications](http://www.construction.nsw.gov.au/ohs/#publications)

Industrial Relations Management  
[www.construction.nsw.gov.au/indrel/#publications](http://www.construction.nsw.gov.au/indrel/#publications)

Environmental Management Systems  
[www.construction.nsw.gov.au/environment/#publications](http://www.construction.nsw.gov.au/environment/#publications)

Training Management  
[www.construction.nsw.gov.au/training/#P3](http://www.construction.nsw.gov.au/training/#P3)

Aboriginal Participation in Construction  
<http://www.construction.nsw.gov.au/aboriginalparticipation/#P4>

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# Preface

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## The GC21 General Conditions of Contract

The GC21 (Edition 1) General Conditions of Contract (“GC21”) builds on the experience and project success delivered with the C21 Construction Contract. It reflects many of the initiatives outlined in the NSW Government White Paper **Construct New South Wales**. C21 includes a range of measures from **Construct New South Wales**, especially those dealing with business practices, security of payment, and management and workforce development. These measures in C21 and now in GC21 give recognition to the Contract as part of a project and should contribute appropriately to the broader project outcomes.

The strong emphasis in C21 based on co-operative contracting and enhanced communication has proven to be highly effective. GC21 incorporates these features and further improvements dealing with NSW Government guidelines, risk allocation for site conditions, design and time management and it further clarifies the roles and responsibilities of the parties.

The companion GC21 Subcontract extends the GC21 framework down the contract chain when GC21 is the basis of the head contract.

## Using this document

All defined words and phrases have initial capitals (except for ‘day’ and ‘end users’) and are in italics in the GC21 General Conditions of Contract unless they are one of the following 12 basic terms, which appear too often for italics to be used:

- day
- Contract
- Date of Contract
- Site
- Subcontract
- Works
- Consultant
- Contractor
- Subcontractor
- Principal
- Supplier
- Valuer

Notes are provided to guide the parties and these notes form part of the Contract.

Attachments 1, 2, 3 and 4 do not form part of the Contract.



# Contract framework

This section deals with the purpose and structure of the Contract. It allocates responsibilities and sets up the procedures for making the Contract work. Underlying it are the basic principles of GC21: co-operative contracting, enhanced communication, clear definition of roles, responsibility for outcomes, and focus on enabling best practice.

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## Roles and relationships

Although the parties have different responsibilities, co-operation is a key element of the Contract.

### 1 General responsibilities

#### .1 The Contractor must:

- .1 *Design* and construct the Works to *Completion* in accordance with the Contract; and

*The extent of the Contractor's Design obligations is specified in Contract Information item 37A.*

- .2 perform and observe all its other obligations under the Contract.

#### .2 The Principal must:

- .1 pay the Contractor the *Contract Price* for its performance, in accordance with and subject to the Contract. The basis of payment may be lump sum, *Schedule of Rates* or a combination of these as referred to in clause 59 and specified in *Contract Information* item 43; and
- .2 perform and observe all its other obligations under the Contract.

- .3 The Principal may give instructions to the Contractor concerning the Works and anything connected with the Works, and the Contractor must comply at its own cost unless an entitlement to payment is specified under clause 60.1.

### 2 Authorised persons

- .1 The Contractor must ensure that at all times there is a person appointed to act with its full authority in all matters relating to the Contract as the *Contractor's Authorised Person* and must keep the Principal informed in writing of the name of that person, and of any change. If the Principal reasonably objects to the person appointed from time to time, the Contractor must replace that person.
- .2 The Principal must ensure that there is a person appointed to act on behalf of the Principal in relation to the Contract as the *Principal's Authorised Person* and will advise the Contractor in writing of any limitations or qualifications to the powers of the *Principal's Authorised Person*. The Principal must keep the Contractor informed in writing of the name of that person and of any change. The person does not act as independent certifier, assessor or valuer. The person acts only as agent of the Principal.
- .3 The Principal will advise the Contractor in writing if the *Principal's Authorised Person* delegates any of its powers to others.

### 3 Co-operation

- .1 The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.

### 4 Duty not to hinder performance

- .1 Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.

### 5 Early warning

- .1 Each party must do all it reasonably can to promptly inform the other of anything of which it becomes aware which is likely to affect the time for *Completion*, cost or quality

of the Works, and the parties must then investigate how to avoid or minimise any adverse effect on the Works and *Scheduled Progress*.

- .2 Clause 5.1 does not change the rights and responsibilities of either party under the Contract, unless they agree in writing to change them.
- .3 Neither party may disclose in any *Issue* resolution proceedings (including *Alternative Dispute Resolution Procedure* and litigation) anything discussed or provided under clause 5.1.

## 6 Evaluation and monitoring

As the project proceeds, regular meetings (usually monthly) allow the parties to evaluate performance and identify priorities for improvement. These meetings allow others concerned with the Works to participate, where appropriate.

- .1 The parties must meet regularly to evaluate and monitor performance of the Contract using the Performance Evaluation and Performance Evaluation Record forms in Attachments 2 and 3.

*These forms list appropriate topics for performance assessment and allow progress to be monitored as the project proceeds. The parties may amend the forms to suit the specific attributes of the Contract. The forms provide a structure for evaluation and for discussion, and focus on achievable improvements in project communication and management.*

- .2 The parties must decide jointly on participation in the meetings by others concerned with the Works, including Subcontractors, Suppliers, Consultants and, if appropriate, persons such as representatives of government authorities, *end users* and local community representatives. Participation in meetings does not give the participants any additional rights or responsibilities.
- .3 Attachments 1, 2 and 3 are not part of the Contract. Nothing concerning or in connection with them changes either party's rights and responsibilities, or can be relied on or used by one party against another in any proceedings.
- .4 Each party and any others who participate in the evaluation and monitoring meetings must meet their own costs for attendance at the meetings and the parties will share equally the other costs.

---

## The Contract

### 7 The Contract

The Contract is formed by the signing of the *Deed of Contract Agreement* by the parties, or by the Principal sending a letter awarding the Contract to the Contractor (*Letter of Award*).

- .1 The Contract is made up solely of the *Contract Documents*, which supersede all understandings, representations and communications between the parties related to the subject matter of the Contract made before the Date of Contract. The *Contract Documents* are:
  - .1 these GC21 General Conditions of Contract;
  - .2 the *Contract Information*;
  - .3 annexed Schedules;
  - .4 *Principal's Documents* (at the Date of Contract); and
  - .5 any documents listed in *Contract Information* item 17 as *Reference Contract Documents*.

*The Letter of Award (or the Deed of Contract Agreement, if used instead) is a Reference Contract Document.*

- .2 The *Contract Documents* must be read as a whole, and anything in one such document must be read as included in all other such documents, unless the context requires otherwise.

- .3 The terms of the Contract cannot be amended or waived unless both parties agree in writing.
- .4 The Principal must give the Contractor the number of copies of the *Principal's Documents* in *Contract Information* item 18.
- .5 Where a *Letter of Award* is used to form the Contract, if requested in writing by the Principal, the Contractor must also execute two copies of the *Deed of Contract Agreement* and return them to the Principal within 14 days of these being forwarded by the Principal. The Principal will return an executed copy to the Contractor.

## 8 Assignment

- .1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal's consent in writing.

## 9 Governing law of the Contract

- .1 The Contract is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

## 10 Scope of the Works, Temporary Work and work methods

### The Works

- .1 The scope of the Works is described in brief in *Contract Information* item 3 and more specifically in the *Principal's Documents* and other *Contract Documents* (as applicable), and includes:
  - .1 all the work specifically referred to in or otherwise contemplated by the Contract;
  - .2 all items not specifically referred to or described in the Contract which nonetheless are required to complete the Works and achieve the effective and efficient use and operation of the Works;
  - .3 all items referred to in one or more of the *Contract Documents* or otherwise necessary for the Works to be fit for the purposes required by the Contract but omitted from other *Contract Documents* (those omitted items are included in the scope of the Works, unless the context requires otherwise); and
  - .4 all items of work reasonably inferred from the *Contract Documents* as necessary to properly execute and complete the Works.
- .2 The Contractor acknowledges that:
  - .1 it is both experienced and expert in work of the type and scale of the Works; and
  - .2 it has made full allowance in the *Contract Price* for the matters referred to in clause 10.1.
- .3 The Contractor acknowledges that *Variations* instructed by the Principal will cause the scope of the Works to change.

### Temporary Work

- .4 The Contractor must carry out and be responsible for all *Temporary Work*, carry out, perform, provide and do everything necessary including all ancillary or other work for or in connection with the *Design* and construction of the Works, subject to the following:
  - .1 The Principal may instruct the Contractor at any time to use a particular method or type of *Temporary Work* and the Contractor must comply with the Principal's instruction.
  - .2 Subject to clause 10.4.3, if the Principal's instruction directly causes the Contractor to incur necessarily and unavoidably any extra costs when compared with the costs the Contractor would have incurred had the Principal not given the instruction, the Contractor may be entitled to those extra costs and an extension of time under clause 54 (if applicable).

- .3 If the need for the instruction in clause 10.4.1 arises from the Contractor's own act or omission, then the Contractor is not entitled to those extra costs or extensions of time.

#### Work methods

- .5 The Contractor is free to use any work method, subject to the following:
- .1 The Contractor is solely responsible for all work methods, whether specified in the Contract or not.
  - .2 The Contractor warrants that it has undertaken all necessary investigation and inquiry to satisfy itself that all work methods specified in the Contract or which the Contractor otherwise proposes to use are appropriate for the purposes of the Contract.
  - .3 If a particular work method is specified in the Contract, the Contractor must use it.
  - .4 If a particular work method is specified in the Contract but it is not possible to use that method, the Contractor must use another method without entitlement to extra cost or an extension of time.
  - .5 If a particular work method for which the Contractor is responsible is impractical and the Contractor, with or without the instruction of the Principal, uses another work method by necessity to complete the Works, the Contractor is not entitled to an extension of time or extra cost.
  - .6 The Principal may instruct the Contractor at any time to use a particular work method.
  - .7 Subject to clauses 10.5.4 and 10.5.5, if the Principal's instruction directly causes the Contractor to incur necessarily and unavoidably any extra costs when compared with the costs the Contractor would have incurred had the Principal not given the instruction, the Contractor is entitled to those extra costs as an addition to the *Contract Price* (if it demonstrates to the reasonable satisfaction of the Principal that it incurred such extra costs) and may be entitled to an extension of time under clause 54 (if applicable).

---

## Statutory Requirements and Guidelines

### 11 Statutory Requirements

- .1 The Contractor is responsible for:
- .1 compliance with all *Statutory Requirements*, subject to clause 53, except if (because of the nature of the requirement) only the Principal can comply; and
  - .2 the giving of all notices necessary to comply with *Statutory Requirements* and the payment of all necessary fees, charges and other imposts, other than those notices and imposts to be given or paid by the Principal under the Contract (or given or paid by the Principal prior to the Date of Contract).

*Clause 53 deals with changes in Statutory Requirements*

- .2 Upon request by the Principal and as a condition of achieving *Completion*, the Contractor must give to the Principal all original documents issued by authorities or providers of services, including those evidencing approvals, authorisations and consents in connection with the Works and the Site.

### 12 Goods and Services Tax

*The Contract Price and any associated amount is Goods and Services Tax inclusive.*

- .1 In this clause 12 the expressions "adjustment note", "consideration", "Goods and Services Tax", "GST", "input tax credit", "supply", "tax invoice", "recipient", "Recipient Created Tax Invoice" ("RCTI") and "taxable supply" have the meanings given in the A New Tax System (Goods and Services Tax) Act 1999.

### Calculation of GST

- .2 Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable or for which payment is to be made under or in accordance with the Contract, include an amount for GST.
- .3 No additional amount on account of GST is payable by a party who receives a taxable supply under or in connection with the Contract. All amounts payable reflect the GST-inclusive market value of the taxable supply.
- .4 Any contract entered into by a party to the Contract with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with the Contract, must include a clause including equivalent terms to clauses 12.2, 12.3 and 12.4.

### GST invoices

- .5 The Principal will issue a tax invoice for each taxable supply it makes to the Contractor without request.
- .6 The Principal will issue to the Contractor an RCTI for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
- .7 The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than for an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor invoices the Principal for that supply.
- .8 Each party must immediately notify the other party if it ceases to be registered for GST or it ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- .9 Each party acknowledges and warrants that at the time of entering into the Contract, it is registered for the GST.
- .10 The Principal will not issue a document that will otherwise be an RCTI, on or after the date when the Contractor or the Australian Taxation Office notifies the Principal that the Contractor does not comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

### Reimbursable expenses

- .11 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
  - .1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party (or its representative member) is entitled in respect of the reimbursable expense; and
  - .2 to the extent that the other party's recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

### Principal supplies

- .12 If the Principal makes any supply to the Contractor as a consequence of any matter arising under or in connection with this Contract, the Contractor must pay to the Principal on demand an amount equal to any GST payable in relation to that supply.

### Pay As You Go

- .13 If the Contractor does not quote its ABN in its tender (to be provided in *Contract Information* item 8) or on its *Payment Claims* or invoices, or the Contractor does not otherwise advise the Principal of its ABN relating to the service, the Principal will withhold tax from payments in accordance with the A New Tax System (Pay As You Go) Act 1999.

### Recipient Created Tax Invoice

- .14 References in clause 12 to Recipient Created Tax Invoices apply notwithstanding any other provision unless:
- .1 the Contractor is not required to be registered for GST under the GST Act and is not registered for GST, and has so notified the Principal before entering into the Contract; or
  - .2 the Contractor and the Principal enter into a Voluntary Agreement for the withholding of Pay as You Go taxation in accordance with the A New Tax System (Pay As You Go) Act 1999.

### Fines and penalties

- .15 Nothing in this clause requires the Principal to pay any amount on account of a fine, penalty, interest or other amount for which the Contractor is liable as a consequence of failure by the Contractor to comply with legislation which governs GST.

## 13 Compliance with codes

The NSW Government has established codes of practice, which address principles and standards of behaviour in the construction industry.

- .1 Subject to the express provisions of the Contract, the parties must comply with the relevant provisions of the codes of practice listed in *Contract Information* item 14.
- .2 The parties must comply with the RTA Statement of Business Ethics available from the RTA website.

## 14 Collusive arrangements

- .1 The Contractor warrants and represents to the Principal and agrees with the Principal that it is a fundamental condition of the Contract that:
  - .1 the Contractor has no knowledge of the tender price of any other tenderer for the Contract;
  - .2 except as disclosed in its tender, and by agreement in writing with the Principal, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association or to or on behalf of any other tenderer in relation to its tender or this Contract, nor paid or allowed any money on that account, nor will it pay or allow any money on that account; and
  - .3 if the Contractor pays to a trade association, industry association or another tenderer or pays to anyone on behalf of a trade association, industry association or another tenderer any money in breach of clause 14.1.2, the Contractor must immediately give the Principal written notice of such an event and such money is deemed to be held on trust for and becomes immediately payable to the Principal. The Contractor must use its best endeavours to recover the money and pay it to the Principal. If it fails to do so within the time specified in a notice by the Principal to the Contractor or otherwise (in the absence of a notice) within a reasonable time, the Principal will be entitled to withhold, deduct or set off from any payment due to the Contractor on any account an equivalent sum or make a demand against the *Undertakings* provided under clause 37.

## 15 Occupational health and safety management

The Contractor must be committed to creating a safe working environment and to continuous improvement in occupational health and safety.

- .1 The Contractor is responsible for and must comply with the requirements of the Contract for occupational health and safety, subject to the express provisions of the Occupational Health and Safety Act 2000 and the Occupational Health & Safety Regulation 2001. This includes, without limitation, compliance with the NSW Government "Occupational Health and Safety Management Systems Guidelines".
- .2 Unless specified otherwise in *Contract Information* item 15, the Principal hereby appoints the Contractor as principal contractor for the Works and authorises the



Contractor to exercise such authority of the Principal as is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor by the Occupational Health & Safety Regulation 2001.

- .3 Where applicable, as indicated in *Contract Information* item 16A, at least 14 days before starting *Design* and construction the Contractor must document, submit and implement an occupational health and safety management plan which complies with the Occupational Health & Safety Regulation 2001 and the NSW Government "Occupational Health and Safety Management Systems Guidelines".
- .4 The Contractor must systematically manage its occupational health and safety management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- .5 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 15.1 to 15.4.

## 16 Industrial relations management

The Contractor must implement a strategic approach to the management of industrial relations at the enterprise level, and to integrate industrial relations management activities into project planning and management.

- .1 The Contractor must manage all aspects of industrial relations on the Site and otherwise in connection with the Contract, and keep the Principal informed of industrial relations issues which affect or are likely to affect the carrying out of the Works.
- .2 Subject to the provisions of any relevant *Statutory Requirement* and the express provisions of the Contract, the Contractor must comply with the NSW Government "Industrial Relations Management Guidelines".
- .3 Where applicable, as indicated in *Contract Information* item 16B, at least 7 days before starting work on the Site, the Contractor must document, submit and implement a Project IR Plan which complies with the NSW Government "Industrial Relations Management Guidelines". The Project IR Plan must be consistent with any IR Strategy submitted with or in conjunction with the Contractor's tender and any amendments to that IR Strategy.
- .4 The Contractor must systematically manage its industrial relations management processes in accordance with the strategies, plans, standards and codes specified in the Contract.
- .5 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 16.1 to 16.4.
- .6 Where applicable as indicated in *Contract Information* item 57, the National Code of Practice for the Construction Industry is applicable to the *Temporary Work* and Works:
  - .1 the Contractor must comply, in the performance of this Contract, with the requirements of the National Code of Practice for the Construction Industry (the "code") and the Industry Guidelines for the Workplace Relations and Occupational Health and Safety Components of the Code (the "industry guidelines"). Copies of the code and the Australian Government Implementation Guidelines for the code and the industry guidelines are available at <http://www.workplace.gov.au>.
  - .2 the Contractor must maintain accreditation under the Australian Government Building and Construction OHS Accreditation Scheme (the Scheme) established by the Building and Construction Industry Improvement Act 2005, while building work is carried out.
  - .3 the Contractor must comply with all conditions of Scheme accreditation.
  - .4 compliance with the code or the industry guidelines will not relieve the Contractor from responsibility to perform the Contract, or from liability for any *Defect* in the *Temporary Work* and Works arising from compliance with the code or the industry guidelines.
  - .5 where a change in the Contract is proposed and that change would affect compliance with the code or the industry guidelines, the Contractor must submit

- a report to the Commonwealth specifying the extent to which the Contractor's compliance with the code or the industry guidelines will be affected.
- .6 the Contractor must maintain adequate records of the compliance with the code and industry guidelines by itself and its *Subcontractors*. The Contractor must permit the Commonwealth or any person authorised by the Commonwealth, including the Interim Building Industry Taskforce, to have access to these records and to its premises (to inspect and copy records), as is necessary to allow validation of its progress in complying with the code and industry guidelines. The Contractor, in all its *Subcontracts*, must require *Subcontractors* to maintain and provide access for the Commonwealth or any person authorised by the Commonwealth to the *Subcontractor's* records and premises to the same extent as required from the Contractor by this clause.
  - .7 if the Contractor does not comply with the requirements of the code or the industry guidelines in the performance of this Contract such that sanction is applied by the Code Monitoring Group, the Commonwealth, without prejudice to any rights that would otherwise accrue, will be entitled to record that non-compliance and take it into account in the evaluation of any future tenders that may be lodged by the Contractor or a related corporation in respect of work for any part of the Commonwealth or its agencies.
  - .8 the Contractor must not appoint a *Subcontractor*, *Consultant* or *Supplier* in relation to the Contract Works where the appointment would breach a sanction imposed by the Code Monitoring Group.
  - .9 the Contractor must ensure that all *Subcontracts* contain requirements functionally equivalent to the requirements of this clause.

## 17 Quality management

The Contractor must and it must also ensure that its Subcontractors, Suppliers and Consultants systematically plan and manage their work to achieve specified quality outcomes, reduce the occurrence and costs of error and waste and to achieve continuous improvement in the quality of the product or service provided.

- .1 The Contractor must systematically manage its processes in accordance with the quality management systems, plans, standards and codes specified in the Contract.
- .2 The Contractor must:
  - .1 submit documentation required by the Contract by the time or times specified in the Contract;
  - .2 review and update the Contractor's quality management procedures and documentation so they remain adequate at all times to manage and ensure the quality of the Works complies with the requirements of the Contract;
  - .3 control non-conforming services and/or products and undertake corrective and preventative action as and when necessary;
  - .4 establish, maintain and keep records of all activities related to the management of quality; and
  - .5 provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel), and all other things necessary to allow the Principal to carry out reviews, surveillance and audit of the Contractor's procedures and conformance with the contractual quality management requirements.
- .3 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 17.1 to 17.2.

## 18 Environmental management

The Principal requires the Contractor to implement a systematic approach to the management of environmental impacts of the Contract.

- .1 Subject to the provisions of any relevant *Statutory Requirements* and the express provisions of the Contract, the Contractor must comply with the NSW Government “Environmental Management Systems Guidelines”.
- .2 Where applicable, as indicated in Contract Information item 16C, at least 14 days before starting *Design* and construction, the Contractor must document, submit and implement an Environmental Management Plan which complies with the NSW Government “Environmental Management Systems Guidelines”.
- .3 The Contractor must systematically manage its environmental management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- .4 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 18.1 to 18.3.

#### Carbon Pollution Reduction Scheme

- .5 Clauses 18.5, 18.6 and 18.7 apply if:
  - .1 a carbon pollution reduction scheme or emissions trading scheme or similar legislative scheme (CPRS) becomes law; and
  - .2 the Contractor's cost of purchasing fuel used for carrying out the Works increases.
  - .3 Subject to clause 18.6 the Contractor may recover from the Principal any increase in the Contractor's cost of purchasing fuel used for carrying out the Works which:
    - (1) arises directly and solely from the introduction of a CPRS; and
    - (2) is not otherwise recoverable under another provision of the Contract.
- .6 The Contractor must:
  - .1 demonstrate to *Principal's Authorised Person's* satisfaction that it has incurred increased costs in purchasing fuel used for carrying out the Works; and
  - .2 provide the Principal with access to all relevant records to enable the Principal to verify the Contractor's *Claim*.
- .7 The Contractor is not entitled to any other *Claim* or additional costs arising out of or in connection with the introduction of any CPRS.

## 19 Training management

**The Contractor must integrate training and skills development into its enterprise planning and management.**

- .1 Subject to the express provisions of the Contract, the Contractor must comply with the NSW Government “Training Management Guidelines”.
- .2 Training management requirements specified in the Contract and the NSW Government “Training Management Guidelines” may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.
- .3 Where applicable, as indicated in Contract Information item 16D, at least 14 days before starting work on the Site the Contractor must document and submit a Training Management Plan which complies with the NSW Government “Training Management Guidelines”.
- .4 The Contractor must systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.
- .5 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 19.1, 19.3 and 19.4.

## 20 Aboriginal participation in construction

**The Contractor must use its best endeavours to make Aboriginal participation, including employment and training, a feature of the project.**

- .1 Where applicable, as indicated in *Contract Information* item 16E, before starting work on the Site, the Contractor must document, submit and implement a Aboriginal

Participation Plan in accordance with the NSW Government “Aboriginal Participation in Construction Implementation Guidelines”.

- .2 The Contractor must systematically manage its aboriginal participation processes in accordance with the systems, plans, standards and codes specified in the Contract.
- .3 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 20.1 and 20.2.

## 21 Authorisation for access to other records

### Release of information

- .1 The Principal may make information concerning the Contractor available to other NSW Government authorities. This information may include, but is not limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor’s performance under the Contract.

### Use of information

- .2 Information about the Contractor from any source, including substantiated reports of unsatisfactory performance, may be taken into account by NSW Government authorities in considering whether to offer the Contractor future opportunities for NSW Government work.

### Qualified privilege

- .3 In making available any information under clause 21.1, the Contractor acknowledges that the Principal will be entitled to rely on the defence of qualified privilege for the purposes of section 30 of the Defamation Act 2005 (NSW).

### Release and indemnity

- .4 The Contractor releases and indemnifies the Principal from and against any *Claim* in respect of any matter arising out of:
  - .1 information being made available under clause 21.1; and
  - .2 the use of such information by a recipient of the information.

## 22 Long service levy

- .1 Before commencing *Design* or construction work, the Contractor must:
  - .1 pay to the Building and Construction Industry Long Service Payments Corporation or the Corporation’s agent the amount of the long service levy payable in respect of the building and/or construction work under the Building and Construction Industry Long Service Payments Act, 1986; and
  - .2 produce to the Principal the documentary evidence of payment of the levy.

## 23 Media releases and enquiries

- .1 The Contractor must obtain the Principal’s prior written consent to:
  - .1 any press release or advertisement it wishes to make or place concerning the Contract, the Principal or the Works; or
  - .2 the release for publication in any media of any information, publication, document or article concerning the Contract, the Principal or the Works.
- .2 The Contractor must refer any media enquiries concerning the Contract, the Principal or the Works to the Principal, for the Principal’s prior written consent to any response, which consent may be given or withheld, in the Principal’s absolute discretion.
- .3 The Contractor must ensure that all Consultants, Subcontractors and Suppliers engaged by the Contractor for the performance of the Contract, comply with the requirements of this clause 23 and obtain the Principal’s prior written consent (through the Contractor) before responding to enquiries or publishing anything of the type referred to in clause 23.

## 24 Registration and licences

- .1 All vehicles and plant used in performing work in connection with the Contract must be properly registered by the Contractor, if required by law to be registered.
- .2 The Contractor must ensure that all drivers who operate vehicles or plant in performing work in connection with the Contract must be properly and appropriately licensed as required by law to operate those vehicles or plant.
- .3 Whenever requested by the Principal, the Contractor must provide promptly, documentary evidence of compliance with clauses 24.1 and 24.2.

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## Management duties

### 25 Time management

The Contractor must actively manage progress, anticipating and responding to events to stay on schedule.

- .1 The Contractor must commence *Design* and construction of the Works on Site in accordance with the *Contract Program* (or the contractual program as referred to in clause 25.6, as applicable).
- .2 The Contractor must carry out *Design* and construction of the Works in accordance with *Scheduled Progress*.
- .3 Whenever requested, the Contractor must demonstrate to the Principal that it is achieving *Scheduled Progress*.
- .4 If the Contractor is not achieving *Scheduled Progress*, the Principal may instruct the Contractor to take all reasonable steps to achieve *Scheduled Progress*, at the Contractor's cost.
- .5 The parties acknowledge that an instruction under clause 25.4 is not an *Acceleration Notice*.
- .6 The Contractor must submit to the Principal a program which complies with clause 25.9 within 14 days of the Date of Contract. Until the Contractor provides this program complying with clause 25.9, the program submitted by the Contractor with its tender shall be the contractual program, if the Principal so advises the Contractor in writing.
- .7 The Principal need not respond to the Contractor about the program submitted. If the Principal raises no objection and the program submitted by the Contractor under this clause 25 complies with clause 25.9, it becomes the *Contract Program*. If the program does not comply with clause 25.9, the Contractor must promptly and in any event within 14 days of being notified by the Principal of the non-compliance, submit to the Principal a further program complying with the requirements for the *Contract Program* in clause 25.9.
- .8 The Contractor must update and resubmit the *Contract Program* when directed by the Principal acting reasonably, taking into account actual progress, any changed circumstances and the effects of delays and approved extensions of time.
- .9 The *Contract Program* must comply with the following requirements:
  - .1 show the dates of, or, in the case of future activities and events, the dates for commencement and completion of *Design* and construction activities, other significant events, *Milestones* and the Works and also include *Contractual Completion Dates*;
  - .2 reflect *Scheduled Progress* and be consistent with all constraints on access, performance and co-ordination;
  - .3 show the logical relationship between activities and events shown in the program, identify time leads and lags, resource and other constraints and the sequence of activities which constitute the critical path or critical paths;
  - .4 show the dates when the Contractor will require information, documents, materials or instructions from the Principal and the dates when the Contractor will provide information or documents to the Principal. These dates are to be consistent with dates which the Principal could reasonably have anticipated at

the Date of Contract that this information, documents, materials and instructions would be required and provided; and

- .5 be in such form and include such detail as the Principal reasonably requires and be accurate, comprehensive and complete in all respects.

When requested by the Principal, the Contractor must provide the *Contract Program* in electronic form to the Principal. All of the requirements of clauses 25.9.1 to 25.9.5 must be accessible and clearly shown in the electronic form of the *Contract Program*. The software used by the Contractor must be acceptable to the Principal.

- .10 The Contractor will not be entitled to *Claim* an extension of time under clause 54.3 or otherwise, until the Contractor has submitted to the Principal a *Contract Program* in conformance with clause 25.9, notwithstanding the references to the contractual program in clauses 25.1 and 25.6. The *Contract Program* submitted in respect of a *Claim* for an extension of time must be the *Contract Program* current (as adjusted under clause 25.8) at the time of the event or events giving rise to the *Claim*.
- .11 All extension of time *Claims* must show how the Contractor has been or will be delayed in reaching *Completion*, by specific reference to an activity or activities on the then current (as adjusted under clause 25.8) critical path or paths of the *Contract Program*.
- .12 Provision of the *Contract Program* does not relieve the Contractor of any of its obligations under the Contract.

## 26 Working days and hours of work

- .1 The Contractor must observe *Statutory Requirements* which regulate working days and hours of work and any requirements of the Principal which regulate working days and hours of work, as specified in *Contract Information* Item 39.

## 27 Intellectual property

- .1 The Contractor assigns or otherwise transfers *Intellectual Property Rights* in all *Data* created specifically for the Contract, upon its creation, to the Principal. The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Intellectual Property Rights* in the Principal.
- .2 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Intellectual Property Rights* in all *Data* created specifically for the Contract is assigned or otherwise transferred to the Principal upon its creation. The Contractor, Subcontractors and Consultants are granted licences to use the *Data* for the purposes of the Contract.
- .3 For *Data* provided by or for the Contractor, but not created specifically for the Contract, the Contractor must obtain irrevocable royalty-free licences to allow the Principal to use, operate, maintain, modify and decommission the Works.
- .4 Licences referred to in clause 27.3 must apply from the Date of Contract or (if the *Data* has not then been created or is not then available) from the date the *Data* is created or becomes available (as applicable) in perpetuity.
- .5 The Contractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* in connection with the Contract and the Works. The Contractor indemnifies the Principal against any claims (including *Claims*), actions, and loss or damage arising out of any failure to make these payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to the *Data* provided by or for the Contractor and used under the Contract or required to use, operate, maintain, modify or decommission the Works.
- .6 The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used by the Contractor and Subcontractors, Suppliers and Consultants for the purposes of the Contract.
- .7 The Contractor must maintain all *Data* secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Contract. This provision does not relate to *Data* which is generally available to the public or which is required to be disclosed by law. This provision survives termination or expiry of the Contract or of the Contractor's employment under the Contract.

## 28 Licences and approvals

- .1 The Contractor must obtain at its own cost all licences, authorisations, approvals and consents necessary to carry out the Works in accordance with the Contract.

## 29 Care of people, property and the environment

- .1 The Contractor is liable for and indemnifies the Principal against loss or damage to:
  - .1 the Works, from the date the Contractor begins carrying out the Works; and
  - .2 the Site and anything brought onto the Site for the purposes of the Contract, from the date the Contractor is given possession of the Site (or the relevant part of the Site, arising out of carrying out of work for or in connection with the Contract), until and including the *Actual Completion Date* of the whole of the Works.
- .2 After the *Actual Completion Date* of the whole of the Works, the Contractor remains liable for and indemnifies the Principal against loss or damage arising out of performing *Variations*, making good *Defects*, and removing *Materials* from the Site.
- .3 The Contractor is liable for and indemnifies the Principal against all claims (including *Claims*), actions, and loss or damage and all other liability arising out of carrying out the Works:
  - .1 to or in connection with any property (other than property covered under clause 29.1); and
  - .2 arising out of personal injury or death.
- .4 The Contractor's liability for and responsibility to indemnify the Principal under clauses 29.1, 29.2 and 29.3 is reduced to the extent that an *Excepted Risk* contributes to an injury or death or loss or damage to property.
- .5 The Contractor is responsible for all of the following:
  - .1 preventing personal injury or death, or loss or damage to the Site, the Works and the *Temporary Work*;
  - .2 preventing loss or damage to adjoining and other properties and the environment arising out of carrying out the Works;
  - .3 the locating and care of existing services;
  - .4 repairing or making good loss or damage to the Works, the environment and the Site arising out of carrying out the Works; and
  - .5 bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising out of carrying out the Works.
- .6 If urgent action is required to avoid death, injury, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor of its obligations), at the Contractor's cost with the Principal's costs being recoverable as a deduction from the *Contract Price*.
- .7 Limitation of liability
  - .1 Subject to clauses 29.7.2 and 29.7.3, the Contractor's total liability to RTA under this Contract in respect of any event that occurs or a liability that arises for which Insurance is required by clause 36 (Risk Event) is limited to the sum of the total aggregate limits of liability or sums insured (Policy Limits) of all Insurances applicable to the Risk Event. The amount which represents the Contractor's total liability is determined by reference to the Policy Limits of the Insurances, whether or not the Insurance actually provides cover for the Risk Event.
  - .2 Subject to clause 29.7.3, clause 29.7.2(1) does not limit the Contractor's liability:
    - (1) in respect of liability which:
      - (a) cannot be limited at law;
      - (b) arises under clauses 27 or 55.4;
      - (c) is due to the Contractor's wilful or reckless misconduct, negligence, fraud or criminal conduct; or

- (d) arises in connection with the Contractor's abandonment of its obligations under the Contract;
  - (2) to the extent that any insurer under a policy referred to in clause 36 Contractors Insurance seeks to exercise a right of subrogation against the Contractor;
  - (3) to the extent that (ignoring the application of clause 29.7.1, the Contractor is entitled to recover that liability from any other third party (including any Subcontractor), or would have been entitled to recover for that liability but for any act or omission of the Contractor;
  - (4) to pay interest or other amounts which the Contract expressly treats as recoverable debts;
  - (5) for unliquidated damages in lieu of unenforceable liquidated damages; or
  - (6) for personal injury (including death) or illness to any person,  
and those liabilities will not be included in any calculation of the Contractor's total liability under clause 29.7.1.
- .8 Exclusion of certain kinds of loss
- (1) The Contractor will not be liable to RTA for:
    - (i) loss of business opportunity;
    - (ii) loss of goodwill;
    - (iii) loss of contracts;
    - (iv) loss arising from business interruption;
    - (v) loss of or corruption of data;
    - (vi) loss of anticipated savings; or
    - (vii) the cost of capital or other financing costs,  
which loss or cost arises due to the performance of the Services, except to the extent that such loss or cost arises out of or in connection with:
      - (viii) a breach by the Contractor of this Agreement; or
      - (ix) the Contractor's negligence.
  - (2) RTA will not be liable to the Contractor for:
    - (i) loss of business opportunity;
    - (ii) loss of goodwill;
    - (iii) loss of contract;
    - (iv) loss arising from business interruption;
    - (v) loss of or corruption of data;
    - (vi) loss of anticipated savings; or
    - (vii) the cost of capital or other financing costs,  
arising out of or in connection with the performance of the Services or this Agreement, except to the extent that such loss or cost arises out of or in connection with:
      - (viii) a breach by RTA of this Agreement; or
      - (ix) RTA's negligence.

### 30 Notices and instructions in writing

- .1 Notices must be sent to the relevant persons at the relevant postal or other addresses specified in *Contract Information* items 4 to 11.
- .2 All notices must be in writing, and all instructions by the Principal must be in writing or confirmed in writing as soon as practicable, where given orally when urgent action is required;



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## Subcontractors, Suppliers and Consultants

Contractual relationships between the Contractor, Subcontractors, Suppliers and Consultants must be on a similar basis to those between the Principal and Contractor. Clause 34 specifies which clauses also apply to Consultants and Suppliers.

### 31 Subcontractor relationships

- .1 The Contractor is solely responsible for all Subcontractors (including any *Preferred Subcontractors*) and for their acts and omissions, and for the termination of any Subcontract and replacement of any Subcontractor.
- .2 The Contractor indemnifies the Principal against all claims (including *Claims*), actions, and loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- .3 The Contractor must:
  - .1 for all Subcontracts valued at or over the amount in *Contract Information* item 20, use the GC21 Subcontract conditions at Attachment 4, without changing the intent or effect;
  - .2 in all Subcontracts valued below the amount in *Contract Information* item 20, but at or over the amount in *Contract Information* item 21, include provisions equivalent to clause 31 of the GC21 Subcontract conditions at Attachment 4; and
  - .3 for all Subcontracts valued below the amount in *Contract Information* item 21, pay the Subcontractor within the number of days given in *Contract Information* item 22 of the Subcontractor claiming payment in accordance with the Subcontract.
- .4 The Contractor must ensure that its Subcontractors include a clause equivalent to clause 31 of the GC21 Subcontract conditions in all *Sub-Subcontracts* valued at or over the amount in *Contract Information* item 21.
- .5 The Contractor must maintain proper records to account for all money received in trust under clause 37 of the GC21 Subcontract conditions at Attachment 4, and show them to the Principal on request.

### 32 Engaging Subcontractors

- .1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with this clause 32.
- .2 When requested, before engaging any Subcontractors and at any other times, the Contractor must provide to the Principal unpriced copies of any Subcontracts, the names and addresses of proposed Subcontractors and the names and addresses of Subcontractors. The Principal may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal objects to any proposed Subcontractor, the Contractor must at its own cost propose another Subcontractor.
- .3 For each trade or area of work for which the Principal has provided a list of *Preferred Subcontractors* before the Date of Contract, the Contractor may only engage a Subcontractor from that list. If no *Preferred Subcontractor* on the list will subcontract to perform the work, the Contractor must provide a separate list and the provisions of clause 32.2 will then apply.

*When applicable, lists of any Preferred Subcontractors are included as Reference Contract Documents in Contract Information item 23.*
- .4 For each trade or area of work specified in *Contract Information* item 24 as a category requiring use of a *Prequalified Contractor*, the Contractor must use only Subcontractors prequalified in that category. Upon request, the Principal will provide to the Contractor a list of *Prequalified Contractors* for each specified category.
- .5 If instructed by the Principal, the Contractor must take a novation of the contracts of specified Principal's consultants, contractors or suppliers, on the terms specified in the Contract.
- .6 If the Contractor terminates a Subcontract, clauses 31, 32, and 33 apply to any replacement Subcontract.

### 33 Subcontractors' warranties

- .1 For each trade or area of work listed in *Contract Information* item 25, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty) to remedy any *Defects* and to remedy or replace *Design, Materials* or workmanship which does not comply with the Contract.
- .2 Clause 33.1 does not affect any of the Contractor's other obligations under the Contract.

### 34 Consultant and Supplier relationships

- .1 Clauses 31.1, 31.2 and 32 apply to Consultants in the same way they apply to Subcontractors, unless the context requires otherwise.
- .2 Clauses 31.1, 31.2, 31.3 (excluding clause 31.3.1), 31.4, 32 and 33 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise, including, without limitation, those relating to insurance.

# Carrying out the Works

This section deals with design and construction activities. It contains most of the provisions in the GC21 General Conditions of Contract that apply to the physical carrying out of the Works, and also covers procedures for payment.

## Starting

### 35 Start-up workshop

The start-up workshop is held to encourage the parties and others concerned with the Works to work co-operatively towards a successful Contract and project. See Attachment 1.

- .1 The Principal must convene a start-up workshop within 28 days after the Date of Contract or such other period as the parties agree.
- .2 The parties must attend the start-up workshop and must jointly decide who else will attend. The structure and relevant processes that apply to evaluation and monitoring meetings under clause 6 shall apply to the start-up workshop.
- .3 The start-up workshop will be conducted so as to promote a culture of co-operation and teamwork for the management of the Contract.
- .4 Each party and any others who participate in the workshop must meet their own costs for attendance at the start-up workshop, and the parties will share equally the other costs.

### 36 Insurance

#### Principal Arranged Insurance

The following provisions apply in addition to insurance arranged by the Principal.

- .1 The Principal has effected an insurance policy or policies to cover the Principal, the Contractor and all *Subcontractors* employed from time to time in relation to the Works for their respective rights, interests and liabilities with respect to:

#### contract works - material damage

- .1 liability for loss or damage referred to in clause 29.1, including loss or damage to *Materials* (excluding constructional plant, motor vehicles, appliances and things (including scaffolding, formwork and the like), clothing, tools and sundry equipment) of the Contractor or any *Subcontractor* used in or in relation to the carrying out of the Works or entrusted to the Contractor by the Principal for that purpose, but not forming or intended to form part of the Works; and

#### third party liability

- .2 liabilities to third parties of the type set out in clause 29 and subject to the maximum limits of liability set out in Schedule 10.

#### professional indemnity

- .3 The RTA has effected a principal professional indemnity insurance policy for its own benefit.
- .2 The Principal may in its discretion have other insureds named or included in the policy or policies referred to in clauses 36.1.1 and 36.1.2, including any other government entity with an interest in the Works or the Site.
- .3 The policy or policies will be maintained by the Principal until the issue of the *Final Payment Schedule*.
- .4 Before the earlier of:
  - .1 10 *Business Days* after the *Date of Contract*; or
  - .2 the Contractor commencing to carry out any part of the Works,

the Contractor must contact the insurance broker nominated in writing to the Contractor as the Principal's insurance broker and must provide to that person all details reasonably requested for the purpose of the insurances referred to in clauses 36.1.1 and 36.1.2

- .5 The Contractor acknowledges that extracts of the policy terms have been exhibited to the Contractor prior to the *Date of Contract* and are attached as Schedule 10. Full copies of the policy terms are available for inspection by arrangement with the Principal's insurance broker.
- .6 The insurance cover under clauses 36.1.1 and 36.1.2 is subject to exclusions. These are set out in the policy terms referred to in clause 36.5 and include the following exclusions:
  - .1 damages for delay in completing or for the failure to complete the *Works*;
  - .2 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;
  - .3 loss or damage resulting from the *Excepted Risks* defined in paragraphs .2 and .3 of the definition; and
  - .4 matters required to be insured under clauses 36.14 or 36.15.
- .7 The Contractor shall be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in clauses 36.1.1 and 36.1.2 in accordance with the policy terms. The Contractor may effect its own insurance to cover the amount of any excess.
- .8 The Contractor acknowledges that:
  - .1 the insurances referred to in clauses 36.1.1 and 36.1.2 have been obtained at the Principal's cost; and
  - .2 the Contractor shall not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance.
- .9 The obtaining of insurance by the Principal in accordance with this clause shall not reduce, vary, or otherwise affect the Contractor's liabilities and obligations pursuant to clause 29, warranties given or otherwise under the Contract or in connection with the *Works*.
- .10 If there is a claim for significant damage or destruction under the Works policy of insurance (as determined by the Principal, acting reasonably):
  - .1 all settlement amounts must be paid by the insurer directly to the Principal;
  - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract; and
  - .3 the Contractor must reinstate the Works if instructed to by the Principal and except as otherwise provided in the Contract may only make a *Claim* for payment for reinstatement of the Works up to the amount of any insurance settlement.
- .11 The provisions of clauses 36.23 and 36.24 also apply to insurance arranged by the Principal.

#### Contractor Insurance

The Contractor must comply with the following provisions relating to insurance to be effected by the Contractor or its Subcontractors, Suppliers or Consultants.

- .12 Before starting any work for or in connection with the Contract, the Contractor must arrange and have in place insurance (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums) for the minimum amounts specified in *Contract Information* items 28 & 29, and pay all premiums for:
  - .1 Workers Compensation and related liability insurance in accordance with the requirements of the Workers Compensation Act 1987, as specified in *Contract*

*Information* item 28, and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor; and

- .2 Not used
- .3 Either comprehensive motor vehicle/mobile plant insurance or third party property damage insurance, as specified in *Contract Information* item 29, and where possible in the joint names of the Principal, the Contractor and all Subcontractors employed from time to time in relation to the Works for their respective rights and interests to cover their liabilities to third parties in connection with the use of each motor vehicle in relation to the Contract.
- .13 The Contractor must ensure that every Subcontractor, Supplier and Consultant is insured at all times for Workers Compensation and related liability in accordance with the requirements of the Workers Compensation Act, 1987.
- .14 If any work for or in connection with the Contract includes asbestos decontamination, the Contractor must pay all premiums and insure under an asbestos liability policy of insurance to cover risks with asbestos decontamination work, as specified in *Contract Information* item 31.
- .15 If any work for or in connection with the Contract includes the use of waterborne craft of 8 or more metres in length, the Contractor must pay all premiums and insure under a marine liability policy and a marine protection and indemnity policy to cover the use of such craft, as specified in *Contract Information* item 32.
- .16 The Contractor must obtain the written approval of the Principal for all of its insurers and for the terms and conditions of the policies and provide copies of the approved policies to the Principal.
- .17 The Contractor must ensure that each policy required to be effected and maintained under the Contract or under Subcontracts is in effect for the relevant period specified in the contract.
- .18 All policies must:
  - .1 require the insurer to notify the Principal (other than in relation to Workers Compensation and professional indemnity) at the same time as the insurer receives or gives any notice concerning the policy, and at least 7 days before any proposed cancellation of a policy; and
  - .2 provide that a notice of claim given to the insurer by the Principal, the Contractor, or a Subcontractor, Supplier or Consultant will be accepted by the insurer as a notice of claim given by all of the insured.
- .19 The policies referred to in clauses 36.14 and 36.15 must be in the name of the Contractor with the Principal as an additional named insured and must cover the Contractor, the Principal, the Principal's Authorised Person and all Subcontractors, Suppliers and Consultants employed from time to time for or in relation to the Contract and the Works for their respective rights and interests and cover their liabilities to third parties.

The policies must include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons covered and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons covered as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result).

The Contractor must:

- .1 ensure that in respect of each insurance required to be effected or taken out as required by clause 36 by the Contractor or any Subcontractor, Supplier or Consultant, it:
  - (1) does not do anything which prejudices any insurance;
  - (2) if necessary, rectifies anything which might prejudice any insurance;
  - (3) reinstates an insurance policy if it lapses;
  - (4) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;

- (5) immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled;
  - (6) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- .2 ensure that any insurance required to provide coverage to Subcontractors acknowledges that the same coverage applies to Suppliers and Consultants.
  - .3 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
  - .4 ensure that a notice to the insurer by one insured will be deemed to be notice by all insured parties.

The policies must be effected before commencing work and be maintained until the Final Payment Schedule is issued under Clause 65.2.

- .20 Before the Contractor starts any work for or in connection with the Contract and whenever requested in writing by the Principal, the Contractor must supply proof that all insurance policies required under the Contract and under Subcontracts and Consultant agreements are current. However, for asbestos decontamination work, the proof must be supplied initially within 60 days after starting that work.
- .21 The Principal need not make any payment under the Contract to the Contractor unless the Contractor has complied with and continues to comply with clause 36.20.
- .22 If the Contractor fails to comply with clauses 36.12, 36.14, 36.15, and 36.20, the Principal may effect and maintain that insurance and pay the necessary premiums. The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due by the Contractor.
- .23 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. The Contractor must take such steps as are necessary or appropriate to ensure that a Subcontractor, Supplier or Consultant (as applicable) will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the Subcontractor, Supplier or Consultant (as applicable), take in relation to the Principal similar action to that which the Contractor is required to take under this clause 36.23.
- .24 The requirements for insurance to be effected and maintained do not affect or limit the Contractor's liabilities (including, without limitation, indemnities given under clause 29) or other obligations under the Contract.

### 37 Undertakings

The Contractor is required to provide security to the Principal in the form of unconditional *Undertakings to pay on demand*, provided by financial institutions on the Contractor's behalf.

- .1 Within 14 days after the Date of Contract the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for the amounts calculated as specified in *Contract Information* items 33 and 34. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).
- .2 Unless the Principal has made or intends to then make a demand against any *Undertaking*, the Principal must return *Undertakings* to the Contractor as follows:
  - .1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and
  - .2 the *Post-Completion Undertaking* at the end of the period in *Contract Information* item 35 (or 12 months if no period is specified there) after the *Actual Completion Date* of the whole of the Works provided all *Defects* then known have been remedied and otherwise when all *Defects* then known are remedied.

- .3 When *Completion* of a *Milestone* is achieved, the Principal may (in its absolute discretion) agree to a proportionate reduction in the level of security held, based on the proportion of the Works in the *Milestone*.
- .4 All *Undertakings* must be provided by a bank, building society, credit union or insurance company acceptable to the Principal.
- .5 The Contractor must not prevent the Principal making any demand against the *Undertakings*, or prevent the provider of an *Undertaking* complying with the *Undertaking* or any demand by the Principal.

## 38 Site access

### Possession of the Site

- .1 Subject to compliance by the Contractor with the provisions of clauses 38.2 and 38.3, within the time period stated in *Contract Information* item 13, or, if no time period is stated, then within 14 days of the Date of Contract, the Principal must give the Contractor possession of the Site, or enough of it to allow for start of *Design* and construction of the Works.

If the Principal does not give the Contractor possession of the Site or enough of it to allow for start of *Design* and construction of the Works by the time specified in clause 38.1, the Contractor may be entitled to an extension of time under clause 54 as its sole remedy and, notwithstanding clause 55, will not be entitled to any costs, losses, expenses or damages under clause 55, or otherwise.

- .2 The Contractor must meet all its obligations under the Contract to provide *Undertakings* and effect insurance before it is entitled to start any work for or in connection with the Contract.

*Refer to clauses 36 (Insurance) and 37 (Undertakings).*

- .3 Before *Design* or construction work commences the Contractor must comply to the extent specified in the Contract with requirements for industrial relations, environmental, safety (including under all occupational health & safety legislation and acting as principal contractor and controller of work sites under the Occupational Health & Safety Regulation 2001) and quality management, other *Statutory Requirements* and any other requirements specified in the Contract to be complied with by the Contractor before *Design* and construction work commences. The Contractor is not entitled to possession of the Site or any part of the Site until the Contractor demonstrates to the Principal that it complies with those requirements.

### Access for the Principal

- .4 Where required for the purposes of the Contract, at all reasonable times the Contractor must permit the Principal (including its authorised employees and agents) to have access to the Site and to the premises of the Contractor and must arrange for such access to the premises of Subcontractors, Suppliers and Consultants. This may include for the purpose of surveillance, audit, inspection, *Testing*, certification and recording of information in any form or for any other reasonable purpose required by the Principal in connection with the Contract.

## 39 Engagement of Valuer

*Refer to Schedule 5 (Agreement with Valuer), under which the Valuer determines cost and time under clauses 51 and 52.*

- .1 If indicated in *Contract Information* item 52A, the Valuer must be engaged for the purposes of clauses 51 and 52 and the following provisions of this clause 39 will apply:
  - .1 The parties acting reasonably must endeavour to agree in writing on the Valuer within 21 days after the Date of Contract or, failing agreement, the Principal must request the person named in *Contract Information* item 52B to select the Valuer.
  - .2 The Principal and the Contractor must jointly engage the Valuer under the form of Schedule 5 (Agreement with Valuer) within a further 21 days from the date of selection of the Valuer.

- .3 The Valuer must make determinations under clauses 51 and 52.
  - .4 The Valuer's certificate will be final and binding unless a party has a right to commence litigation under clause 39.1.5.
  - .5 If the net amount of the Valuer's determination exceeds the amount in *Contract Information* item 52C (calculating the amount without including interest on it), then either party may commence litigation in respect of the *Variation*, but only within 56 days after receiving the determination.
- .2 If a Valuer is not engaged the assessment and determination of a value or the effect on the time for *Completion* is governed by the procedures in clause 52 and by clauses 72 to 75, as applicable.

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## The Site

### 40 Site information

- .1 The parties acknowledge that:
  - .1 at the Date of Contract, the Principal has provided in good faith the geotechnical or other information concerning the Site specified in *Contract Information* items 36A and 36B;
  - .2 the information specified in *Contract Information* items 36A and 36B does not form part of the Contract;
  - .3 the Principal does not guarantee the completeness of the information specified in *Contract Information* item 36A;
  - .4 the Principal does not guarantee the accuracy, quality or completeness of the information specified in *Contract Information* item 36B;
  - .5 the Principal accepts no duty of care in connection with information specified in *Contract Information* item 36B (or with having provided it);
  - .6 the Contractor warrants that it:
    - (1) has made its own inquiries (including the checking of information provided by the Principal) concerning the Site;
    - (2) did not in any way rely on the completeness of the information provided by the Principal specified in *Contract Information* Item 36A other than as a guide for ascertaining what *Further Site Information* the Contractor considers it needs to obtain under clause 40.3; and
    - (3) did not in any way rely on the information (which information could contain errors, omissions and other inaccuracies) provided by the Principal, as specified in *Contract Information* item 36B; and
  - .7 the Contractor also warrants that it has made its own interpretations, deductions and conclusions from the information provided by the Principal and did not in any way rely on interpretations, deductions and conclusions made by or for the Principal.

*Other information concerning the Site may be included in the Contract.*

- .2 The Contractor warrants that it has:
  - .1 examined the Site and surrounds and satisfied itself through its own investigation as to the condition and characteristics which may be encountered on, in or under the Site (including sub-surface conditions) and as to the further geotechnical or other information for the Site that may be required to be obtained by the Contractor; and
  - .2 made its own assessment of the risks, contingencies and other circumstances which might affect the Works and has allowed fully for these in the *Contract Price* (subject to clause 41).
- .3 If the Contractor considers that further geo-technical or other information for the Site is required, it may obtain *Further Site Information* and must give the Principal details of *Further Site Information* as it is obtained.



- .4 *Further Site Information* does not include any information in the *Contract Documents* or information which by the Contract the Contractor is required to otherwise obtain.
- .5 Except if the Contract provides otherwise, the Contractor must bear the cost of obtaining *Further Site Information*.

#### 41 Site Conditions

Early warning should serve to reduce the severity of possible cost and time implications when adverse *Site Conditions* are encountered. For this purpose, the Contractor is encouraged to obtain *Further Site Information* in advance of construction.

- .1 The Contractor agrees that it has no other entitlement arising out of or in connection with *Site Conditions* other than as referred to in this clause 41.
- .2 If the Contractor encounters, in the execution of the Works (including when obtaining *Further Site Information*), *Site Conditions* which are materially adverse in comparison to the *Site Conditions* which the Contractor should have reasonably foreseen at the Date of Contract, having regard to the warranty in clause 40.2, the Contractor must notify the Principal in writing forthwith and in any event within 7 days of encountering these *Site Conditions* (and prior to making any related *Claim*), giving full details of:
  - .1 the *Site Conditions* encountered;
  - .2 the manner in which they are said to be materially adverse (having regard to the warranty in clause 40.2, together with information supporting this contention;
  - .3 the effect on the Works;
  - .4 subject to clause 41.8, the estimated additional cost (if any) of dealing with the *Site Conditions* encountered and the additional work and resources involved;
  - .5 the delay (if any) to progress of the Works; and
  - .6 any other relevant matters.

The Principal may request the Contractor to provide any further information relating to the circumstances of the *Site Conditions* encountered.

- .3 The Contractor is solely responsible for dealing with the *Site Conditions* encountered in a manner so as to minimise any extra costs and in a manner to which the Principal has no objection.
- .4 Subject to clause 41.8:
  - .1 the Contractor will be entitled as an adjustment to the *Contract Price* to its direct, reasonable additional costs (including costs of delay or disruption), necessarily and unavoidably incurred by the Contractor in dealing with materially adverse *Site Conditions*, from the date of provision to the Principal of the written notice required by clause 41.2, having taken all reasonable steps to minimise the costs in dealing with materially adverse *Site Conditions*; and
  - .2 the Contractor may also be entitled to an extension of time for *Completion* under clause 54 for delays caused by the materially adverse *Site Conditions* occurring from the date of provision to the Principal of the written notice required by clause 41.2.
- .5 If a *Variation* is instructed or agreed as a result of *Site Conditions* shown by *Further Site Information* given to the Principal no later than 21 days before construction on the relevant part of the Site would have started, but for the *Variation*, it must be dealt with (including the matters of value and extension of time for *Completion*) under the *Variation* procedures in clause 52.
- .6 If a *Variation* is instructed or agreed as a result of *Site Conditions*, but the Contractor does not give to the Principal the *Further Site Information* within the time provided in clause 41.5:
  - .1 the *Variation* must be valued under clause 52 but the value of the *Variation* must exclude the costs of any aborted work arising out of the *Variation*; and
  - .2 no payment will be made to the Contractor for costs of delay or any aborted work under any other provision of the Contract or otherwise.
- .7 Clause 41.6 applies regardless of any provisions to the contrary in the Contract.

- .8 Notwithstanding anything in clause 41, when specified in *Contract Information* item 41 that the Contractor is to bear the full risk of encountering and dealing with materially adverse *Site Conditions*:
  - .1 the Contractor is not entitled to the costs of dealing with materially adverse *Site Conditions*; and
  - .2 notwithstanding, clause 54, if the Contractor is or will be delayed in reaching *Completion* as a result of dealing with materially adverse *Site Conditions*, the Contractor will not be entitled to an extension of time for *Completion*.
- .9 If a *Variation* is instructed or agreed as a result of *Site Conditions*, the parties' rights and obligations are not affected by clause 41.8.

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## Design

The Contractor has some design, design coordination and design management responsibility. The extent of *Design* by the Contractor may be as little as shop detailing, as much as the full *Design* of the Works, or it may be some requirement in between, and Clause 43 applies in all these cases.

In addition, the Contractor may be required to check, adopt and be responsible for design carried out before the Date of Contract by the Principal. In that case, it is specified in *Contract Information* item 38, and clause 44 applies.

### 42 Ambiguities

Clause 42 applies to all *Contract Documents*, including *Principal's Documents*.

- .1 The Contractor, in addition to any responsibility to check *Principal's Documents* under clause 44 (if applicable), must check the *Contract Documents* and notify the Principal of any ambiguities, inconsistencies or discrepancies at least 21 days before the Contractor proposes to use them for *Design* or construction (including procurement, manufacture or fabrication of any part of the Works) or for other Contract purposes.
- .2 The Principal must resolve any ambiguities, inconsistencies or discrepancies in the *Contract Documents* which are notified by the Contractor to the Principal for resolution.
- .3 Subject to clause 42.4, if the resolution in clause 42.2 results in the Contractor incurring increased or reduced costs than the Contractor should reasonably have anticipated at the time of tender, the *Contract Price* must be adjusted by the difference in costs agreed or valued under the procedures in clause 52 (and where applicable, dealt with under clauses 72 to 75). In the assessment of what the Contractor should reasonably have anticipated (as referred to above) regard must be had to the provisions of the Contract, in particular clause 10, and to whether the ambiguity, inconsistency or discrepancy was (or should have been) reasonably apparent to the Contractor at the time of tender.
- .4 If the Contractor fails to take the steps required in clause 42.1, and a *Variation* is instructed by the Principal due to any ambiguity, inconsistency or discrepancy:
  - .1 the Contractor will not be entitled to costs for delay or the cost of any aborted work (including *Design*) resulting from the *Variation*; except that
  - .2 if clause 44 is not applicable, the Contractor will be entitled to the reasonable and unavoidable cost of any aborted work (including *Design*) if the ambiguity, inconsistency or discrepancy is included in the *Principal's Documents* forming part of the *Contract Documents*.

### 43 Contractor's Documents

- .1 The Contractor must carry out all necessary design to complete *Design* of the Works (whether or not it is responsible under clause 44.1 for the Principal's design in the *Principal's Documents*) and so produce *Contractor's Documents* which meet the requirements of all of the following:
  - .1 the Contract;
  - .2 Principal's instructions;
  - .3 *Statutory Requirements*;

- .4 the Building Code of Australia (if applicable in *Contract Information* item 37B), and relevant Australian Standards; and
  - .5 if no other standard is specified in the Contract, then good industry standards applicable to the Works.
- .2 The Contractor acknowledges that the Contractor must not change the Principal's design in the *Principal's Documents* without the Principal's prior written approval. Whenever requested by the Principal, the Contractor must promptly confirm in writing that *Contractor's Documents* are consistent with and comply with the *Principal's Documents* and other relevant *Contract Documents*. If the Principal's design is required to be changed (with the Principal's prior written approval), the *Variation* must be dealt with under the procedures in clause 52.
  - .3 The Contractor warrants that *Contractor's Documents* and any related *Design*, materials, documents and methods of working will not infringe any *Intellectual Property Rights*. The Contractor indemnifies the Principal against any costs, losses, expenses or damages arising out of the Contractor infringing any *Intellectual Property Rights*.
  - .4 The Contractor must produce *Contractor's Documents* which will ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the *Contractor's Documents* are not fit because of design work by the Principal for which the Principal retains responsibility.
 

*The Principal retains responsibility for the Principal's design carried out before the Date of Contract unless clause 44 applies.*
  - .5 The requirements of clause 43.4 are not reduced or affected by any *Variations*.

#### 44 Adopting Principal's Documents

*This clause only applies when this is indicated in Contract Information item 38. It does not replace any other provisions of the Contract, but adds further responsibilities when required.*

*If clause 44 applies, the Contractor must accept full responsibility for design carried out by the Principal before the Date of Contract, in addition to Design to be carried out by the Contractor.*

- .1 If *Contract Information* item 38 specifies that the Contractor must accept full responsibility for design carried out by the Principal before the Date of Contract, then before submitting *Contractor's Documents* to the Principal in accordance with clause 45 the Contractor (at its own cost) must:
  - .1 check, and notify the Principal of details (together with appropriate supporting documents) of any *Fault* in the *Principal's Documents*;
  - .2 amend the documents to correct *Faults* so that, on *Completion*, the Works and every part will be fit for the purposes required by the Contract; and
  - .3 accept and adopt the *Principal's Documents* as if the Contractor prepared them so that they (amended by the Contractor as necessary) become *Contractor's Documents* when submitted under clause 45.
 

*See clause 43 for requirements applying to Contractor's Documents.*
- .2 Subject to any provisions of the Contract which provide for change to the *Principal's Documents* and clause 42, the Principal must instruct a *Variation* if the Contractor notifies the Principal of a *Fault* in the *Principal's Documents* and the Principal requires a change to the Works as a result.
- .3 If *Principal's Documents* adopted by the Contractor contain a *Fault* not notified to the Principal by the Contractor in accordance with clause 44.1.1:
  - .1 the Contractor will be responsible for, and not entitled to payment for delays or the cost of any aborted work arising out of the *Fault*; and
  - .2 the value of any *Variation* the Principal instructs as a result of the *Fault* must not include the cost of such delays or aborted work.

- .4 The Contractor acknowledges that the Principal's design is incomplete and may contain *Faults* or conflict with *Statutory Requirements* or the Building Code of Australia (if applicable, as referred to in *Contract Information* item 37B) or other codes or standards which the Contractor is required to comply with under the Contract.
- .5 The Principal makes no representation concerning Principal's design and the Contractor is not entitled to rely on the completeness or accuracy of the Principal's design.
- .6 The Principal relies on the Contractor to identify and remedy *Faults* in the *Principal's Documents*.

#### 45 Submitting Contractor's Documents

- .1 The Contractor must submit *Contractor's Documents* (as developed progressively and in stages, but so that each part is complete and in sufficient detail to explain what is proposed) to the Principal at least 21 days before the date the Contractor proposes to use them for construction (including procurement, manufacture or fabrication) of any part of the Works. The Contractor must provide the number of copies of the *Contractor's Documents* specified in *Contract Information* item 19 when submitting *Contractor's Documents*.
- .2 To the extent specified in the Contract, the Contractor must undertake design review and consider the *Design* with those persons specified in the *Contract Documents*, or those persons identified by the Principal, including those involved in using or occupying any part of the Works as *end users*. The Contractor must carry out such design review and consideration with the Principal and those other persons and develop the *Design* and *Contractor's Documents* using the outcomes of this review and consideration. The Contractor must then submit to the Principal for its consideration any necessary amendments to the *Principal's Documents* proposed by the Contractor, including those arising out of the design review and consideration, prior to the Contractor submitting *Contractor's Documents*, as referred to in clause 45.1.
- .3 The Principal need not respond to the Contractor about the *Contractor's Documents* submitted.
- .4 If the Principal objects to the *Contractor's Documents*, the Contractor must take the objections into account and discuss them with the Principal. The Contractor must correct any *Fault* in the *Contractor's Documents*.
- .5 Notwithstanding the design review and consideration by others under clause 45, the Contractor remains fully responsible for all *Contractor's Documents*.
- .6 Nothing the Principal does or omits to do in connection with this clause 45 makes the Principal liable for *Contractor's Documents*, or prevents the Principal from relying on or enforcing a right, under the Contract or otherwise.

#### 46 Innovation

This clause provides an incentive to the Contractor to improve its service to the Principal by innovation. If the Principal accepts the Contractor's proposal, the Contractor benefits by retaining immediate savings in its costs; the Principal benefits from the added value to the Works, reduced operating or maintenance costs, or similar savings. Alternatively, if stated in *Contract Information* Item 42, the parties agree to share the savings in costs derived from an innovation.

- .1 The Contractor may submit in writing to the Principal, at its own cost, a detailed proposal for changes to the Works, including *Design* or *Materials*, which is likely to offer significant benefits (including long-term or repeated benefits) to the Principal.
- .2 If the Principal requires it, and if the Contractor wants to proceed with the proposal, the Contractor must provide (at no cost to the Principal) a report on the details, implications and benefits of the proposal. The report must be prepared by a Consultant acceptable to the Principal.
- .3 The proposal must not include anything which might adversely affect the quality of *Design* or construction or operation or maintenance of the Works. Proposed changes must be consistent with the purpose and intent of the Contract and the Works.

- .4 The Principal must consider the Contractor's proposal, but is not bound to accept any proposal or proposed changes. No *Claim* will arise out of the Principal's consideration of or failure to accept any proposal or proposed changes.
- .5 Subject to clause 46.7 and 46.8, if the Principal accepts any changes proposed by the Contractor, any actual direct saving in the cost to the Contractor of the Works resulting from the changes will be for the benefit of the Contractor.
- .6 The Principal may accept the proposed changes subject to conditions.
- .7 The Contractor is fully responsible to the Principal for the compliance of the Works and for the changes and their consequences.
- .8 Notwithstanding the provisions of clause 46.5, if indicated in *Contract Information* item 42, the savings in the cost to the Contractor of the Works with the changes proposed by the Contractor and accepted by the Principal under clause 46 must be shared by the Contractor and the Principal in the proportions of the savings stated in *Contract Information* item 42. The calculated savings must include the assessed reduction in the costs of the Works to the Contractor and Subcontractors and Suppliers, less any costs incurred by the Principal in assessing or implementing the changes, including but not limited to related design work.

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## Construction

### 47 Setting out the Works

- .1 The Contractor must set out and construct the Works at the locations and levels specified in or required by the Contract.
- .2 The Contractor may request in writing from the Principal any necessary additional information to be provided by the Principal relating to setting out the Works not included in the *Contract Documents*. The Contractor must make the request at least 14 days prior to the date the Contractor proposes to use the information for set out for construction of the part of the Works to which the information applies. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.
- .3 While carrying out the Works, if the Contractor discovers or is made aware of any error in the location, level, dimension or alignment of the Works:
  - .1 the Contractor must notify the Principal;
  - .2 the Principal need not respond to the Contractor about any error;
  - .3 the Principal may instruct the Contractor regarding necessary rectification work and the Contractor must comply;
  - .4 the Contractor must rectify any error to ensure that the Works comply with the Contract; and
  - .5 if an error occurs because of the Principal's design for which the Principal retains responsibility and causes the Contractor to incur necessarily and unavoidably any extra costs, the Contractor may be entitled to those extra costs and an extension of time under clause 54.
- .4 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements, (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree (but is not obliged to do so) by notice in writing that certain matters can be excluded from the survey. The survey must be performed by a registered surveyor or other surveyor to whom the Principal has no objection.

### 48 Construction

- .1 The Contractor must supply all *Materials* and construct the Works in accordance with all of the following:
  - .1 the Contract;
  - .2 the *Contractor's Documents*;

- .3 the Principal's instructions concerning the Works;
  - .4 *Statutory Requirements*;
  - .5 the Building Code of Australia (if applicable in *Contract Information* item 37B), and relevant Australian Standards; and
  - .6 if no other standard is specified in the Contract, then good industry standards applicable to the Works.
- .2 The Contractor must comply with this clause 48 and ensure that the Works and every part of them are fit for the purposes required by the Contract. This responsibility is reduced to the extent that the Works are not fit because of design work by the Principal for which the Principal retains responsibility.

*The Principal retains responsibility for the Principal's design carried out before the Date of Contract unless clause 44 applies.*

- .3 The provisions of clause 48.2 are not reduced or affected by any *Variations*.

#### 49 Testing

- .1 The Contractor must:
  - .1 *Test* (at its own cost) all parts of the Works specified in the Contract to be *Tested*;
  - .2 give the Principal the opportunity to witness the *Tests* by giving reasonable notice; and
  - .3 make the results available to the Principal.
- .2 The Principal may instruct the Contractor at any time to *Test* any part of the Works. The Principal must pay for the *Tests* (as an addition to the *Contract Price*) if the results of the *Tests* show full compliance with the Contract. Otherwise, the Contractor must pay.
- .3 The Contractor must repeat the *Tests* (at its own cost) of all parts of the Works where *Defects* have been found, until the results of these *Tests*, as reported in writing to the Principal, confirm that all *Defects* have been made good and that the Works comply with the Contract.

#### 50 Defects

The Principal considers the Contractor to be an expert in *Design* and construction of the Works and holds the Contractor responsible for its work. The Principal requires *Completion* to be defect-free.

These *Defects* provisions are to ensure that the Works are constructed to the standards required by the Principal. The Principal can also rely on its common law rights. Also refer to clause 71 which deals with *Defects* after *Completion*.

- .1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract. This requirement does not affect any other remedy or right of the Principal.
- .2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice* issued by the Principal.
 

*A similar provision applies after Completion under clause 71.1.*
- .3 If the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Principal may have the *Defects* made good by others and then:
  - .1 the cost will be a debt due to the Principal and may be deducted from the *Contract Price*, unless a *Variation* applies under clause 50.5; and
  - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had performed the work.
- .4 Nothing in this clause 50:
  - .1 reduces the Contractor's warranties and other liabilities and obligations under the Contract; or
  - .2 affects the Principal's common law right of damages.

- .5 If at any time before *Completion* the Contractor becomes aware of any defect which results from design or other work or actions for which it is not responsible, it must:
  - .1 promptly notify the Principal; and
  - .2 make good the defect as a *Variation* under clause 52 if instructed to by the Principal.

#### 51 Acceptance with Defects not made good

- .1 The Principal, in its absolute discretion (and at any time, whether before or after *Completion*), may accept that specific *Defects* defined by the Principal need not be made good.
- .2 Before the Principal does so:
  - .1 the Principal may propose deductions from the *Contract Price*, and any terms it requires;
  - .2 if the Contractor agrees with the deductions and the terms, the *Contract Price* will be adjusted accordingly; and
  - .3 if the Contractor agrees with the terms but not with the proposed deductions:
    - (1) the Valuer must decide the value of the deductions as if a *Variation* applied under clauses 52.4 and 52.5, and the *Contract Price* must be adjusted accordingly; or
    - (2) if no Valuer is engaged (as may be specified in *Contract Information* item 52A), the provisions of clauses 72 to 75 will apply, as appropriate.
- .3 If the parties do not agree in writing on the Principal's terms, the Contractor must make good the *Defects* defined by the Principal.
- .4 The Contractor remains liable for *Defects* whether known or not known at the time the Principal accepts that defined *Defects* need not be made good under this clause 51.

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## Changes to work

#### 52 Variations

- .1 The Principal may instruct *Variations* in writing at any time before *Completion* (and after *Completion* in accordance with clause 71.1), and the Contractor must comply with these instructions.
- .2 Unless the Principal considers that urgent or special circumstances exist and instructs the Contractor to proceed, the Contractor must not begin to carry out a *Variation* until:
  - .1 the parties have agreed on its value (including delay costs under clause 55.1) and time implications; or
  - .2 a party has made a request to the Valuer, if a Valuer is engaged; or
  - .3 where no Valuer is engaged, the Principal instructs the Contractor to proceed,in each case in accordance with clause 52.4.
- .3 When requested to by the Principal, the Contractor must advise the Principal of its price (including amounts for any delay costs claimed in accordance with clause 55.1) for a proposed *Variation* and its effect (if any) on the time for *Completion*, or on any other matter specified, within the time specified in the request. In advising the Principal of its effect on the time for *Completion*, the Contractor thereby acknowledges its responsibility to take all reasonable steps:
  - .1 to carry out the work concurrently with other work whenever possible; and
  - .2 to otherwise minimise the effects of the *Variation* on the *Contractual Completion Date*, including for any *Milestone*.
- .4 If the parties agree that a *Variation* applies:
  - .1 they must endeavour to agree in writing on its value and effect on the time for *Completion* (if any). Failing agreement on value or time, either may request the Valuer to decide. If no Valuer is engaged (as may be specified in *Contract Information* item 52A), the provisions of clauses 72 to 75 apply, as appropriate and the principles for valuation and calculating time in clauses 3 and 4 of

Schedule 5 (Agreement with Valuer) apply even though the Valuer is not involved; or

*Refer to clause 39 (Engagement of Valuer) and to the agreement with the Valuer in Schedule 5 (Agreement with Valuer).*

- .2 then if the rates or prices included in the Contract do not apply to the *Variation* the Principal may instruct the Contractor to carry out work involved in any *Variation* as *Daywork* and, the principles for determining the value of the *Variation* and the effect on the time for *Completion* when using *Daywork* are set out in Schedule 9 ((Principles for Valuing Daywork Variation).

*The Valuer must make its determinations in accordance with Schedule 5 (Agreement with Valuer).*

- .5 The *Contract Price* must be adjusted to account for the value of the *Variation*.
- .6 If the parties do not agree that a *Variation* applies, all issues relating to the claimed *Variation* must be dealt with under clauses 72 to 75. The principles for valuation and calculating time in clauses 3 and 4 of Schedule 5 (Agreement with Valuer) apply even though the Valuer is not involved.
- .7 The Contractor acknowledges that the development of *Design* (including developing the requirements for and detailed scope of the Works) by the Contractor does not constitute a *Variation*.
- .8 Regardless of any other provision of the Contract, if the Contractor considers that a *Variation* applies but the Principal has not instructed a *Variation*, the Contractor must make its *Claim* for a *Variation* within 7 days from the start of the event giving rise to the *Variation*, or from the time when the event should have become known to the Contractor with reasonable diligence on its part.
- Refer also to clause 72.3.*
- .9 *Variations* instructed by the Principal must be generally consistent with or of a similar nature to the type of work included in the Works.
- .10 The Contractor may propose in writing to the Principal a *Variation* for the Contractor's convenience. The Principal may approve the *Variation* but is not obliged to do so. The Principal's approval may be conditional. Subject to the conditions of the Principal's approval, the other relevant provisions of clause 52 and Schedule 5 (Agreement with Valuer) apply to any *Variation* proposed by the Contractor and approved as a *Variation* by the Principal.

### 53 Changes in Statutory Requirements

- .1 If *Statutory Requirements* change after the closing date for the tender for the Contract and a change to the Works may be required as a result, the Contractor must promptly notify the Principal. The Principal must instruct a *Variation* under clause 52 if the Principal requires a change to the Works as a result.

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## Changes to time

The Contractor is responsible for managing progress to meet *Contractual Completion Dates* for *Milestones* (if any) and for the Works. These dates or times for *Completion* are initially given in the *Contract Information*, but may be adjusted under clauses 41 (Site Conditions), 52 (Variations), 54 (Extensions of time), and 56 (Acceleration).

### 54 Extensions of time

Under the conditions set out in clause 54 the Principal will extend the time for *Completion* if there is nothing the Contractor can reasonably do to avert circumstances beyond its control to avoid delay. Refer also to clauses 25 Time management and 69 *Completion*.

- .1 If the Contractor is or will be delayed in reaching *Completion*, the Contractor will be entitled to an extension of time for *Completion* for the number of days assessed by the Principal, if the Contractor satisfies the Principal that all the following conditions apply:



- .1 The cause of the delay was beyond the control of the Contractor (including an act, default or omission of the Principal, but not including a *Variation* instructed or agreed by the Principal or otherwise determined) and the Contractor has not contributed in any way to the delay.
 

*Extensions of time for Variations are dealt with under clause 52 and Schedule 5 (Agreement with Valuer or under clauses 72 to 75).*
- .2 The Contractor has taken all reasonable steps to avoid and minimise the delay and its effects.
- .3 The Contractor has given to the Principal each of the notices required under clauses 54.2 and 54.3.
- .4 The delay occurred to an activity or activities on a critical path of the then current *Contract Program*, as provided for in clause 25, and the Contractor has submitted this *Contract Program* with the notice required under clause 54.3.
- .2 The Contractor must give the Principal notice of the delay, its cause, relevant facts, and its expected impact, as soon as practicable after the delay commenced.
- .3 Within 14 days of commencement of the delay, the Contractor must give the Principal notice of the extension of time claimed, together with the information required under clause 25.11 and other information sufficient for the Principal to assess the *Claim*. If the delay continues for more than 14 days, the Contractor must give a further notice every 14 days thereafter, until after the delay ends, if the Contractor wishes to claim a further extension of time, together with further information of the kind required by this clause 54.3.
- .4 An extension of time is only given for delays occurring on days on which the Contractor usually carries out work for the Contract.
- .5 When concurrent events cause a delay in reaching *Completion* and one or more of the events is within the control of the Contractor, then to the extent that the events are concurrent, the Contractor will not be entitled to an extension of time for *Completion* notwithstanding that another cause of the delay is such that the Contractor would have had an entitlement to an extension of time.
- .6 The Principal may in its absolute discretion for the benefit of the Principal extend the time for *Completion* at any time and for any reason, whether or not the Contractor has *Claimed* an extension of time. The Contractor is not entitled to an extension of time for *Completion* under this clause 54.6 unless the Principal exercises its discretion to extend the time for *Completion*.
- .7 This clause 54 is subject to the provisions of any other clause in the Contract which entitles the Contractor to an extension of time for *Completion*.

## 55 Delay costs

### Delays caused by the Principal

Clauses 55.1, 55.2 and 55.3 prescribe the Contractor's rights when the Principal causes a delay to the Contractor in reaching *Completion*. Where prescribed in the Contract, the Contractor may be entitled to payment of delay costs which are caused by a specified delaying event. Otherwise, the Contractor is not entitled to extra payment for delay, disruption or interference of any nature whatsoever caused by the Principal (including for a breach of the Contract by the Principal).

- .1 The Contractor is entitled to delay costs at the rate or rates in *Contract Information* item 51A, for the number of working days by which the time for *Completion* is extended because of a delay caused only by:
  - .1 a *Variation*, other than one for which, under clauses 41.6, 42.4 and 44.3, there is no payment for delays; or
 

*Clause 41.6 deals with Site Conditions, 42.4 with ambiguities in the Contract Documents, and 44.3 with Faults in Principal's Documents.*
  - .2 a breach of the Contract by the Principal which causes delay, disruption or interference to the Contractor carrying out the Works.

- .2 The rate or rates of delay costs will be reduced where the Principal (or anyone authorised by the Principal) is using or occupying any part of the Works prior to *Completion*, under clause 68. This reduction in the delay costs will be determined by the Principal acting reasonably. The reduced rate or rates of delay costs will be the same proportion of the full rate or rates as is the value (as agreed by the parties or failing agreement, as determined reasonably by the Principal) of the remaining work to achieve *Completion* to the *Contract Price*.
- .3 The Contractor's only remedies for delay, disruption or interference of any nature whatsoever caused by the Principal (including for a breach of the Contract by the Principal, as referred to in clause 55.1.2) whether under the Contract, at law or otherwise, are an extension of time for *Completion* under clauses 41, 52 or 54, and delay costs under clause 55.1 and 55.2.

#### Delay to Completion

If indicated in *Contract Information* Item 51, the Contract provides for liquidated damages to be payable by the Contractor to the Principal, if the Contractor fails to achieve *Completion* by the *Contractual Completion Date*.

- .4 If the Contractor fails to achieve *Completion* by the *Contractual Completion Date* as required by clause 69, the Contractor will be liable to pay the Principal liquidated damages as a debt due and owing at the rate stated in *Contract Information* item 51B for every day after the *Contractual Completion Date* to and including the *Actual Completion Date*. If, however, the Contract is terminated under clauses 78 or 79, before the Contractor reaches *Completion*, any applicable liquidated damages for failure to achieve *Completion* by the *Contractual Completion Date* will run to the date of termination of the Contract.
- .5 The Principal, in its absolute discretion, may demand payment of the liquidated damages amount from the Contractor or may deduct, withhold or set-off the liquidated damages amount from any amount otherwise payable to, or security provided by the Contractor. A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages will not amount to a waiver of or otherwise affect the Principal's rights and entitlements.
- .6 If the *Contractual Completion Date* is extended after the Contractor has paid or the Principal has deducted liquidated damages, the excess amount of liquidated damages paid by the Contractor or deducted by the Principal will be payable by the Principal to the Contractor, subject to any right of set-off which the Principal may have.
- .7 The amount of liquidated damages will be reduced where the Principal (or anyone authorised by the Principal) is using or occupying any part of the Works prior to *Completion*, under clause 68. This reduction in the amount of liquidated damages otherwise payable under the Contract will be determined by the Principal acting reasonably. The reduced amount will be an amount which is in the same proportion to the full amount of liquidated damages otherwise payable as is the value (as agreed by the parties or failing agreement, as determined reasonably by the Principal) of that part of the Works used or occupied is to the *Contract Price*.
- .8 The Contractor acknowledges that the rate for liquidated damages set out in *Contract Information* item 51B represents a genuine pre-estimate of the amount of loss or damage, as calculated at the Date of Contract, which the Principal is likely to suffer if the Contractor fails to reach *Completion* by the *Contractual Completion Date*. The Contractor warrants that it will not challenge the rate for liquidated damages as being in the nature of a penalty.
- .9 The provisions of clauses 55.4 to 55.8 apply to a failure by the Contractor to achieve *Completion* by the *Contractual Completion Date*, in respect of the Works and also in respect of any *Milestones*.

#### 56 Acceleration

- .1 The Principal may instruct the Contractor to accelerate progress of the carrying out of the Works. The instruction must be in the form of an *Acceleration Notice*, and the Contractor must comply unless, before taking any steps to accelerate, it demonstrates to

the satisfaction of the Principal that the acceleration as instructed cannot be reasonably achieved.

- .2 The Contractor is not entitled to payment under this clause 56 if no *Acceleration Notice* is issued.
- .3 Whenever possible, the parties must agree on the steps to be taken and basis for payment for acceleration before the Contractor takes those steps, or failing agreement the Principal must determine a reasonable value.
- .4 The Principal must pay the Contractor for acceleration (as an addition to the *Contract Price*) if it achieves the acceleration instructed by the Principal, but the value must take into account any relevant extensions of time which may be granted under clauses 41, 52 or 54 for delay during the period of acceleration.

#### 57 Principal's suspension

- .1 The Principal may instruct the Contractor to suspend progress of the Works and *Temporary Work*, and the Contractor must comply.
- .2 The Contractor must resume carrying out the Works and *Temporary Work* when instructed to by the Principal.
- .3 If the need for the suspension arises from the Principal's own act or omission, then the Contractor will be entitled to:
  - .1 any extension of time granted under clauses 52 or 54; and
  - .2 (as an addition to the *Contract Price*) its reasonable, direct Site and off-Site costs of the suspension, unavoidably incurred, having taken all reasonable steps to minimise the costs.
- .4 The Contractor has no other remedies in connection with the suspension.

#### 58 Contractor's suspension

- .1 The Contractor may suspend work for or in connection with the Contract if the Principal:
  - .1 has both;
    - (1) become liable to pay the Contractor the full amount of a *Payment Claim* made in accordance with clause 62 (excluding payments already made), or the *Scheduled Amount*; and
    - (2) failed to pay it within the time prescribed by clause 63,
  - or
  - .2 fails to pay the amount of a determination by an adjudicator under the Building and Construction Industry Security of Payment Act 1999 NSW.
- .2 Before it suspends work under this clause 58, the Contractor must give the Principal at least 2 *Business Days* notice of its intention to do so. The Contractor may suspend work on expiry of the 2 *Business Days* if it has still not been paid.
- .3 The Contractor must resume all work within 3 *Business Days* of having been paid the amount referred to in clause 58.1.
- .4 If the Contractor elects to suspend work under this clause 58, then it may be entitled to an extension of time under clause 54, but despite clause 55, the Contractor will not be entitled to delay costs or damages under clause 55.

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## Payment

#### 59 The Contract Price

- .1 The *Contract Price*, and the rates and/or lump sums it includes, are not adjusted for rise or fall in the cost of labour or *Materials* provided by the Contractor, or for new, changed or increased taxes, duties or other imposts, unless expressly stated in the Contract.

*If specified in Contract Information item 40 that rise and fall adjustments are to be made, the provisions of Schedule 8 (Cost Adjustment Formula) apply.*

### Schedules of Rates

- .2 At the Date of Contract, quantities in a *Schedule of Rates* are estimated only, and the Principal does not guarantee either the estimated quantities or the descriptions of the items.
- .3 If a *Schedule of Rates* is included in the Contract, the *Contract Price* is the sum of the products of the quantities and the relevant rate for each item in the *Schedule of Rates*, plus all lump sums (if any). Before an item is completed, the estimated quantity will be used in the calculation of the *Contract Price*. After an item is completed, the actual quantity measured in accordance with the Contract will be used in the calculation of the *Contract Price*.
- .4 The Contractor is entitled to payment of the *Contract Price* calculated for actual quantities measured in accordance with the Contract.

### Provisional Sums and Provisional Quantities

*Provisional Sums and Provisional Quantities (if any) are shown in a Reference Contract Document listed at Contract Information item 17.*

- .5 The Contractor must carry out work which is the subject of a *Provisional Sum* as instructed by the Principal, on the terms the Principal specifies in the instruction.
- .6 If the Principal instructs the Contractor to carry out work which will be the subject of a *Provisional Sum* the *Contract Price* will be adjusted as follows:
  - .1 The amount of the *Provisional Sum* specified in the Contract must be deducted from the *Contract Price*.
  - .2 The cost of work performed by a Subcontractor or a Supplier under a Subcontract or by a Consultant (excluding any amount payable due to default or negligence of the Contractor) must be added to the *Contract Price*, together with the amount calculated by applying the *Provisional Sum* margin percentage stated in *Contract Information* item 47 to that cost of work.
  - .3 The cost of any work performed directly by the Contractor, and the cost of *Materials* supplied directly by the Contractor (including in each case a reasonable allowance for overhead and profit), must be added to the *Contract Price* without a *Provisional Sum* margin.
- .7 If the Principal does not instruct the Contractor to carry out work which is the subject of a *Provisional Sum* the amount allowed in the *Contract Price* for that work must be deducted from the *Contract Price*.
- .8 If the Principal instructs the Contractor to carry out work which is the subject of a *Provisional Quantity* and that instruction requires the Contractor to carry out a greater or lesser quantity of work than the *Provisional Quantity*, including that no work the subject of the *Provisional Quantity* will be carried out, the *Contract Price* must be adjusted by the amount calculated by multiplying the contract rate applicable to the *Provisional Quantity* work by the difference between the *Provisional Quantity* and the quantity of work carried out.

### 60 Entitlements

- .1 Except as otherwise expressly stated under the Contract, the *Contract Price* is only to be increased if required under any of the following clauses:
  - .1 clause 10.4 (Temporary Work);
  - .2 clause 10.5 (Work methods);
  - .3 clause 41 (Site Conditions);
  - .4 clause 42 (Ambiguities);
  - .5 clause 49 (Testing);
  - .6 clause 52.5 (Variations);
  - .7 clause 55.1.1 (Delay costs);
  - .8 clause 56.4 (Acceleration);

- .9 clause 57.3 (Principal's suspension);
  - .10 clause 59.3 (The Contract Price - Schedule of Rates);
  - .11 clause 59.6 (The Contract Price - Provisional Sums);
  - .12 clause 59.8 (The Contract Price - Provisional Quantities); and
  - .13 clause 66 (Interest on late payments).
- .2 The *Contract Price* may be decreased if required by the Contract. Clauses that allow decreases in the *Contract Price* include:
- .1 clause 42 (Ambiguities);
  - .2 clause 50.3 (Defects);
  - .3 clause 51.2 (Acceptance with Defects not made good);
  - .4 clause 52.5 (Variations);
  - .5 clause 59.3 (The Contract Price - Schedules of Rates);
  - .6 clauses 59.6, 59.7 & 59.8 (The Contract Price - Provisional Sums and Provisional Quantities); and
  - .7 clause 71.1 (After Completion).
- .3 The Contractor is not entitled to any other payments related to the subject matter of the Contract, under the Contract or otherwise, except:
- .1 under clauses 64, 78 and 79;
  - .2 for breach of the Contract; or
  - .3 where this exclusion is not permitted by law.

## 61 Prepayment

*Prepayment* is an advance payment against the *Contract Price* which provides early cash flow to the Contractor, Subcontractors, Suppliers and Consultants. They can keep the *Prepayment*, until it is deducted from amounts otherwise payable towards the end of the series of *Progress Payments* or *Milestone Payments*, unless the Contractor requests earlier return of *Undertakings* provided to the Principal in respect of the *Prepayment*. *Prepayment* may be utilised by the Contractor, Subcontractors, Suppliers and Consultants for any purpose related to the Contract.

- .1 The Contractor may claim *Prepayment*, as advance payment against the *Contract Price* (separate from *Payment Claims*) at any time before achieving *Completion* if all the following apply:
- .1 the total amount claimed for *Prepayment* is no more than the amount in *Contract Information* item 44;
  - .2 in consideration of the Principal accepting the *Undertakings* and providing the *Prepayment*, the Contractor has provided separate *Undertakings* to the Principal for the amounts of the *Prepayment*, including those arranged and provided by Subcontractors, Suppliers and Consultants, for each of the Contractor, Subcontractor, Supplier and Consultant amounts assigned; and
  - .3 the Contractor has assigned those *Prepayment* amounts directly to the Subcontractors, Suppliers and Consultants in writing, and has notified the Principal of the assignments.
- .2 The Contractor may claim for itself no more than one-third of the *Prepayment* amount in *Contract Information* item 44.
- .3 The Principal must pay the amount claimed within 14 days after all the conditions in clauses 61.1 and 61.2 have been met.
- .4 The Principal must return *Undertakings* provided for *Prepayment*, after deducting the value of the *Prepayment* made (as adjusted by any earlier such deductions) from payments otherwise payable to the Contractor, as follows:
- .1 on achieving *Completion* of the whole of the Works;
  - .2 as requested in writing by the Contractor; or
  - .3 when the total of the *Prepayment* made (as adjusted by such deductions) and *Payment Claims* to date equals or exceeds the *Contract Price*.

- .5 If, following achieving *Completion* of the whole of the Works or the earlier termination of the Contract (as applicable) or when the Contractor requests the return of *Undertakings*, the full amount of the *Undertakings* has not been deducted from payments otherwise payable to the Contractor, the Principal may make a demand against the *Undertakings* for any amount which has not been deducted.

## 62 Payment Claims

The Contract allows for payment by regular (usually monthly) *Progress Payments*, or on the *Completion of Milestones*. The two can be used together.

- .1 Unless otherwise specified in the Contract, the Contractor must make *Payment Claims* for the *Claimed Amount* based on the *Value Completed* and as specified in clause 62. Subject to clause 62.2, *Payment Claims* must be made monthly, on the date in each month specified in *Contract Information* item 49A, starting no earlier than the 14<sup>th</sup> day after the Date of Contract, and ending with the *Final Payment Claim* referred to in clause 65. *Payment Claims* made monthly are to include amounts for work carried out to the end of the previous month.
- .2 If *Contract Information* item 49B specifies payment by *Milestone Payment*, then the Contractor may only make a *Payment Claim* for the value of a *Milestone* on its *Completion*. If *Contract Information* item 49B specifies payment by *Milestone Payment* and monthly *Progress Payment*, then the Contractor must make a *Payment Claim* in accordance with this clause 62.2 for *Milestone Payments* and clause 62.1 otherwise.
- .3 The Contractor must submit *Payment Claims* in the form of Schedule 3 (Payment Claim Worksheet), or in such other form to which the Principal agrees.
- .4 A *Payment Claim* must:
- .1 identify the work and *Materials* to which the *Payment Claim* relates; and
  - .2 indicate the amount of the *Progress Payment* that the Contractor claims to be due for the work done to which the payment relates, in accordance with clauses 62.1 and 62.2 after allowing for the retention of the *Completion Amount* under clause 64 and for payments already made, as the *Value Completed*.
- .5 *Payment Claims* must show all *Claims*:
- .1 for amounts the Principal has agreed to or is required to pay in connection with a *Claim* made under clause 72 or another provision of the Contract and
  - .2 for interest (if any) due to the Contractor under clause 66.
- .6 *Payment Claims* must be accompanied by:
- .1 all relevant calculations ;
  - .2 a completed and true statutory declaration executed on the date of the *Payment Claim* in the form of Schedule 7 (Statutory Declaration);
  - .3 *Conformance Records* showing conformance with particular requirements of the Contract, as provided in the Contract and the certificates in the form of Schedule 4 (Certificate of Compliance), signed by the Contractor and also by any Consultants involved in the work, verifying that all work that has been done including *Design* and construction with *Materials* that have been supplied are in accordance with the Contract and
  - .4 any other information specified in the Contract.
- .7 *Payment Claims*, the *Claimed Amount* and the *Value Completed* must not include amounts for:
- .1 subject to the provisions of clause 62.8, work or *Materials* not yet incorporated into the Works; or
  - .2 *Claims* (including *Claims* for *Variations* not agreed to by the Principal, nor determined by the Valuer, nor determined under clause 75 or otherwise) not agreed to by the Principal or *Claims* not yet determined, as referred to in clauses 72 to 75.

.8 Subject to all of the following conditions, the Contractor may include an amount in a *Payment Claim* for *Materials* intended for incorporation in the Works but not yet incorporated, if:

.1 prior to the Contractor giving the *Payment Claim*, the Principal agrees in writing to pay the Contractor for specified *Materials* not yet incorporated into the Works and:

- (1) the Contractor provides a detailed schedule of the specified *Materials* and evidence that the *Materials* are marked in the name of the Principal and are insured for their full value, no later than 14 days before submitting the *Payment Claim*;
- (2) prior to submitting the *Payment Claim* the Contractor provides an *Undertaking* equal to the amount to be included in the *Payment Claim* for the specified *Materials* not yet incorporated into the Works;
- (3) the only unfixed *Materials* included in the valuation are those that have become or, on payment for *Materials* still unfixed, will become the property of the Principal free of any *Encumbrance*;
- (4) the Contractor provides to the Principal evidence of the Contractor's ownership; and
- (5) for any such *Materials* imported or to be imported into Australia the Contractor has given the Principal a clean on board bill of lading for the *Materials*, drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice for the *Materials*;

or

.2 the value of the *Materials* is greater than \$100,000 and:

- (1) the Principal agrees in writing to pay the Contractor for those *Materials* not yet incorporated into the Works;
- (2) the Contractor delivers to the Principal a written statement from the person with the custody of the *Materials* or on whose land the *Materials* are stored in the following terms:

"To: The Roads and Traffic Authority of NSW

I am a representative of [name of company/entity with custody of the *Materials*] or on whose land the *Materials* are stored] in the capacity of [insert position] and I am authorised to make this statement on behalf of [insert name as above]. I confirm that [insert name as above] has no lien, charge or other encumbrance over the materials listed in the schedule to this statement ('*Materials*'). I acknowledge that the *Materials* are the property of the Roads and Traffic Authority of NSW and I hereby irrevocably authorise you or your officers or others acting with your authority to enter the premises where the *Materials* are stored at any reasonable hour to inspect or remove the *Materials*. I undertake to make no claim or charge against you in respect of the storage of the *Materials*.

#### SCHEDULE

[list the *Materials*]

SIGNED .....

DATE: ....."

- (3) The Contractor agrees that the *Materials* will not be removed from their place of storage without the prior written approval of the Principal;
- (4) The Contractor agrees that upon payment being made in respect of the *Materials* that have not been incorporated into the Works, such *Materials* shall become the property of the Principal free from any liens, charges or other encumbrances whatsoever;

- (5) The Contractor agrees that upon the *Materials* becoming the property of the Principal, they shall be entrusted to the Contractor for the purpose of carrying out the Works and the Contractor shall be solely liable for their care.
- .9 The Contractor warrants for itself and for and on behalf of Subcontractors and Suppliers that no *Encumbrance* exists over any *Materials* incorporated into the Works by the Contractor. If the Contract or the Contractor's employment under the Contract is terminated by the Principal, the Contractor must ensure that the Principal, in respect of any unfixed *Materials* for which payment has been made or which have been appropriated to the Contract, may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.
- .10 For work carried out and allowed in each *Payment Claim*, the following applies in calculating the *Claimed Amount* and the *Value Completed*:
- .1 For completed work covered by a lump sum:
- (1) The Contractor may claim a lump sum by instalments with each *Payment Claim* calculated in accordance with Schedule 3. The total of the lump sum instalments must never exceed the total of the lump sum.
  - (2) The subtotal of "*Value Completed* \$" amounts for all activities is recorded.
- .2 For completed work covered by a *Schedule of Rates*:
- (1) The Contractor may claim for work covered by a *Schedule of Rates* as it is actually carried out (measured in accordance with the Contract), in accordance with Schedule 3.
  - (2) The subtotal of "*Value Completed* \$" of work for all *Schedule of Rates* items is recorded.
- .3 The *Value Completed* at the time of the *Payment Claim* is the sum of the values of work completed (and subtotal "*Value Completed*\_" \$" amounts) calculated under clauses 62.10.1 and 62.10.2.

### 63 Payments

- .1 When given a *Payment Claim* by the Contractor, the Principal must within 10 *Business Days*:
- .1 if it agrees with the *Payment Claim*, adopt it as its assessment; or
  - .2 if it disagrees with the *Payment Claim*, prepare its own assessment, in consultation with the Contractor if appropriate, and give to the Contractor a *Payment Schedule*.
- .2 The Principal's assessment in the *Payment Schedule* must:
- .1 identify the *Payment Claim* to which it relates;
  - .2 indicate the amount of the payment (if any) that the Principal proposes to make as the *Scheduled Amount*; and
  - .3 if the *Scheduled Amount* is less than the *Claimed Amount* (excluding payments already made) indicate why it is less and (if it is less because the Principal is withholding payment for any reason), the Principal's reasons for withholding payment.
- .3 If the *Scheduled Amount* which the Principal proposes to pay is less than the *Claimed Amount* (excluding payments already made), the Contractor may give notice of an *Issue* under clause 73, and if the *Payment Claim* is made under the Building and Construction Industry Security of Payment Act 1999 NSW, the Contractor may apply for adjudication for the difference.
- .4 Reasons why the *Scheduled Amount* may be less than the *Claimed Amount* (excluding payments already made) or for withholding payment include:
- .1 disagreement with the *Claimed Amount*;
  - .2 progressive retention of the *Completion Amount* under clause 64;
  - .3 the costs and estimated costs associated with remedying *Defects*;



- .4 amounts the Principal is otherwise entitled to withhold, set-off or otherwise deduct;
  - .5 *Prepayment* deductions in accordance with clause 61; and/or
  - .6 exclusion of amounts the Principal has not agreed, or is not required, to pay in connection with a *Claim* under clause 72 or another provision of the Contract.
- .5 The Principal must pay to the Contractor as a *Progress Payment* the *Scheduled Amount* by the later of:
- .1 the number of *Business Days* specified in *Contract Information* item 49C (or if no period is specified then 10 *Business Days*) after issuing the *Payment Schedule* or the number of *Business Days* specified in *Contract Information* item 49C after receiving the statutory declaration, the specified *Conformance Records* and the certificates in the form of Schedule 4 (Certificate of Compliance) referred to in clause 62.5; and
  - .2 the period specified in the Contract, after the Contractor takes any other actions and complies with any other obligations required which are stated in the Contract to be pre-conditions to payment before any payment is payable.
- .6 If the Principal does not give the Contractor a *Payment Schedule* within 10 *Business Days* after receiving a *Payment Claim* made under the Building and Construction Industry Security of Payment Act 1999 NSW, the Contractor may proceed to exercise its rights under the Act.
- .7 Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor's account specified in the relevant *Payment Claim Worksheet* provided by the Contractor.
- .8 Payment by the Principal is not evidence that the Principal accepts the value, quantity or quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement, and is payment on account only. Payments made by the Principal do not affect or prejudice any of the Principal's rights, powers, remedies or defences and are subject to review pursuant to the provisions of clauses 73 to 75 or otherwise as permitted by the Contract (including by litigation).

#### 64 Completion Amount

*The Completion Amount provides an incentive; the earlier the Contractor achieves defect-free Completion of the whole of the Works, the earlier the payment occurs.*

- .1 The *Completion Amount*, if one is specified in *Contract Information* item 45, becomes an entitlement of the Contractor on *Completion* of the whole of the Works. The Contractor may then claim it in the next *Payment Claim*, subject to the Principal's right to set-off under clause 67.
- .2 The Principal will retain the *Completion Amount* from *Payment Claims* when the *Value Completed* exceeds fifty percent (50%) of the *Contract Price*.
- .3 The Principal will own any interest earned on the monies retained for the *Completion Amount*.

#### 65 Final payment

*This clause contains provisions which apply to the Contractor's Final Payment Claim and the Principal's Final Payment Schedule in addition to those in clauses 62 and 63.*

- .1 The Contractor must submit a *Final Payment Claim* within 13 weeks after achieving *Completion* of the whole of the Works. The *Final Payment Claim* must include any *Claim* not previously claimed in a *Payment Claim*, and which is then permitted under clauses 62 and 63 of the Contract, being a *Claim* agreed to by the Principal or if not agreed, having been determined in accordance with the Contract.
- .2 Within 10 *Business Days* of receiving the *Final Payment Claim* (or, if the Contractor has not submitted a *Final Payment Claim*, within 15 weeks after achieving *Completion* of the whole of the Works), the Principal must give the Contractor a *Final Payment Schedule* stating the amount payable by one party to the other and where the Contractor has submitted a *Final Payment Claim*, complying with the relevant provisions of clause 63.

- .3 Any payments by the Contractor to the Principal in accordance with the *Final Payment Schedule* must be made within a further 14 days after it is issued.

*Refer to clause 63 for provisions covering payments by the Principal to the Contractor.*

- .4 Any other *Claim* not previously brought which the Contractor is then entitled under the Contract to bring must be made (separate from the *Final Payment Claim*) within 13 weeks after achieving *Completion* of the whole of the Works. Otherwise it is barred. If the Principal agrees to a *Claim* involving money under this clause 65.4, the Principal will make payment within 28 days of such agreement or of it being determined in accordance with the Contract.
- .5 The issue of the *Final Payment Schedule* is conclusive evidence that all necessary increases to the *Contract Price* or to any other entitlement of the Contractor have been made, except for those required by:
- .1 arithmetical error; or
  - .2 valuation of *Variations* under clause 52 relating to a *Claim* made in accordance with clause 65.4; and
  - .3 resolution under clauses 72 to 75 (as applicable) of:
    - (1) any *Claim* (other than *Variations* valued under clause 52) made in accordance with clause 65.4; or
    - (2) any other *Issue* raised which may properly be raised in accordance with the Contract during a period of 28 days following the issue of the *Final Payment Schedule*.
- .6 The Contractor's liability under the Contract or otherwise is not affected by the issue of the *Final Payment Schedule*. The Contractor's liability continues until any limitation period under statute expires.

## 66 Interest on late payments

- .1 A party which fails to make a payment by the time or by the last day of the period prescribed by the Contract must pay interest to the other party, at the rate in *Contract Information* item 50, for the period the payment is late.

## 67 Set-off

- .1 If the Principal claims a sum under or arising out of the Contract or any other contract between the Principal and the Contractor, the Principal may:
- .1 withhold, deduct or set-off the claimed sum against any sum to which the Contractor is otherwise entitled under or arising out of the Contract; and
  - .2 make a demand against the *Undertakings* provided under clause 37 for any amount of the claimed sum in excess of the sum to which the Contractor is then otherwise entitled.

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# Completion

## 68 Early use

- .1 Before the Contractor achieves *Completion*, the Principal (and anyone authorised by the Principal) may use or occupy (but is not obligated to) any part of the Works which is sufficiently complete, or the whole of the Works and then:
- .1 the Contractor's responsibilities are not affected, except if they are reduced under clause 29.4 or if the Principal (or anyone authorised by it to use or occupy any part of the Works) causes the Contractor's work to be hindered; and
  - .2 the Principal becomes responsible for any additional insurance required.
- .2 If the Principal requires to use or occupy any part or the whole of the Works before the Contractor achieves *Completion*, as provided in clause 68.1, the Principal must give not less than 21 days notice in writing to the Contractor that the Principal will be using or occupying a part or parts, or the whole of the Works and must specify those parts, or that the whole of the Works is, to be so used or occupied.

- .3 The Contractor must do everything necessary to provide to the Principal promptly, but in any event no later than 21 days after receipt of the notice in clause 68.2, all documents and other things relevant to the parts to be used or occupied as are listed in the second paragraph of the definition of *Completion*, and to otherwise provide full assistance and cooperation to the Principal (and anyone authorised by the Principal) in the use and occupation of the Works.

## 69 Completion

The Contract requires defect-free *Completion*. There is no concept of “practical completion” applying to the Contract. *Completion* applies to any *Milestones* as well as to the whole of the Works.

- .1 The Contractor must achieve *Completion* by the *Contractual Completion Date*.
- .2 When the parties agree that *Completion* has been achieved, each party acting reasonably, the Principal must give the Contractor a notice stating the *Actual Completion Date*.

## 70 Close-out workshop

The close-out workshop is an opportunity to review the management of the Contract. It is also used to collect and provide feedback to the parties to enable them to improve the overall communication and management process for any possible future contracts. The purpose of the workshop is to provide a realistic assessment of the performance by the workshop participants.

- .1 The Principal must convene a close-out workshop within 21 days after achieving *Completion* of the whole of the Works. The structure and processes that apply to evaluation and monitoring meetings under clause 6 apply to the close-out workshop.
- .2 The parties must attend the close-out workshop and must jointly decide who else will attend.
- .3 Each party and any others who participate in the workshop must meet their own costs for attendance at the close-out workshop, and the parties will share equally the other costs.

## 71 After Completion

- .1 At any time after *Completion*:
  - .1 the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*;
  - .2 if the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the provisions of clauses 50.3 and 50.4 will apply; and
  - .3 the Principal may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 71.1.1.
- .2 This clause 71 does not reduce the Contractor’s liability, whether arising under the Contract or otherwise. The Contractor’s liability continues until any limitation period under statute expires.
- .3 This clause 71 does not affect the Principal’s rights under clause 51.

# Claim and Issue resolution

This section provides a step-by-step procedure for handling *Claims* and *Issues*. Generally, the aim of the Contract is for the parties to resolve matters through discussions as soon as possible and within the times specified. Further steps are only needed if the parties have been unable to resolve matters between themselves.

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## Claim resolution

### 72 Contractor's Claims

- .1 Any *Claim* not made, assessed and determined under another provision of the Contract must be made, assessed and determined under this clause 72 (unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation).

*These clauses deal with Claims made, assessed and determined under another provision of the Contract:*

*clause 41 (Site Conditions);*

*clause 42 (Ambiguities) (in part);*

*clause 44 (Adopting Principal's Documents);*

*clause 49 (Testing);*

*clause 51 (Acceptance with Defects not made good);*

*clause 53 (Changes in Statutory Requirements);*

*clause 52 (Variations) (in part);*

*clause 54 (Extensions of time);*

*clause 55 (Delay costs);*

*clause 61 (Prepayment);*

*clause 62 (Payment Claims);*

*clause 64 (Completion Amount); and*

*clause 65 (Final payment) (in part).*

- .2 Where the Contractor is entitled to make a *Claim* under a provision of the Contract including under clause 65.4, which does not specify a time for making the *Claim* or otherwise in relation to the Contract or the Works, then the *Claim* must be made within 28 days from:
- .1 the start of the event giving rise to it; or
  - .2 the time the event should have become known to the Contractor, with reasonable diligence on its part.
- .3 If the Contractor fails to make a *Claim* within the specified time, the Contractor will not be entitled to interest on any amount involved in the *Claim* for the period before the Contractor made the *Claim*. However, any *Claim* not made within the times specified in clause 65 is barred.
- .4 Each *Claim* must include information sufficient for the Principal to assess the *Claim*, without the need for further information. This includes the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1 and 1.2 of the Schedule 6 (Expert Determination Procedure).
- .5 The Principal must assess a *Claim*, and reach agreement about it with the Contractor or reject it, within 28 days after receiving the *Claim* with all information required by clause 72.4.
- .6 If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim* under clause 62.5 or 65.1 (excluding a *Claim* made under clause 65.4, for which the Principal will make payment within 28 days of such agreement or of it being determined in accordance with the Contract).

- .7 If a *Claim* is rejected or not agreed it will be an *Unresolved Claim*, and then the Contractor may notify the Principal that it disputes the rejection or failure to agree as an *Issue*, within 14 days after the end of the 28 day period referred to in clause 72.5.
- .8 The provisions of clauses 72.2 to 72.7 (where no alternative provision applies or these provisions are not consistent with the context) apply generally to all *Claims* whether made under clause 72 or under another provision of the Contract.

## Issue resolution

### 73 Notification of Issue

- .1 The Contractor may dispute an assessment, determination or instruction of the Principal, or an *Unresolved Claim*, by giving notice to the Principal (copied to the Principal's senior executive named in *Contract Information* item 7A) of an *Issue* within 28 days after the assessment, determination or instruction, or within 14 days as provided in clause 72.7 for an *Unresolved Claim*.
- .2 Either party may give notice to the other (copied to that party's senior executive) of an *Issue* (excluding an *Issue* referred to in clause 73.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter arising under, out of or in any way connected with the Contract, within 28 days after becoming aware of the *Issue* (or, in the case of an *Adjudication Issue*, within 28 days after the event leading to the *Adjudication Issue* arises).
- .3 If the parties have agreed to engage in an *Alternative Dispute Resolution Procedure*, they must follow that procedure before either commences court proceedings or takes similar action.
- .4 Subject to clauses 65 and 72, if the Principal or the Contractor (as applicable) gives notice of an *Issue* but not within the time provided by clauses 73.1 and 73.2, (in the case of the Contractor) or within the time provided by the clause 73.2 (in the case of the Principal) and it is resolved in favour of the party giving notice of the *Issue*, that party will not be entitled to interest on any amount involved in the *Issue* for the period before notice of the *Issue* was given.
- .5 The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment, determination or instruction.

*However, the Contractor will be entitled to the amount determined by an agreed Alternative Dispute Resolution Procedure or the court, with simple interest as referred to in clause 66, from the date the agreed Alternative Dispute Resolution Procedure determines or the court decides that the amount should have been paid.*

- .6 The Principal's assessments, determinations or instructions may, subject to this Contract, be reviewed and revised in any *Alternative Dispute Resolution Procedure* or court proceedings which might follow this *Issue* resolution procedure.
- .7 This *Issue* resolution procedure does not prevent a party from seeking an urgent declaration or injunction from a court.

### 74 Resolution by senior executives

- .1 If a party gives notice of an *Issue* under clause 73, the senior executives named in *Contract Information* items 7A and 10 must promptly confer to try to resolve the *Issue*.
- .2 The parties may agree at any time after notice of an *Issue* is given under clause 73 to engage in an *Alternative Dispute Resolution Procedure* in respect of that *Issue*. An agreement to engage in an *Alternative Dispute Resolution Procedure* must specify:
  - .1 whether the decision, finding, determination, result or agreed outcome of the *Alternative Dispute Resolution Procedure* will be final and binding on the parties within any agreed monetary limit;
  - .2 that the *Alternative Dispute Resolution Procedure* may, by agreement between the parties, be varied or extended from time to time to include additional or fewer processes; or

- .3 that if the *Alternative Dispute Resolution Procedure* has not produced a decision, finding, determination, result or agreed outcome of the *Issue* in question within a specified period of time, either party may commence court proceedings in respect of the *Issue*.
- .3 If the parties have agreed that the *Alternative Dispute Resolution Procedure* is to be final and binding on the parties to some extent and that procedure produces a decision, finding, determination, result or agreed outcome of the *Issue*, neither party is entitled to commence, conduct or continue court proceedings in respect of that *Issue* to that extent.
- .4 If the *Alternative Dispute Resolution Procedure* engaged by the parties under clause 74.2 is *Expert Determination* then unless otherwise agreed, clause 75 will apply to the *Expert Determination*.
- .5 If the parties, within 28 days after a notice of an *Issue* is given under clause 73, have not agreed to engage in an *Alternative Dispute Resolution Procedure* under clause 74.2, then the parties will be deemed to have agreed to engage in *Expert Determination* under clause 75.

## 75 Expert Determination

- .1 If *Expert Determination* is to apply to an *Issue* under clause 74, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days of agreement under clause 74.2 or deemed agreement under clause 74.5, the *Expert* will be nominated (on the application of either party) by the person named in *Contract Information* item 55. That person must not nominate:
  - .1 an employee of the Principal or the Contractor;
  - .2 a person who has been connected with the Works or the Contract; or
  - .3 a person who the Principal and the Contractor have not been able to agree on.
- .2 When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by letter of engagement (copied to the Contractor) setting out:
  - .1 the *Issues* referred to the *Expert* for determination;
  - .2 the *Expert's* fees;
  - .3 the procedure for *Expert Determination* in Schedule 6 (*Expert Determination Procedure*); and
  - .4 any other matters which are relevant to the engagement.
- .3 The Principal and the Contractor must share equally the fees and out-of-pocket expenses of the *Expert* for the determination, and bear their own costs.
- .4 The procedure for *Expert Determination* is set out in Schedule 6 (*Expert Determination Procedure*).
- .5 In answer to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim.
- .6 If the *Expert* determines that one party must pay the other an aggregated amount exceeding the amount in *Contract Information* item 56 (calculating the amount without including interest on it, and after allowing for set-offs), or if the *Expert's* determination involves a finding which does not involve paying a sum of money, then either party may commence litigation in respect of the amount referred to above (which amount exceeds the amount in *Contract Information* Item 56) or the finding which does not involve paying a sum of money, as applicable, but only within 56 days after receiving the determination.
- .7 Unless a party has a right to commence litigation under clause 75.6:
  - .1 the parties must treat each determination of the *Expert* as final and binding and give effect to it; and
  - .2 if the *Expert* determines that one party owes the other money, that party must pay the money within 28 days.
- .8 The representative of the Principal for all of the purposes of this clause 75 is the person specified in *Contract Information* item 54. This person (and his/her address) may differ

from the person (and his/her address) for the giving of notices to the Principal, as specified in clause 30.1.

#### 76 Parties to perform the Contract

- .1 During *Claim* and *Issue* resolution procedures under clauses 72 to 75, the parties must continue to perform their obligations under the Contract.

# Termination

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## 77 Termination for Contractor's Default or Insolvency

- .1 The Principal may terminate the Contractor's employment under the Contract for *Contractor's Default* or *Contractor's Insolvency* by giving notice, as set out in this clause 77.
- .2 In the case of *Contractor's Default*, the Principal must first give notice to the Contractor that it has 7 days after the notice is given to the Contractor to remedy the *Contractor's Default*.
- .3 If the Contractor fails to give the Principal a notice containing clear evidence that it has remedied a *Contractor's Default*, or fails to propose steps reasonably acceptable to the Principal to remedy the *Contractor's Default*, the Principal may give the Contractor a notice terminating its employment under the Contract.
- .4 Nothing in this clause 77 affects or negates the Principal's common law rights to terminate or for damages.

*If a right to terminate exists at common law, a notice to terminate at common law may be given without first giving notice to remedy a default.*

- .5 In the case of *Contractor's Insolvency*, the Principal may give the Contractor a notice terminating its employment under the Contract.
- .6 If the Principal terminates the Contractor's employment under this clause 77, it may at its sole discretion, employ others to complete the Works and all the following will then apply:
  - .1 The Contractor must leave the Site as soon as reasonably practicable and remove all *Temporary Work and Materials* it has brought onto the Site, but must leave any *Temporary Work and Materials* required by the Principal to have the Works completed.
  - .2 The Contractor must assign to the Principal the Contractor's rights and benefits in all its contracts concerning the Works, warranties and unconditional undertakings, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract.
  - .3 The Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the Principal and must procure at the time of entering into each Subcontract and other contracts, the consent in writing of all of its Subcontractors, Suppliers and Consultants to the novation. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any *Undertakings* given on the Contractor's behalf.
  - .4 The Contractor must do everything and sign all documents necessary to give effect to this clause 77, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
  - .5 If, on *Completion*, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor to complete them, taking into account any *Prepayments*, then the difference will be a debt due by the Contractor to the Principal.
  - .6 The Principal may make provisional assessments of the amounts payable to the Principal under clause 77.6.5 and may demand them under the *Undertakings*.

## 78 Termination for Principal's convenience

- .1 The Principal may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.



- .2 The Contractor must comply with any instructions of the Principal to wind down and stop work.
- .3 The Contractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work* it has brought onto the Site for constructing the Works, except for those items identified in the termination notice as to be retained on the Site.
- .4 After termination under clause 78.1, subject to its rights under the Contract, including clause 67, the Principal must pay the Contractor:
  - .1 the *Value Completed* for all work carried out (as determined under clauses 62 and 63) to the date the termination notice takes effect, after taking into account previous payments and any *Prepayments*, and any deductions, retentions or set-offs under clauses 63, 64 or 67;
  - .2 the cost of *Materials* reasonably ordered by the Contractor for the Works which it is legally liable to accept, but only if on payment these unfixed *Materials* become the property of the Principal, free of any *Encumbrance*;
  - .3 the reasonable, direct costs of removal of the *Temporary Work* and other things from the Site incurred by the Contractor, but only if the Contractor complies with a strict duty to mitigate costs;
  - .4 an amount of 2% of the unpaid portion (after taking into account the amount payable under clause 78.4.1) of the *Contract Price*; and
  - .5 costs reasonably incurred by the Contractor in the expectation of completing the Works and not included in any other payment by the Principal.
- .5 The Principal must return the *Undertakings*, subject to its rights under the Contract.
- .6 The payments referred to in clause 78.4 are full compensation for termination under this clause 78, and the Contractor has no *Claim* for damages or other entitlement whether under the Contract or otherwise.
- .7 The Contractor must, wherever possible, include in all Subcontracts and other contracts an equivalent provision to this clause 78.

#### 79 Termination for Principal's default

- .1 If the Principal fails to pay the Contractor any amount in accordance with the Contract which is not in dispute, or commits any fundamental breach of the Contract, then the Contractor may give notice requiring the Principal to remedy the default within 28 days after receiving the notice.
- .2 If the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 78.3 to 78.6 will then apply and the Principal must pay the Contractor the applicable amounts referred to in clause 78.4 as its sole remedy and in full compensation for the Principal's breach.
- .3 The Contractor has no other right to terminate the Contract, under the common law or otherwise.

#### 80 (not used)

This clause number is reserved to maintain consistency between the GC21 General Conditions of Contract and GC21 Subcontract.

#### 81 Termination notices

- .1 Notices under clauses 77, 78 and 79 must be in writing and be delivered by hand, registered post or equivalent, or facsimile.

# Meanings

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## Meanings

### 82 Interpretation

- .1 Words in the singular must be interpreted to include the plural, and vice versa.
- .2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.

### 83 Definitions

Some words and phrases have special meanings in the Contract. In some cases, the defined meaning is different from the meaning that the word or phrase might have in ordinary usage, or it might include conditions that don't normally apply. In order to understand the Contract, you need to take these special meanings into account.

All defined words and phrases have initial capitals (except for 'day' and 'end users') and are in italics in the GC21 General Conditions of Contract unless they are one of the following 12 basic terms, which appear too often for italics to be used:

- day
- Contract
- Date of Contract
- Site
- Subcontract
- Works
- Consultant
- Contractor
- Subcontractor
- Principal
- Supplier
- Valuer

- .1 Wherever the following words and phrases are used in this Contract with initial capitals (except for 'day' and 'end users'), they have the special meanings set out opposite them in this clause 83 unless the context requires otherwise.

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## Meanings of words and phrases

### Acceleration Notice

A written instruction under clause 56.1 by the Principal to the Contractor to accelerate progress of the Works, titled “\_Acceleration Notice\_”.

### Actual Completion Date

The date on which *Completion* of the Works or of a *Milestone* (as applicable) is achieved by the Contractor.

### Adjudication Issue

A claim, dispute, issue or difference about any matter arising under, out of or in any way connected with the Building and Construction Industry Security of Payment Act 1999 NSW, except to the extent the claim, dispute, issue or difference is required by that Act to be dealt with in accordance with that Act.

Events that may lead to an Adjudication Dispute include, without limitation and to the extent permitted by law:

- (a) the appointment of, or a determination by, an adjudicator under that Act;
- (b) a request by either party for the final resolution of matters the subject of a determination by an adjudicator under that Act; and
- (c) a claim by the Principal for recovery or withholding of any payment, or part of a payment, by it in connection with a determination by an adjudicator under that Act.

### Alternative Dispute Resolution Procedure

A procedure for the resolution of an Issue, apart from court proceedings, to be engaged in by agreement of the parties under this clause.

Such procedures include, without limitation:

- (a) *Expert Determination*;
- (b) mediation; and
- (c) arbitration under the Commercial Arbitration Act 1985 NSW.

### Business Day

Any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

### Certificates of Compliance

Certificates in the form of Schedule 4, as referred to in clause 62.6.2

### Claim

A claimed entitlement of the Contractor under or arising out of or connected with the Contract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of Contract by the Principal.

### Claimed Amount

The amount claimed by the Contractor in a *Payment Claim*.

### Completion

The state of the Works or a *Milestone* (as applicable) being complete, except for *Defects* not known.

This includes, without limitation:

- .1 the supply to the Principal of all Schedule 1 Subcontractor's Warranties, operating and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings;
- .2 certificates, authorisations, approvals and consents from statutory authorities and service providers;
- .3 those certificates required for the occupation, use and maintenance of the Works; and
- .4 all other documents, *Testing*, training and other requirements specified in the Contract.

### Completion Amount

An amount stated in *Contract Information* item 45 and included in the *Contract Price*, which under clause 64 may be claimed by the Contractor after the *Actual Completion Date* of the whole of the Works.

### Completion Undertaking

The *Undertaking* required under clause 37.1, for the percentage of the *Contract Price* (at the Date of Contract) specified in *Contract Information* item 33.

### Conformance Records

Records which show conformance by the Contractor with particular requirements of the Contract, as provided in the Contract and as referred to in clause 63.

### Consultant

A consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to one with the Contractor.

### Contract

The agreement between the Contractor and the Principal constituted by the *Contract Documents*.

### Contract Documents

All the documents listed or referred to in clause 7.1.

### Contract Information

The document described as such in the *Contract Documents*, which sets out information for the purposes of the Contract.

### Contract Price

The amount stated as such in *Contract Information* item 43, subject to adjustment in accordance with the Contract.

### Contract Program

The program described in clause 25.

### Contractor

The party named as such in *Contract Information* item 8, and including its successors and permitted assigns.

### Contractor's Authorised Person

The person appointed to act for the Contractor under clause 2, including as named in *Contract Information* item 9.

### Contractor's Default

A substantial breach of the Contract by the Contractor, including, without limitation, any of the following:

- .1 abandoning the carrying out of the Works;
- .2 suspending progress of the carrying out of the Works in whole or part without the written agreement of the Principal, except for suspension under clause 58;
- .3 significantly failing to achieve *Scheduled Progress*;
- .4 failing to comply with an instruction in writing or confirmed in writing by the Principal;
- .5 failing to carry out the Works with professional skill and care and competence;
- .6 failing to maintain any registration or licence required by law to carry on activities required under the Contract;
- .7 failing to provide security as required under clause 37 of the Contract; or
- .8 failing to effect and maintain insurance policies as required under the Contract.

### Contractor's Documents

Both:

- .1 drawings, specifications, calculations and other documents and information, meeting the requirements of clause 43, which the Contractor must produce to *Design* and construct the Works in accordance with the Contract; and
- .2 documents which become *Contractor's Documents* under the Contract, including *Principal's Documents* checked, accepted and adopted under clause 44.

### Contractor's Insolvency

Any of the following applying to the Contractor:

- .1 insolvency;
- .2 the Contractor indicates it does not have the resources to perform the Contract;

- .3 an application for winding up is made which is not stayed within 14 days;
- .4 a winding-up order is made;
- .5 a controller, administrator, receiver, receiver and manager, provisional liquidator, or liquidator is appointed;
- .6 a mortgagee enters into possession of any property of the Contractor;
- .7 notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- .8 any actions having a similar effect are taken.

#### Contractor's Margin

An amount or proportion added for profit and additional overhead costs (including administration, supervision, establishment and attendance costs) incurred solely as a result of a *Variation*, but not including any overhead costs relating to delay, disruption or interference caused by the *Variation*.

#### Contractual Completion Date

The date (or the last day of the period) specified in *Contract Information* item 13 on, or by which, the Contractor must achieve *Completion* of the Works or of a *Milestone* (as applicable), as may be adjusted under clauses 41, 52 and 54.

#### Data

Drawings, sketches, specifications, digital records and computer software and all other data and information relating to the Contract.

#### Date of Contract

The date of the *Letter of Award* or if no *Letter of Award* is issued by the Principal to the Contractor, the date the *Deed of Contract Agreement* is signed by the Principal after the Contractor has signed it.

#### day

A calendar day, including all *Business Days* and non-Business Days.

#### Daywork

Work for a *Variation* carried out by the Contractor for which payment is made on the basis of daily job time and cost records for workmen, constructional plant, *Materials*, services and other cost-related work as provided in Schedule 9 (Principles for Valuing Daywork Variation).

#### Deed of Contract Agreement

A deed of agreement in the form annexed to the Contract.

#### Defect

Includes an error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, which results from a failure of the Contractor to comply with the Contract.

#### Defect Notice

A notice issued by the Principal under clause 50.2 or 71.1 instructing that specified *Defects* be made good within a given period.

#### Design

*Design* of the Works to be carried out by the Contractor, including the completion of any of the Principal's design work which is described in the *Principal's Documents*, to the extent specified in *Contract Information* item 37; *Designed*, the *Design*, and other derivatives of *Design* have a corresponding meaning.

### Encumbrance

Any mortgage, charge, lien, title retention, trust, power or other encumbrance.

### end users

Persons to be involved in using or occupying any part of the Works, as referred to in clauses 6.2 and 45.2.

### Excepted Risks

Any of the following:

- .1 any negligent act or omission of the Principal, the *Principal's Authorised Person* or the employees, consultants or agents of the Principal;
- .2 any risk specifically excepted in the Contract;
- .3 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
- .4 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's employees or agents.

### Expert

A person engaged to determine *Issues* under clause 75.

### Expert Determination

The process of determination of an *Issue* by an *Expert*, under clause 74 as set out in clause 75 and the procedure in Schedule 6 (Expert Determination Procedure).

### Fault

Ambiguity, inconsistency, discrepancy, omission, error or other fault.

### Final Payment Claim

A *Payment Claim* given by the Contractor to the Principal under clause 65.1.

### Final Payment Schedule

A *Payment Schedule* given by the Principal to the Contractor under clause 65.2.

### Further Site Information

Site information obtained after the Date of Contract by the Contractor.

### Intellectual Property Rights

Includes copyright, patent right, registered design, trade mark or name and other protected rights.

### Issue

Any issue including any *Adjudication Issue*, dispute or difference raised by either party under clause 73.

### Letter of Award

A letter from the Principal to the Contractor awarding the Contract to the Contractor as referred to in clause 7.

### Materials

Includes materials, plant, equipment and other goods.

#### Milestone

A part of the Works specified as such in *Contract Information* item 13.

#### Milestone Payment

A payment to the Contractor on *Completion* of a *Milestone*.

#### Payment Claim

A *Claim* for payment made by the Contractor to the Principal under clauses 62 or 65.

#### Payment Schedule

A payment schedule containing the Principal's assessment of a *Payment Claim* and stating the amount the Principal proposes to pay as the *Scheduled Amount*, as referred to in clause 63.

#### Post-Completion Undertaking

The *Undertaking* required under clause 37.1, for the percentage of the *Contract Price* (at the Date of Contract) specified in *Contract Information* item 34.

#### Preferred Subcontractor

A Subcontractor included on the list in *Contract Information* item 23 and provided by the Principal to the Contractor for a specified trade or area of work.

#### Prepayment

The amount to be advanced by the Principal in accordance with clause 61 and *Contract Information* item 44.

#### Prequalified Contractor

A *Preferred Subcontractor* who has been notified in writing by the Principal that it has met the Principal's prequalification criteria for the type of work involved.

#### Principal

The entity named as such in *Contract Information* item 4.

#### Principal's Authorised Person

The person appointed to act for the Principal in terms of clause 2 including as named in *Contract Information* item 5.

#### Principal's Documents

The design and other documents prepared by the Principal for the Contract and provided to the Contractor at the Date of Contract and included in the *Contract Documents*, and any modified or further such documents later provided by the Principal to the Contractor for the Contract.

#### Progress Payment

A payment by the Principal in response to a *Payment Claim*, on account of the *Contract Price*.

#### Provisional Sum

A sum included in the *Contract Price* and identified as a provisional, monetary, prime cost, contingency or other such sum or allowance for the work specified in the Contract against that sum.

#### Provisional Quantity

The quantity of an item of work which is specified in the Contract, but the quantity of which or whether that item of work will actually be required is not known definitively at the Date of Contract.

### Reference Contract Documents

The documents expressly referred to as such in *Contract Information* item 17 and forming part of the Contract.

### Schedule of Rates

Any schedule in the Contract stated to be a *Schedule of Rates*, and which shows rates payable for carrying out items of work described in the schedule.

### Scheduled Amount

The amount of payment (if any) stated in a *Payment Schedule*, that the Principal proposes to make in relation to a *Payment Claim* as referred to in clause 63.2.2.

### Scheduled Progress

The rate of progress to be achieved by the Contractor in *Designing* and constructing the Works, such that the Contractor is proceeding with due expedition and without undue delay (other than a delay for which the *Contractual Completion Date* is adjusted under the Contract), so that it will (or is likely to) complete the Works and all *Milestones* by their respective *Contractual Completion Dates*.

### Site

The lands and other places to be made available by the Principal to the Contractor for the purpose of executing the Works, and including any existing buildings, services or other improvements, as specified in *Contract Information* item 2.

### Site Conditions

Any physical conditions of the Site (including sub-surface conditions, but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in the execution of the Works.

### Statutory Requirements

The laws relating to the Works, the Site, or the environment or the lawful requirements of any authority or provider of services having jurisdiction over the Works, the Site, or anyone or anything connected with the Works, the Site or otherwise relating to the Contract.

### Subcontract

An agreement between the Contractor and a Subcontractor or a Supplier.

### Subcontractor

An entity engaged by the Contractor to carry out part of the Works or the *Temporary Work*, or both, other than a Consultant or a Supplier.

### Sub-Subcontract

An agreement between a Subcontractor or Supplier and its subcontractor or supplier.

### Supplier

An entity engaged by the Contractor to supply part of the Works or *Temporary Work*, or both.

### Temporary Work

Temporary structures, amenities, physical services and other work, including *Materials*, plant and equipment used in or in relation to the carrying out of the Works but not forming part of the Works.



#### Test

Examine, inspect, measure, prove and trial, including opening up of any part covered up, if necessary; *Testing* and other derivatives of *Test* have a corresponding meaning.

#### Undertaking

An unconditional undertaking to pay on demand, in the relevant form of Schedule 2 (Undertaking), provided as security to the Principal.

#### Unresolved Claim

A *Claim* rejected or not agreed under clause 72.7.

#### Value Completed

The value of work (including *Design*) carried out by the Contractor and incorporated into the Works, as referred to in clause 62.

#### Valuer

The entity engaged to determine time and cost matters under clause 39.

#### Variation

Any change to the Works including additions, increases, omissions and reductions to and from the Works, but not including such changes or otherwise in respect of the development by the Contractor of *Design* (including without limitation development of shop drawings and other *Contractor's Documents*) in accordance with the requirements of the Contract, and not including omissions of the type referred to in clause 10.1.3.

#### Works

The work to be *Designed* and constructed by the Contractor, as referred to in clause 10, including all works and items of the type referred to in clause 10.1 and *Variations*, but excluding *Temporary Work*; it applies to the Works as a whole and also to any part of the Works unless stated otherwise or the context requires otherwise.

# Deed of Contract Agreement

Refer to clause 7 of the GC21 General Conditions of Contract

---

## This Contract

*Contract title:* »  
*Contract number:* »  
*Dated:* » .....

**is made between**

*The Principal:* »  
**and**

*The Contractor:* » .....  
ABN » .....

## Agreement

### The parties agree:

- .1 The Contractor must:
  - .1 *Design* and construct the Works to *Completion* in accordance with the Contract; and
  - .2 perform and observe all its other obligations under the Contract.
- .2 The Principal must:
  - .1 pay the Contractor the *Contract Price* (on the basis of a lump sum, schedule of rates or a combination of these as specified in the Contract) for its performance, in accordance with and subject to the Contract; and
  - .2 perform and observe all its other obligations under the Contract.
- .3 The Contract is defined in the attached GC21 General Conditions of Contract.
- .4 The attached *Contract Information* forms part of the Contract.
- .5 Words in this *Deed of Contract Agreement* have the meanings given in the GC21 General Conditions of Contract.

## Executed as a Deed

The Common Seal of the Contractor was affixed by the authority of the Board of Directors in the presence of:

*Signature of Director/Secretary*

.....

*Signature of witness*

.....

*Name of witness (in full)*

*Signed, sealed and delivered by:*

as an authorised delegate of the Principal

.....

*Signature of witness*

.....

*Name of witness (in full)*



# Contract Information

The *Contract Information* is part of the Contract. Words and phrases are defined in clause 83.

---

## Project and Contract

### Item

#### 1 Project and Contract name

Project and Contract name: GWH Upgrade: Winbourne Road,  
Hazelbrook to Station Street, Woodford  
Contract No.: 09.2613.1699

#### 2 Site

*Mentioned in clause 83*

The Site is: Great Western Highway between  
Winbourne Road, Hazelbrook and Station  
Street, Woodford, New South Wales plus  
intersecting side streets as necessary for the  
construction of the work under the Contract,  
as shown on the Roadworks drawings.

#### 3 Description of the Works (including purpose)

*Mentioned in clauses 10 & 83*

The Works are: Widen Great Western Highway to 2 lanes in  
each direction, including new shared  
footpath, public utility adjustments, street  
lighting, retaining walls, property  
adjustments and landscaping plus new  
pedestrian bridge over the highway at  
Hazelbrook railway station.  
The Works are defined in further detail in  
Specification G1 clause 1.

---

## Principal's details

#### 4 Principal

The Principal is: Roads and Traffic Authority of New South  
Wales

#### 5 *Principal's Authorised Person*

*Mentioned in clause 2*

The *Principal's Authorised Person* is: Project Services Manager  
Project Services Manager, Urban Team 1,  
Parramatta

#### 6 Notices to the Principal

*Mentioned in clause 30*

Notices must go to the *Principal's Authorised Person* listed above, at the address or number shown here.

Office address:  
(for delivery by hand) Project Management Services  
Level 8, 27-31 Argyle Street  
Parramatta NSW 2150»

Postal address:  
(for delivery by registered post) Project Management Services  
PO Box 973  
Parramatta NSW 2124»

Facsimile number: (02) 8849 2816

e-mail address Ian\_Allan@rta.nsw.gov.au

## 7 Senior executive

A - Principal's senior executive

*Mentioned in clauses 73 & 74*

The Principal's senior executive is: Director, Major Infrastructure or nominee

B - Documents copied to the Principal's senior executive

*Mentioned in clause 73*

When documents must be copied to the Principal's senior executive the address is as follows:

Office address:  
(for delivery by hand) 101 Miller Street  
North Sydney NSW 2060

Postal address:  
(for delivery by registered post) Locked Bag 928  
North Sydney NSW 2059

Facsimile number: 02 8588 4170

e-mail address senior\_executive@rta.nsw.gov.au

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## Contractor's details

### 8 Contractor

The Contractor is: » .....  
» .....  
ABN » .....

### 9 Contractor's Authorised Person

The Contractor's Authorised Person is: » .....  
*Mentioned in clause 2*

### 10 Senior executive

*Mentioned in clause 74*

The Contractor's senior executive is: » .....

## 11 Notices to Contractor

*Mentioned in clause 30*

Notices must go to the personnel listed above, at the address or number shown here.

Office address:  
(for delivery by hand) » .....  
» .....  
» .....  
» .....

Postal address:  
(for delivery by registered post) » .....  
» .....  
» .....  
» .....

Facsimile number: » .....

e-mail address » .....

## Dates and times

### 12 Date of Contract

*Mentioned in clause 83*

This is the date the Principal signs the Contract after the Contractor has signed, or the date of the Principal's *Letter of Award* to the Contractor (as applicable).

Date of Contract is: date of the Principal's *Letter of Award* to the Contractor.....

### 13 Contractual Completion Date and times

*Mentioned in clause 83*

*The time periods for Completion include the 14 days or other time periods referred to in Clause 38.*

#### Whole of the Works

Time period for possession of the Site is: ***Please refer to clause 8 of G1 (Job Specific Requirements) Specification.***

Time period for *Completion* is: 110 weeks from *Date of Contract*

#### Whole of the Works and Milestones

##### Milestone 1

Description of *Milestone*: *Water Quality Basins 2-5 plus Spill Containment Pit 2B and associated stormwater drainage systems that are needed to operate each Water Quality Basin as a construction sediment basin*

Time period for possession of the Site is: 14 days from *Date of Contract*.  
 Time period for *Completion* is: 20 weeks from *Date of Contract*.

#### Milestone 2

Description of *Milestone*: *N/A*  
 Time period for possession of the Site is: »  
 Time period for *Completion* is: » weeks from »

#### Milestone 3

Description of *Milestone*: *N/A*  
 Time period for possession of the Site is: »  
 Time period for *Completion* is: » weeks from »

---

## NSW Government requirements

### 14 Codes

*Mentioned in clause 13*

The following NSW Government codes that apply are: ‘Code of Practice for Procurement’.

### 15 Principal contractor

*Mentioned in clause 15.2*

Is the Contractor appointed as principal contractor? (Yes/No) »Yes (“Yes” applies if not filled in).

### 16 NSW Government construction Guidelines requirements

#### A - OHS Management Plan

*Mentioned in clause 15.3*

Is the Contractor required to submit a Project OHS Management Plan? (Yes/No) Yes

Is the Contractor required to submit a Site-specific Safety Management Plan? (Yes/No) No.

#### B - Industrial Relations Plan

*Mentioned in clause 16.3*

Is the Contractor required to submit a Project IR Plan? (Yes/No) » (“Yes” applies if not filled in).

## C - Environmental Management Plan

*Mentioned in clause 18.2*

Is the Contractor required to submit a » (“Yes” applies if not filled in).  
Environmental Management Plan?  
(Yes/No)

## D - Training Management Plan

*Mentioned in clause 19.3*

Is the Contractor required to submit a » (“Yes” applies if not filled in).  
Training Management Plan? (Yes/No)

## E - Aboriginal Participation Plan

*Mentioned in clauses 20.1*

This is a project where Aboriginal participation outcomes are achievable.

The Project Aboriginal Participation 3  
Category is:

Is a Project Aboriginal Participation Yes (“Yes” applies if not filled in).  
Plan required? (Yes/No)

---

## Reference Contract Documents

## 17 Reference Contract Documents

*Mentioned in clause 7.1.5*

The Reference Contract Documents are: Deed of Contract Agreement and *Letter of*  
(Deed of Contract Agreement / *Letter of Award* (Letter of Award applies if  
*Award*). not filled in); and  
»

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## Principal's Documents

18 Copies of *Principal's Documents**Mentioned in clause 7.4*

The number of copies of the *Principal's* 5  
*Documents* to be provided to the Contractor  
is:

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## Contractor's Documents

19 Copies of *Contractor's Documents**Mentioned in clause 45.1*

The number of copies of the 5  
*Contractor's Documents* to be provided  
to the Principal is:



## Subcontract work

### 20 Use of GC21 Subcontract

Subcontract value requiring use of GC21 Subcontract is: »\$250,000.00

*Mentioned in clause 31.3*

### 21 Use of equivalent clauses

Subcontract value requiring use of equivalent clauses is: »\$100,000.00

*Mentioned in clauses 31.3 & 31.4*

### 22 Payment for minor Subcontract

Maximum period before payment for minor Subcontract: 15 business days

*Mentioned in clause 31.3*

### 23 Preferred Subcontractors

*Preferred Subcontractors* referred to in clause 32 are:

*Telstra for Telstra asset adjustments (Specification G7 Clause 4.2.2)*  
*Jemena for Jemena asset adjustments (Specification G7 Clause 4.4.1)*

*Mentioned in clause 32*

### 24 Prequalified Contractors

Trades or areas of work requiring use of *Prequalified Contractors* are

» RTA's Prequalification Scheme for Construction Industry and ITS Contractor categories :

- *Class R80 for Roadworks*
- *Class B1 for Bridgeworks*
- *Class SR for fabrication of steel truss members*
- *PCCP accreditation for painting steel girders*
- *Class K2 for lean-mix concrete subbase paving (or equivalent experience)*
- *Class A2 for asphalt paving*
- *Class TS02 for traffic signal installation*

» RTA's Registration Scheme for Construction Industry Contractors categories

- *D Drainage Works*
- *E Earthworks*
- *L2 Primary Testing*
- *G Traffic Control*

*Mentioned in clause 32*

### 25 Subcontractor's warranty

*Mentioned in clause 33.1*

Trades or areas of work requiring a Subcontractor's warranty are:

*Elastomeric joint sealant supplier, RTA B312 Clause 5*

*Supplier of bridge nameplates, RTA B345 Clause 9*

*Supplier of road signs, RTA 3400 Clause 6.*

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## Insurance - General

*Mentioned in clauses 36.1 & 36.2*

### 26 Works Insurance

Minimum cover:	RTA's Principal Arranged Insurance
Insurer:	As per Policy Extract
Policy number:	As per Policy Extract
Period of cover:	Until issue of <i>Final Payment Schedule</i> .

### 27 Public liability insurance

Minimum cover:	RTA's Principal Arranged Insurance
Insurer:	As per Policy Extract
Policy number:	As per Policy Extract
Period of cover:	Until issue of <i>Final Payment Schedule</i> .

### 28 Workers compensation insurance

*Mentioned in clause 36.12*

Minimum cover:	As required by law.
Insurer:	» .....
Policy number:	» .....
Period of cover:	Until issue of <i>Final Payment Schedule</i> .

### 29 Motor Vehicle Fleet/Mobile Plant Insurance

*Mentioned in clause 36.12.3*

Minimum cover (Third Party Property Damage):	\$20M.
Insurer:	» .....
Policy number:	» .....
Period of cover:	Until issue of <i>Final Payment Schedule</i> .

---

## Insurance - Specific

*Mentioned in clauses 36.12.2*

### 30 Professional indemnity insurance

Is a professional indemnity policy to be held by the Contractor or Designer?	No.
Minimum cover:	» \$ .....
Insurer:	» .....
Policy number:	» .....

Period of cover: » .....

### 31 Asbestos liability insurance

*Mentioned in clause 36.14*

Minimum cover: \$20 million  
 Insurer: »  
 Policy number: »  
 Period of cover: Until issue of *Final Payment Schedule*.

### 32 Marine liability and marine protection and Indemnity insurance

*Mentioned in clause 36.15*

Marine liability  
 Minimum cover: » \$N/A.....  
 Insurer: » .....  
 Policy number: » .....  
 Period of cover: The whole of the period of use of waterborne craft of 8 or more metres in length on work for or in connection with the Contract.

Marine Protection and indemnity  
 Minimum cover: »\$N/A.....  
 Insurer: » .....  
 Policy number: » .....  
 Period of cover: The whole of the period of use of waterborne craft of 8 or more metres in length on work for or in connection with the Contract.

---

## Security

### 33 Completion Undertaking

*Mentioned in clause 37.1*

Percentage of the *Contract Price* at the Date of Contract is: 4 %

### 34 Post-Completion Undertaking

*Mentioned in clause 37.1*

Percentage of the *Contract Price* at the Date of Contract is: 1 %

### 35 Return of *Post-Completion Undertaking*

*Mentioned in clause 37.2.2*

Period for return of *Post-Completion Undertaking* is: »12 months

---

## Site information

### 36 Site information

*Mentioned in clause 40*

*Information contained in the documents listed in Contract Information items 36A and 36B does not form part of the Contract.*

A - Documents not guaranteed for completeness

Documents not guaranteed for completeness are: Not used

B - Documents not guaranteed for accuracy, quality or completeness

Documents not guaranteed for accuracy, quality or completeness are:

**Geotechnical information report:**

»

- HW5 - Great Western Highway, Drilling Investigation for Proposed Woodford to Hazelbrook Upgrade: Stage 4 - Factual Report, Report No. G3767/1, February 2007, by RTA Geotechnology Section.
- HW5 - Great Western Highway, Drilling Investigation for Proposed Pedestrian Overbridge Bridge at Hazelbrook - Factual Report, Report No. G3767/3, February 2008, by RTA Geotechnology Section.
- Geotechnical Investigations, Great Western Highway Upgrade between Woodford and Hazelbrook, 20 August 2007, 25191-026-558\R001B (GEOTECHNICAL).DOC, by URS Australia P/L.
- *Report on Subgrade Evaluation, Pavement Investigation & Design, Report Number 544/03/H41999, January 2004 by RTA Geotechnical & Scientific Services.*

**Environmental information:**

- Review of Environmental Factors, REF Submissions Report, December 2002
- REF Decision Report for Great Western Highway Upgrade – Woodford to Hazelbrook , June 2003
- REF Submissions Report for Great Western Highway Upgrade – Woodford to Hazelbrook (December 2002)
- Revised Heritage Assessment Report - Great Western Highway Upgrade Stage 5: Station Street, Woodford to Winbourne Road, Hazelbrook (Biosis Research, December 2008)

**Reports:**

- Great Western Highway Upgrade. Winbourne Road, Hazelbrook to Station Street, Woodford. Concept Erosion and Sediment Control Plan. 29 July 2009 by URS.
- Great Western Highway Woodford to Hazelbrook Upgrade. Water Quality Control Design Report Stage 5. 30 July 2009 by URS
- *Waste Assessment and Classification, dated 26 August 2009.*
- *Design report for Woodford to Hazelbrook Stage 5 New South Wales, Prepared by the Reinforced Earth Company, Report Number: TAIAUS-DR-4560/B, June 2009*
- *Design report for Woodford to Hazelbrook Stage 5 New South Wales, Prepared by the Reinforced Earth Company, Report Number: TAIAUS-DR-4296B/B, June 2009.*

**Drawings:**

- Possible Construction Staging Arrangements (CS 5101-5604).
- Example Erosion and Sediment Control Layout (ES 5005-5110)

**Other:**

- *Google earth presentation*
- *MX design model*
- *3D AutoCAD for Road Design and 3D AutoCAD for existing levels survey*
- *Memorandum titled “Contaminated Material in Hazelbrook Station Road Embankment” dated 4 September 2009 from Bruce Spry to David Tawadros.*

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## Scope of activities

### 37 Scope of *Design* activities

*Mentioned in clause 1.1.1*

#### A - Extent of *Design* by the Contractor

*Mentioned in clauses 1.1.1 and 43.1*

Extent of *Design* by the Contractor is: All necessary design for or in respect of the Works not already performed by the Principal, including but not limited to all design development, documentation and coordination of the design of the various engineering and architectural disciplines, workshop detailing and finalisation of the *Design* in all respects, in accordance with the *Contract Documents*. Refer also to clause 43.

Under no circumstances may the Contractor change the Principal's design without the Principal's prior written approval.

If the Principal's design is required to be changed with the Principal's approval, the *Variation* is to be valued under clause 52.

#### B - Building Code of Australia

*Mentioned in clauses 43.1 & 48*

Is the Building Code of Australia to apply to the *Design* in the *Contractor's Documents* (clause 43.4) and to the *Materials* used in the construction of the Works (clause 48)? (Yes/No) No

#### 38 Responsibility for *Design*

*Mentioned in clause 44*

Is the Contractor to assume responsibility for design carried out by the Principal before the Date of Contract and does clause 44 apply? (Yes/No) » No.

#### 39 Working days and hours of work

*Mentioned in clause 26*

Working days and hours of work: »between 7am to 6pm Monday to Friday inclusive but excluding proclaimed public holidays and the Contractor's rostered days off.

#### 40 Rise or fall adjustments

*Mentioned in clause 59.1*

Are rise or fall adjustments applicable to the Contract (~~excluding Daywork~~)? (Yes/No) As specified in Schedule 8.

#### 41 *Site Conditions*

*Mentioned in clause 41.8*

Is the Contractor to bear the full risk, including cost and time implications, of encountering and dealing with materially adverse <i>Site Conditions</i> ? (Yes/No)	Yes, in relation to any reinforced soil wall design by the Contractor. No, in relation to roadworks, bridgeworks and retaining walls in accordance with the Principal's design.
--	--

---

## Innovation

### 42 Innovation

*Mentioned in clause 46.8*

Do the parties agree to share the savings in the cost to the Contractor of the Works resulting from changes accepted by the Principal? (Yes/No)      Yes.

If "No", the Contractor keeps the direct saving in the cost to the Contractor of the Works, as provided in clause 46.5.

Percentage of saving to be allocated to the Contractor is:      50%.

Percentage of saving to be allocated to the Principal is:      50%

---

## Payments

### 43 *Contract Price* at the Date of Contract

*Mentioned in clause 59*

*Contract Price* at the Date of Contract is:      » \$.....

Basis of payment:

Basis of payment is:      »  
(Lump sum / *Schedule of Rates* / *Schedule of Rates* and lump sums)

### 44 Amount of *Prepayment*

*Mentioned in clause 61.1.1*

Amount of *Prepayment* is:      10% of the *Contract Price*

### 45 *Completion Amount*

*Mentioned in clauses 62.4.2 & 64*

The *Completion Amount* is:      nil

### 46 *Provisional Sums/Provisional Quantities*

*Mentioned in clause 59*

*Provisional Sum/ Provisional Quantities* referred to in clause 59:      Yes. Refer to *Schedule of Rates* and *Schedules of Prices*

47 *Provisional Sum* margin

The *Provisional Sum* margin percentage is: 10%

*Mentioned in clause 59.6.2*

48 *Contractor's Margin on Variations*

The percentage for *Contractor's Margin* on *Variations* is: 10% (10% if not filled in).

*Mentioned in clause 83 and Schedule 5 - clause 3.1.3.*

## 49 Payment date and method

A - Date for *Payment Claims*

Date in month for making *Payment Claims* is:

The first *Business Day* of each calendar month.

*Mentioned in clause 62.1*

## B - Type of payment

The method of payment will be by: (*Progress Payment / Milestone Payment*)

» *Monthly Progress Payments* (*Monthly Progress Payments* apply if not filled in).

*Mentioned in clause 62.2*

## C - Time for payment

Time that a payment becomes payable subject to clauses 63.5 is;

10 *Business Days*

*Mentioned in clauses 63.6 & 63.7*

## 50 Interest on late payments

Rate of interest per annum is:

*Mentioned in clause 66*  
the rates as determined by the Uniform Civil Procedure Rules 2005 on unpaid judgments for the period in which the amount remains unpaid.

---

## Delay costs

## 51 Delay costs

*Mentioned in clauses 55.1, 55.2 & 55.3*

Any working day referred to within this item means a working day as described in Contract Information Item 39.

## A - Delay costs

Rate per working day for » weeks from date of contract (exclusive of GST): \$7,700

Rate per working day after » weeks from date of contract (exclusive of GST): \$31,250



B - Delay to *Completion* and liquidated damages

*Mentioned in clauses 55.4 to 55.9*

Clause 55.4 applies to this Contract?      Yes  
(Yes/No)

The rate per working day for liquidated      \$7,016  
damages for the whole of the Works\* is:  
(exclusive of GST)

The rates per working day for liquidated      Milestone 1: \$7,016  
damages for *Milestones*\* are:              Milestone 2: \$ »  
(exclusive of GST)                              Milestone 3: \$ »

*\* The rates for each are separate and distinct from each other.*

---

## Engagement of Valuer

### 52 Engagement of Valuer

#### A - Engagement of Valuer

*Mentioned in clauses 39.1& 39.2*

The Valuer must be engaged? (Yes/No) No

#### B - Person to nominate the Valuer

*Mentioned in clause 39.1.1*

The person to nominate the Valuer is: Not Applicable

#### C - Litigation Threshold

*Mentioned in clause 39.1.5*

Threshold amount for litigation following a Valuer's determination is: Not Applicable.

---

## Expert Determination

### 53 *Not used*

### 54 *Expert Determination* representative

*Mentioned in clause 75*

The name of the representative of the Principal for all of the purposes in clause 75, to whom all documents must be copied under Schedule 6 (Expert Determination Procedure) is: Legal Counsel Infrastructure Law

Office address:  
(for delivery by hand) 101 Miller Street  
North Sydney NSW 2060

Postal address:  
(for delivery by registered post) Locked Bag 928  
North Sydney NSW 2059

Facsimile number: 02 8588 4133

e-mail address expert\_determination@rta.nsw.gov.au

### 55 Person to nominate *Expert*

*Mentioned in clause 75.1*

Person to nominate *Expert* is: Chairperson,  
Engineers Australia Sydney Division  
Level 3  
8 Thomas Street  
Chatswood 2067

Telephone (02) 9410 5600  
Facsimile (02) 9410 0000

56 Threshold amount for litigation

Threshold amount for litigation  
following a determination is:

\$500,000.00

*Mentioned in clause 75.6*

---

## National Code of Practice for Construction Industry

57 National Code of Practice for the Construction Industry

The National Code of Practice for the  
Construction Industry applies:

Yes (“No” applies if not filled in)

*Mentioned in clause 16.6*



# Schedules

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Schedule 1	Subcontractor's Warranty
Schedule 2A	Undertaking (on behalf of the Contractor)
Schedule 2B	Undertaking (on behalf of Subcontractor, Supplier or Consultant)
Schedule 3	Payment Claim Worksheet
Schedule 4	Certificate of Compliance
Schedule 5	Agreement with Valuer
Schedule 6	Expert Determination Procedure
Schedule 7	Statutory Declaration
Schedule 8	Cost Adjustment Formula
Schedule 9	Principles for Valuing Daywork Variation
Schedule 10	Extracts of Insurance Policy Terms



# Subcontractor's Warranty

The Contractor has entered into the Contract with the Principal for the carrying out of the Works.

The Subcontractor has entered into an agreement with the Contractor for the Subcontract Work or Products, which are a part of the Works.

In return for the Principal allowing the Subcontract Work or Products to be used in the Works, the Subcontractor agrees to give the warranties, indemnities and other promises in this Deed. The obligations created by this Deed are in addition to the obligations of the Subcontractor to the Contractor and do not affect any other rights or remedies available to the Principal against the Contractor or the Subcontractor.

Refer to clause 33.1 of the GC21 General Conditions of Contract.

---

## Definitions

<i>Deed dated:</i>	» .....
	<b>between</b>
<i>Subcontractor or Supplier:</i>	» .....
	» .....
	ABN » .....
	<b>and</b>
<i>The Principal:</i>	»
	<b>concerning</b>
<i>The Contract:</i>	The contract between the Principal and the Contractor
<i>Contract title:</i>	»
<i>Contract number:</i>	»
<i>Works:</i>	The works to be <i>Designed</i> and constructed by the Contractor, as described in the Contract.
<i>The Contractor:</i>	» .....
	ABN » .....
<i>Subcontract Work or Products:</i>	» .....
<i>Warranty Period:</i>	» .....years from the <i>Actual Completion Date</i> of the whole of the Works.

Other words and phrases in this Deed have the meanings given in the General Conditions of Contract.

In this Deed, the term Subcontractor includes Supplier. The terms Subcontractor, Contractor and Principal include their successors and permitted assigns.

---

## Terms of Deed

### 1 Warranty

- .1 The Subcontractor warrants that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work or Products will:
  - .1 comply in all respects with the requirements of the Contract;
  - .2 comply with the applicable industry standards, including (without limitation) the Building Code of Australia and any applicable Australian Standards, to the extent that the quality of *Materials* or standard of workmanship is not specified in the Contract; and





- .2 The Subcontractor agrees that the Principal taking such action does not affect any obligation of the Subcontractor under this Deed.
- .3 The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.

## 9 Assignment

- .1 The Principal may assign the benefit of this Deed to the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.

## 10 Operation of Deed

- .1 This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.

### Executed as a deed

The common seal of the Subcontractor was affixed in accordance with its Articles of Association in the presence of:

*Signature of Director/Secretary* » .....

*Name of Director/Secretary* » .....

*Signature of Director* » .....

*Name of Director)* » .....

or (if the Subcontractor is not a corporation)

Signed, sealed and delivered on behalf of the Subcontractor by:

*Signature of Authorised Person* » .....

*Name of Authorised Person* » .....

### **and witnessed by:**

*Signature of witness* » .....

*Name of witness (in full)* » .....

Signed, sealed and delivered on behalf of the Principal by:

*Signature of Authorised Person* » .....

*Name of Authorised Person* » .....

### **and witnessed by:**

*Signature of witness:* » .....

*Name:* » .....

*Place:* » .....



# Undertaking

Refer to clauses 37 and 61 of the GC21 General Conditions of Contract.

---

## On behalf of the Contractor

*Name of Financial Institution:* » .....  
*The Principal:* » .....  
*The Contractor:* » .....  
ABN » .....  
*Security Amount* \$ » .....  
*The Contract:* The contract between the Principal and the Contractor  
*Contract Title:* » .....  
*Contract Number:* » .....

Other words and phrases in this *Undertaking* have the meanings given in the General Conditions of Contract.

## Undertaking

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This *Undertaking* continues until one of the following occurs:
  - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
  - .2 this *Undertaking* is returned to the Financial Institution; or
  - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

*Dated* » ..... *at* » .....

**Execution by the Financial Institution:**



# Undertaking

Refer to clause 61 of the GC21 General Conditions of Contract.

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## On behalf of the Subcontractor, Supplier or Consultant

*Name of Financial Institution:* » .....  
*The Principal:* » .....  
*The Contractor:* » .....  
ABN » .....  
*Subcontractor, Supplier or Consultant:* » .....  
ABN » .....  
*Security Amount* \$ » .....  
*The Contract:* The contract between the Principal and the Contractor  
*Contract Title:* » .....  
*Contract Number:* » .....

Other words and phrases in this *Undertaking* have the meanings given in the General Conditions of Contract.

### Undertaking

- .1 At the request of the Subcontractor, Supplier or Consultant (as applicable) and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract and the agreement between the Contractor and the Subcontractor, Supplier or Consultant (as applicable), the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Subcontractor, Supplier or Consultant (as applicable) and despite any notice from the Subcontractor, Supplier or Consultant (as applicable) not to pay.
- .3 The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This *Undertaking* continues until one of the following occurs:
  - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required
  - .2 this *Undertaking* is returned to the Financial Institution; or
  - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal) and the liability of the Financial Institution will then immediately end.

*Dated* » ..... *at* » .....

**Execution by the Financial Institution:**



# Payment Claim Worksheet

Refer to clause 62 of the GC21 General Conditions of Contract.

Details for electronic funds transfer to the *Contractor's* account are included below, as referred to in clause 63.7.

*The Contractor:* » .....  
 ABN » .....  
*The Contract:* The contract between the Principal and the Contractor  
*Contract Title:* » .....  
*Contract Number:* » .....  
*Name of Financial Institution:* » .....  
*Account Name:* » .....  
*Account Number:* » .....

Where the Contract includes a schedule of prices for work covered by a lump sum.

Item no	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for schedule of prices					

Where the Contract includes a Schedule of Rates

Pay Item	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for Schedule of Rates					

Materials

Pay Item	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for Materials					

Variations

Pay Item	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for Variations					

Total Value Completed \$

GST

Total Value including GST

\* Amounts and rates are GST exclusive.





# Certificate of Compliance

Refer to clause 62.6.3 of the GC21 General Conditions of Contract.

## Contract

*The Contract:* The contract between the Principal and the Contractor  
*Contract Title:* »  
*Contract Number:* »  
*Dated:* » .....

## Certificate

**To:**  
*The Principal:* »  
**From:**  
*The Contractor:* » .....  
 ABN » .....  
*Consultant:* » .....  
 ABN » .....  
*Consultant (2)* » .....  
 ABN » .....

In accordance with clause 62.6.3 of the Contract, we certify that all design work done (and all construction work\* relating to the *Design* to the date of this *Certificate of Compliance*) is in accordance with the Contract.

### Signed by the Consultant(s)

*Signature of Authorised Person* » .....  
*Name of Authorised Person* » .....  
*Date:* » .....  
*Consultant (2)\*:*  
*Signature of Authorised Person* » .....  
*Name of Authorised Person* » .....  
*Date:* » .....

\* delete if not applicable

In accordance with clause 62.6.3 of the Contract, we certify that all work done (including *Design* and construction work done and *Materials* supplied) to the date of this *Certificate of Compliance* is in accordance with the Contract.

### Signed by the Contractor:

*Signature of Authorised Person* » .....  
*Name of Authorised Person* » .....  
*Date:* » .....

# Agreement with Valuer

The Principal has engaged the Contractor under the Contract to *Design* and construct and complete the Works.

The parties have agreed under the Contract to refer certain matters to the Valuer for determination.

Refer to clauses 39, 51 and 52 of the GC21 General Conditions of Contract.

---

## Definitions

<i>Agreement dated:</i>	» .....
	<b>between:</b>
<i>The Valuer:</i>	» .....
	ABN » .....
	<b>and:</b>
<i>The Principal:</i>	»
	<b>and:</b>
<i>The Contractor:</i>	» .....
	ABN » .....
	<b>concerning:</b>
<i>The Contract:</i>	the contract between the Principal and the Contractor
<i>Contract Title:</i>	»
<i>Contract Number:</i>	»
<i>Dated:</i>	» .....
<i>The Works:</i>	the works to be designed and constructed by the Contractor, as described in the Contract.

Other words and phrases in this agreement have the meanings given in the General Conditions of Contract.

The terms Contractor and Principal include their successors and permitted assignees.

---

## Terms of agreement

- 1 Request to determine and acceptance
  - .1 The parties request the Valuer to determine the value and time associated with *Variations* and other matters referred to the Valuer under the Contract. The Valuer agrees to comply with this request in accordance with this agreement.
- 2 Determination by Valuer
  - .1 When a matter is referred to the Valuer by either party, the Valuer must consult with both parties, determine the matter in accordance with this agreement and as specified in the Contract, and issue a certificate stating the determination within 28 days, or another time agreed by the parties, of the matter being referred to the Valuer.
  - .2 If a certificate issued by the Valuer contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Valuer must correct the certificate.

### 3 Principles for valuation

- .1 If a *Variation* involves additional or increased work, the Valuer must determine its value as the sum of the following:
  - .1 the additional reasonable direct labour, material and plant costs of the Contractor;
  - .2 the additional reasonable costs to the Contractor of Subcontract and Consultant work involved in carrying out the *Variation*; and
  - .3 the additional amount calculated as the percentage in *Contract Information* item 48 of the total of the costs under clauses 3.1.1 and 3.1.2 of this agreement, which allows for the *Contractor's Margin*.
- .2 If a *Variation* involves decreased or omitted work, the Valuer must determine its value as that of the work included in the *Contract Price*:
  - .1 as specified in the Contract, or otherwise as valued by the Valuer based on the rates and lump sums in the Contract or otherwise applying at the closing time of tender; and
  - .2 including a reasonable *Contractor's Margin* and a reasonable allowance for any time-dependent costs not included in the *Contractor's Margin* which will not be incurred as a result of the decreased or omitted work.
- .3 The Valuer must not include any *Contractor's Margin* in the costs determined under clauses 3.1.1 and 3.1.2. of this agreement.
- .4 The Valuer must not include any amount in the valuation of Subcontract work under clause 3.1.2 of this agreement for extra costs, losses or expenses attributable to any default or negligence of the Contractor.
- .5 The Valuer must not include any amount in the valuation of a *Variation* for the costs of delay or disruption caused by the *Variation*.

*Delay costs are dealt with in clause 55 of the General Conditions of Contract.*

### 4 Principles for calculating time

- .1 If the *Variation* involves additional or increased work and extra time is required for *Completion*, the Valuer must determine a reasonable extension to the time for *Completion*, using the provisions of clause 54 (other than clause 54.1.1) of the General Conditions of Contract, taking into account that the Contractor must take all reasonable steps:
  - .1 to carry out the work concurrently with other work whenever possible; and
  - .2 to otherwise minimise the effects of the *Variation* or new item of work on *Completion* by the applicable *Contractual Completion Date*.Only delays which have or will delay the Contractor in reaching *Completion* will entitle the Contractor to an extension of time for *Completion* as a result of a *Variation*.
- .2 If the *Variation* leads to less time being required for *Completion*, the Valuer must determine a reasonable reduction to the time for *Completion*.

### 5 Meeting

- .1 The Valuer may meet with the parties together to discuss the referred matter. The parties agree that such a meeting is not a hearing which would give anything under this agreement the character of an arbitration.

### 6 Documents

- .1 The Valuer will take into consideration:
  - .1 documents, information and other written material which has been exchanged by the parties before the request to the Valuer;
  - .2 any submission or submission in reply by a party to the Valuer (copied to the other party); and
  - .3 information or material as provided in clause 7.2 below.

- .2 The Valuer will fix appropriate times for the provision of any submissions and submissions in reply as referred to above.
- .3 The parties acknowledge that when a matter referred to the Valuer involves a Subcontractor, Supplier or Consultant's claim, the Valuer will give the relevant Subcontractor, Supplier or Consultant the opportunity to be involved in the valuation process. The Valuer must wherever possible include in the certificate a breakdown of each Subcontractor, Supplier or Consultant's entitlement in the determination.

## 7 Role of Valuer

- .1 The Valuer:
  - .1 acts as an expert and not as an arbitrator;
  - .2 is not expected or required to obtain or refer to any information or material relating to trade information or other third party material but may do so if the Valuer wishes; and
  - .3 must issue a certificate in a form the Valuer considers appropriate, stating the Valuer's determination, with reasons.

## 8 Certificate final

- .1 Subject to clause 39.1.5 of the General Conditions of Contract, the parties agree to accept the determination in the Valuer's certificate as final and binding.

## 9 Liability of Valuer

- .1 The Valuer is not liable for anything done or omitted by the Valuer under this agreement, other than fraud.

## 10 Fees and expenses

- .1 The Principal and the Contractor must share equally the fees and out-of-pocket expenses of the Valuer for the determination. However, the Principal alone must pay all such fees and out-of-pocket expenses related to any *Variation* which the Principal proposes but does not later instruct.
- .2 The fees payable to the Valuer under this agreement are:
  - .1 an administration fee of \$» for reviewing the *Contract Documents*
  - .2 an amount for the time involved in performing the Valuer's duties under this agreement based on these hourly rates:

Director	\$»	/hour
Associate	\$»	/hour
Senior Quantity Surveyor / Engineer	\$»	/hour
Quantity Surveyor / Engineer	\$»	/hour
Technician	\$»	/hour

- .3 substantiated out-of-pocket expenses.

## 11 Confidentiality

- .1 The parties and the Valuer must keep confidential all proceedings and submissions relating to a determination by the Valuer. They must not divulge information to any other person except with the previous written consent of the other party, or as required by law, or in order to enforce a determination of the Valuer.

## 12 Termination of agreement

- .1 This agreement may be terminated by a written notice to the Valuer signed by both the Principal and the Contractor. The Principal and the Contractor may then, separately or together, recover all documents each had provided to the Valuer. They must then pay all the Valuer's outstanding fees and expenses in accordance with clause 10 of this agreement.

## 13 Payment

- .1 The Principal and the Contractor must pay the Valuer within 14 days of receiving an invoice which complies with this agreement.
- .2 The Principal and the Contractor must advise the Valuer of the necessary details for invoicing if they have agreed that one of them will make payments to the Valuer on behalf of both.

## 14 Period of engagement of Valuer

- .1 Unless this agreement is terminated under clause 12 of this agreement, the Valuer is engaged until the time of issue of the *Final Payment Schedule*, plus any further period of time required for any referred matter which has not been determined by the Valuer by the time of issue of the *Final Payment Schedule*.

**Signed by the Contractor:**

*Signature of Authorised Person* » .....

*Name of Authorised Person* » .....

*Date:* » .....

**Signed by the Principal:**

*Signature of Authorised Person* » .....

*Name of Authorised Person* » .....

*Date:* » .....

**Signed by the Valuer:**

*Signature of Valuer* » .....

*Name of Valuer* » .....

*Date:* » .....

# Expert Determination Procedure

Refer to clause 75 of the GC21 General Conditions of Contract

---

## 1 Questions to be determined by the Expert

- .1 The *Expert* must determine for each *Issue* the following questions (to the extent that they are applicable to the *Issue*):
  - .1 Is there an event, act or omission which gives the claimant a right to compensation, or otherwise assists in resolving the *Issue* if no compensation is claimed:
    - (1) under the Contract
    - (2) for damages for breach of the Contract, or
    - (3) otherwise in law?
  - .2 If so:
    - (1) what is the event, act or omission?
    - (2) on what date did the event, act or omission occur?
    - (3) what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *Issue*?
    - (4) is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
  - .3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
    - (1) what compensation, if any, is payable from one party to the other and when did it become payable?
    - (2) applying the rate of interest specified in the Contract, what interest, if any, is payable when the *Expert* determines that compensation?
    - (3) if compensation is not claimed, what otherwise is the resolution of the *Issue*?
- .2 The *Expert* must determine for each *Issue* any other questions identified or required by the parties, having regard to the nature of the *Issue*.

## 2 Submissions

- .1 The procedure for submissions to the *Expert* is as follows:
  - .1 The party to the Contract which has referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 75.2 of the General Conditions of Contract.
  - .2 The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the *Expert* will promptly determine any extra time permitted, following a submission on the point by a party desiring to make a submission, within the time specified by the *Expert*. The response to the submission in clause 2.1.1 may include cross-claims.
  - .3 The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters

- .4 The other party may comment on the reply, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.
      - .2 The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
      - .3 The *Expert* may request further information from either party. The request must be in writing, with a time limit for the response. The *Expert* must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment on the response.
      - .4 All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be copied to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address specified in *Contract Information* item 54. This address may be different to the address for the giving of notices to the Principal under clause 30.1.
- 3 Conference
- .1 The *Expert* may request a conference with both parties to the Contract. The request must be in writing, setting out the matters to be discussed.
  - .2 The parties agree that such a conference is not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.
- 4 Role of Expert
- .1 The *Expert*:
    - .1 acts as an *Expert* and not as an arbitrator;
    - .2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the *Expert's* own expertise; and
    - .3 must issue a certificate in a form the *Expert* considers appropriate, stating the *Expert's* determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the *Expert* referred to in clause 75.2 of the General Conditions of Contract.
  - .2 If a certificate issued by the *Expert* contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the *Expert* must correct the certificate.

# Statutory Declaration

Refer to clause 62.6 of the GC21 General Conditions of Contract

*Oaths Act (NSW) Ninth Schedule*

RTA Form No 592

Schedule

## Statutory Declaration

I, \_\_\_\_\_ of

Insert name of Declarant

\_\_\_\_\_ do solemnly and sincerely  
declare that:

Insert address

1. I am a representative of \_\_\_\_\_  
("Contractor") in the Office Bearer capacity of

Insert name of Contractor and ABN if applicable

insert position title of Declarant

2. The Contractor has a contract with the Roads & Traffic Authority to carry out certain works for

Insert name of Contract

\_\_\_\_\_ ("Contract").

3. Attached to and forming part of this declaration is a Subcontractor's Statement given by the Contractor in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:

- a. under the Workers Compensation Act 1987, section 175B, in the form and providing the detail required by that legislation;
- b. under the Payroll Tax Act 2007, Schedule 2 Part 5, in the form and providing the detail required by that legislation; and
- c. under the Industrial Relations Act 1996, section 127, in the form and providing the detail required by that legislation.

4. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

5. The obligations of the Contractor under the Contract relating to Security of Payment, if any, including payment of employees, workers and Subcontractors of the Contractor have been complied with by the Contractor.

6. If the Contractor has subcontractors and the subcontract price exceeds \$25,000 at commencement, the Contractor has received from each of those subcontractors a statutory declaration and Subcontractor's Statement in equivalent terms to this declaration (made no earlier than 14 days before the date of this declaration).

7. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors referred to in clause 6 were:

- (a) given to the Contractor in its capacity as 'Principal Contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ('Acts'); and
- (b) given by the subcontractors in their capacity as 'Subcontractors' as defined in the Acts.



8. I am not aware of anything that would contradict the statements made in the statutory declarations and Subcontractor's Statements provided to the Contractor by its Subcontractors.
9. The period of the Contract covered by this declaration and the attached Subcontractor's Statement is from \_\_\_\_\_ to \_\_\_\_\_.
10. The Contractor is not, under any law, insolvent or unable to pay its debts as and when they fall due.

Insert the relevant  
payment period

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at \_\_\_\_\_ (*place where declaration made*)  
on \_\_\_\_\_ (*date of declaration*) by

\_\_\_\_\_  
Signature of person making the declaration

before me: \_\_\_\_\_

Justice of the Peace/Solicitor of the Supreme Court of New South Wales

[or other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place]

**SUBCONTRACTOR'S STATEMENT  
REGARDING WORKERS COMPENSATION, PAYROLL TAX  
AND REMUNERATION (Note 1)**

Workers Compensation

s175B Workers Compensation Act 1987

Payroll tax

Schedule 2 Part 5 Payroll Tax Act 2007

Remuneration

ss127, 127A Industrial Relations Act 1996

Sub Contractor: \_\_\_\_\_ ABN: \_\_\_\_\_

*(Business name)*

of \_\_\_\_\_

*(Address of subcontractor)*

has entered into a contract with \_\_\_\_\_ (Note 2)

*(Business name of principal contractor)*

ABN: \_\_\_\_\_ For work between: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ and \_\_\_\_ / \_\_\_\_ / \_\_\_\_ (Note 3)

*Date Date*

and/or Payment Claim Details: \_\_\_\_\_ (Note 4)

Nature of contract work: \_\_\_\_\_ (Note 5)

**DECLARATION**

I, \_\_\_\_\_ a Director of / a person authorised by the subcontractor on whose behalf this

*(delete as appropriate)*

declaration is made, hereby state that the abovementioned subcontractor:

Is either

A sole trader or partnership without workers or subcontractors (Note 6).

OR

Has and will maintain in force valid workers compensation insurance, policy \_\_\_\_\_

*(Policy Number)*

held with \_\_\_\_\_ as indicated on the attached

*(Insurance Company)*

Certificate of Currency dated \_\_\_\_\_, in respect of work done in connection with the contract, during any period of the contract and has paid all workers compensation insurance premiums payable in connection with the contract (Note 7).

Is Is not also a principal contractor in connection with the work under contract (Note 8).

Has Has not been given a written statement by subcontractors in connection with the work.

Is Is not required to be registered as an employer under the *Payroll Tax Act 2007* *(Pay-roll tax client No.)*

Has paid all Payroll tax due in respect of employees who performed the work for the principal contractor, as required at the date of this statement (Note 9).

Has paid all remuneration payable to relevant employees, for work done under the contract during the period outlined above (Note 10).

Signature \_\_\_\_\_ Full Name \_\_\_\_\_

*(please print)*

Position/Title \_\_\_\_\_ Dated \_\_\_\_\_

**WARNING**

- Any subcontractor, who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 units or \$11,000).
- Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.
- The principal contractor must retain a copy of any written statement for a period of not less than five years (Payroll tax), six years (Remuneration) or seven years (Workers compensation).
- **This statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987***

## NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, Payroll tax and remuneration payable by the subcontractor.
2. For the purpose of this statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity), referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal.
3. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates.

Section 127(6) *Industrial Relations Act 1996* defines remuneration as '*remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.*'

Section 127(11) of the *Industrial Relations Act 1996* states '*to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.*'

4. Payment claim details – Where a subcontractor has entered into a payment schedule with a principal contractor they must identify the period or payment to which the statement applies.
5. An accurate description of the work covered by the contract must be included.
6. In completing the statement, a subcontractor declares that they are a sole trader or partnership without workers or subcontractors and is not required to hold workers compensation insurance.
7. In completing the statement, a subcontractor declares that workers compensation premiums payable up to and including the date(s) on the statement have been paid, and all premiums owing during the term of the contract will be paid.
8. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out work. If your business falls within this category you should also obtain statements from your subcontractors.
9. In completing the statement, a subcontractor declares that all Payroll tax payable relating to work undertaken as part of the contract has been paid.
10. In completing the statement, a subcontractor declares that all remuneration payable has been paid.

It is noted that definitions of employer, employee, remuneration, and specific provisions for employers of outworkers in the clothing trades are as defined in s127A of the *Industrial Relations Act 1996*.

11. Failure to complete this statement may result in the principal contractor withholding any payment due to the subcontractor. Any penalty for late payment under the contract does not apply to any payment withheld under this subsection. Subcontractors may wish to keep a copy of the statement for their own records.

For more information, please visit the WorkCover website [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au), Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au), or Office of Industrial Relations, Department of Commerce website [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au). Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## Schedule 8

# Costs Adjustment Formula

## 1 No adjustment if contract period less than 52 weeks

- .1 Except for cost adjustment for the supply of bitumen calculated under clause 7 of this schedule, if the time stated in the Contract Information for Completion of the Works is 52 weeks or less from the Date of Contract, the Contract is not subject to adjustment for rise and fall in costs.

## 2 Method of cost adjustment

- .1 If the time stated in the Contract Information for Completion of the Works is more than 52 weeks from the Date of Contract, each payment under clause 63 of the Contract shall be adjusted in accordance with this clause 2.
- .2 The method of adjustment is as follows (in the order set out below):-
- .1 Deduct from the value of the Payment Schedule otherwise proposed to be made by the Principal under clause 63 of the Contract the sum of:-
    - (1) the value of the immediately preceding Payment Schedule; and
    - (2) amounts payable to the Contractor for items referred to in clause 7 for work carried out in performance of the Contract and incorporated in the Works since the date of the immediately preceding Payment Schedule.
  - .2 Multiply the result by the Costs Adjustment Factor in clause 3.
  - .3 If the net Costs Adjustment Factor is positive, add the result to the value of the payment to be made.  
If the net Costs Adjustment Factor is negative, subtract the result from the value of the payment to be made.

## 3 Costs adjustment formula

- .1 Subject to clause 3, the Costs Adjustment Factor is determined by the following formula:-

$$C = r \left( \frac{Rn}{Ro} \times \frac{Xn - Xo}{100 + Xo} + \frac{Rn}{Ro} \times \frac{Yn - Yo}{100 + Yo} \right) + 0.85 \left( \frac{Rn - Ro}{Ro} \right)$$

where

C = Costs Adjustment Factor

r = Labour costs proportion of the Contract which for the purposes of this clause is 0.425 only for bridge construction contracts (and the bridge construction portion of combined road and bridge construction contracts) and 0.350 only for roadworks, earthworks and drainage contracts (and the roadworks construction portion of combined road and bridge construction contracts).

Rn = Road and Bridge Construction Index Number, which is the Division E Construction, Road and Bridge Construction index as published by the Australian Bureau of Statistics (Reference No. 4121) applicable to the calendar month immediately preceding the last calendar month in which the work the subject of the relevant Payment Schedule was carried out.

Ro = Road and Bridge Construction Index Number, which is the Division E Construction, Road and Bridge Construction index as published by the Australian Bureau of Statistics (Reference No. 4121) applicable to the calendar month preceding the calendar month during which tenders closed.

Xn = Current Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable to the calendar month immediately preceding the last calendar month in which the work the subject of the relevant Payment Schedule was carried out.

- Xo = Base Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable as at the calendar month immediately preceding the calendar month during which tenders closed.
- Yn = Current Works' Compensation Premium Rate, which is the rate shown in Table A Division E Subdivision 41 of the Workers' Compensation Act 1987, Insurance Premiums Order for Road and Bridge Construction (Group 412 Class 412100) applicable as at the calendar month immediately preceding the last calendar month in which the work the subject of the relevant Payment Schedule was carried out.
- Yo = Base Workers' Compensation Premium Rate, which is the rate shown in Table A Division E Subdivision 41 of the Workers' Compensation Act 1987, Insurance Premiums Order for Road and Bridge Construction (Group 412 Class 412100) applicable on the first day of the calendar month immediately preceding the calendar month during which tenders closed.

NOTE: Rates published by Australian Bureau of Statistics are for quarterly periods and the rate for the calendar month will be the rate for the quarter containing that calendar month.

#### 4 Adjustment of new rates

- .1 If the Principal instructs a Variation under clause 52 of the Contract which is not, in the opinion of the Principal, of the same class of works provided in the Contract schedules, every payment made under clause 63 of the Contract for the Variation will be adjusted in the following manner:-
- .1 the value of the Works to be certified by the Principal in a Payment Schedule under clause 63 of the Contract will be multiplied by the Costs Adjustment Factor referred to in clause 3 as varied by clause 4.1.3;
  - .2 the amount which is produced as a result of the operation of clause 4.1.1 will, where the Costs Adjustment Factor (as varied by this clause) is positive, be added to, or where the Cost Adjustment Factor (as varied by this clause) is negative, be subtracted from the Principal's assessment value of the Works under clause 63 of the Contract; and
  - .3 for the purposes of clause 4, the words "the calendar month in which the Contractor submitted or the Principal assessed the rate or price" referred to in clause 3 replace the words "the calendar month during which tenders closed" in the definition of each of the terms "R", "Xo" and "Yo" in clause 3.

#### 5 Index Numbers as first published

- .1 The Index Numbers referred to in this clause as being published by the Australian Bureau of Statistics are the numbers as first published for a particular month by the Australian Bureau of Statistics. For the purposes of this clause, those numbers are not subject to alteration following publication of revised, amended or corrected numbers.

#### 6 Items not to be adjusted

- .1 Payments made to the Contractor for the following items will not be adjusted at all:-
- .1 extra work instructed by the Principal under clause 52 of the Contract to be executed by the Contractor at a price or prices agreed between the Principal and the Contractor unless the agreement expressly provides for cost adjustment;
  - .2 extra work instructed by the Principal under clause 52 of the Contract and carried out as Daywork in accordance with clause 52 of the Contract unless expressly determined by the Principal;
  - .3 items paid for as Provisional Sums in accordance with the Contract; and
  - .4 items subject to a separate cost adjustment under clause 7.

#### 7 Cost adjustment for the supply of bitumen

- .1 The Contract Price shall be subject to adjustments for variations in the cost of bitumen supplied by the Contractor. The adjustment shall be effected in the Payment Claims submitted by the Contractor in accordance with clause 62 of the Contract and the Payment Schedules issued under clause 63 of the Contract.
- .2 Any cost adjustment under this clause 7 shall be calculated from the formula:-
- $$D = (C - B) \times A$$
- where –

- A = the quantity of bitumen derived from –
1. The calculation of residual bitumen at 15 degrees Centigrade where the product is sprayed bituminous surfacing or a tack coat.
  2. The approved design binder content where the product is asphalt.
  3. The approved residual binder content where the product is a bituminous slurry surfacing.
- B = the Price of Class 170 bitumen applicable on the last day of the month immediately preceding the month during which the tenders closed;
- C = the Price of Class 170 bitumen on the last day of the month immediately preceding the month during which the work is performed; and
- D = the applicable cost adjustment for this payment claim.
- The Price of Class 170 bitumen shall be the average of the prices for the suppliers contracted to supply the RTA on its panel contract for the Supply of Bitumen and Related Products.

## 8 No other costs adjustment

- .1 Unless expressly provided elsewhere in the Contract, there is no adjustment for any costs changes except as provided by clauses 2-7 inclusive. The Contractor accepts the provisions under clauses 2-7 inclusive in full compensation for all costs changes which occur after the closing date of tenders irrespective of their nature and including those consequent upon alteration in the standard working hours and industrial conditions applicable to or prescribed for any industry generally by an Act, Court, Commission or Authority.

## Schedule 9

# Principles for Valuing Daywork Variation

---

## 1 Daywork procedure and determination

- .1 If the Principal directs that any work be carried out as *Daywork*, the Contractor must record each day in a manner to be approved by the Principal the particulars of all resources used by the Contractor for the execution of the *Daywork*. The Contractor must furnish to the Principal in a *Payment Claim* under clause 62, the records and all time sheets, wages sheets, invoices, receipts and other vouchers that are necessary to support this *Payment Claim*. The Principal must assess the amount to be paid to the Contractor in respect of each *Payment Claim* under clause 63 and in making its assessment must have regard to the following:
  - .1 the amount of wages and allowances paid or payable by the Contractor at the rates obtaining on the Site at the time, as established by the Contractor to the satisfaction of the Principal or at such other rates as may be approved by the Principal;
  - .2 the amount paid or payable by the Contractor in accordance with any statute or award applicable to day labour additional to the wages paid or payable under 1.1.1 of this *Daywork* procedure;
  - .3 the amount of hire charges in respect of constructional plant approved by the Principal for use on the work in accordance with such hiring rates and conditions as may be agreed upon between the Principal and the Contractor or, in the absence of such an agreement, in accordance with such rates and conditions as may be determined by the Principal;
  - .4 the reasonable amounts paid by the Contractor for services, Subcontracts and professional fees;
  - .5 the reasonable actual cost to the Contractor at the Site of all *Materials* supplied and required for the work; and
  - .6 a charge calculated as specified in clause 2.2 below or as otherwise agreed upon between the Principal and the Contractor, to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit.

## 2 Amounts included in *Daywork*

- .1 The amount payable to the Contractor under 1.1.2 above includes all amounts necessarily incurred by the Contractor in statutory charges and award payments generally applicable as labour on-costs additional to the wages and allowances paid or payable under 1.1.1 above.
- .2 The amount payable to the Contractor for the things described in 1.1.6 above is:
  - .1 for *Daywork* carried out by the Contractor, 27% of the total of the amounts calculated for 1.1.1 to 1.1.3 above inclusive; and
  - .2 for *Daywork* carried out by a Subcontractor, Supplier or Consultant 12% of the total of the amounts calculated for 1.1.4 and 1.1.5 above.

## 3 Principles for calculating time

- .1 If the parties do not agree on the effect on the time for *Completion* of the *Variation* carried out as *Daywork*, the extension of time for *Completion* due if any, must be dealt with under clauses 72 to 75 based on the principles contained in clauses 3 and 4 of Schedule 5 (Agreement with Valuer) even where the Valuer is not involved.

Schedule 10

# Extract of Insurance Terms

**ROADS AND TRAFFIC AUTHORITY OF NSW**

**Three Year Principal Contract Works Insurance**

## **SUMMARY**

The contents and the intellectual property of these wordings are deemed to be commercially sensitive and are the property of the Aon Risk Services Australia Limited and as such there should be no disclosure of the information contained therein to parties outside of **Roads and Traffic Authority of NSW**.

No material anywhere in this report or in the policy wordings may be copied or further disseminated without the express and written permission of Aon Risk Services.

Issued through:

Corporate Risk Services  
*Aon Risk Services Australia Limited*  
*ABN 17 000 434 720*  
*Level 33, Aon Tower*  
*201 Kent Street*  
*SYDNEY NSW 2000*

*Telephone 61 2 9253 8407*  
*Facsimile 61 2 9253 7106*



In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurers agree to indemnify the Insured in the manner and to the extent provided herein, subject always to the Limits and Sub-limits of Liability, Conditions, Exclusions and other terms of this Policy.

The liability of all of the Insurers collectively will in no case exceed the Limits and Sub-limits of Liability stated in the Schedule or elsewhere in this Policy. Furthermore, the liability of each of the Insurers individually will in no case exceed the proportion set against each Insurer's name.

Signed for and on behalf of the Insurers

## Section 1 Contract Works & Section 2 Third Party

### Insurers and Proportions

Class of Insurance	Policy No	Underwriter	Policy Limit(s)	Deductible (s) / Excesses	
CONTRACT WORKS	99-0000476-CGR	Allianz Australian Insurance Ltd	CONTRACTS UP TO A\$50,000,000	Contracts up to A\$5,000,000	A\$15,000
				Contracts between A\$5,000,001 and \$20,000,000	A\$50,000
				Contracts between A\$20,000,001 and A\$50,000,000	A\$100,000
				Tunnelling Contracts	A\$250,000
THIRD PARTY LIABILITY	99-0000476-LGR	Allianz Australian Insurance Ltd	A\$20,000,000	Injury to Contractors	A\$50,000
				Products Liability	A\$50,000
				Underground Services	A\$50,000
				All other claims	A\$10,000
EXCESS THIRD PARTY LIABILITY *	TBA	Allianz Australian Insurance Ltd	A\$70,000,000	Primary A\$20,000,000	
EXCESS THIRD PARTY LIABILITY *	TBA	American Home Insurance Ltd	A\$110,000,000	Excess of A\$70,000,000 Excess of A\$20,000,000	

\* Excess Third Party insurances are annually renewable.

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## Important Notice

This document is a summary of the Annual Contract Works – Third Party Liability Insurance Policies arranged on behalf of the RTA in respect of its Construction Contracts commenced after 1 October 2006.

This summary is designed to acquaint the RTA Project Management and contractors with the details of the basic cover provided by the Insurance Policies.

The summary is an abbreviated form of the actual policy documents and is not a substitute for the full Policy Wordings.

Aon Risk Services Australia Limited  
Sydney

## Schedule

### Sections 1 and 2

#### Insured

Roads and Traffic Authority of New South Wales ('RTA') as Principal or Contractor.

Any subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated; any of the following persons or entities for whom or for which the insured parties under clauses and above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:

- a. any principal or owner or agent of the Principal; or joint venture partner or alliance partner;
- b. any construction manager or project manager;
- c. any contractor or sub-contractor of any tier;
- d. any architect, engineer or other consultant for their onsite activities only;
- e. any lessor, financier, mortgagee or trustee;
- f. any government body;
- g. any other party with an insurable interest in the Contract(s);

It shall be noted that the architect, engineer or other consultant referred to in d. above shall not be construed as any other Insured

any director, executive officer, employee, contract staff or partner of any of the insureds under whilst acting as such; any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds whilst acting as such; and all for their respective rights and interests.

#### Business and Activities of the Insured

Principally but not limited to:

- civil contractors, designers, consultants, suppliers, project and construction managers, maintenance contractors;
- plant and equipment owners, operators and hirers, lessees and lessors;
- road traffic authority, which includes, property owners and occupiers, lessees and lessors; and all incidental and associated operations, trades and activities.

#### Period of Insurance

From: *1 October 2006 at 4.00pm*

To: *1 October 2009 at 4.00pm*

#### Maximum defects liability period

24 months any one Contract in respect of the original Defects Liability Period.

**Insured Contracts Sections 1 & 2**

All contracts commenced by the Insured after 4.00p.m. on 1 October 2006 but shall not include:

1. Contracts commenced prior to the initial Period of Insurance; or
2. Contracts that are funded by private finance but not excluding works or services associated therewith performed by or at the direction of RTA and declared under this Policy;

**Geographical Limits****Section 1 Material Damage**

Anywhere in Australia

**Sections 2 Third Party Liability**

Anywhere in the world but excluding any operations of the Insured domiciled in the United States of America or Canada.

**Sums Insured Sections 1 Material Damage**

In respect of contracts commencing during the Period of Insurance, as defined herein:

**A\$50,000,000** any one Occurrence

This Sum Insured applies in excess of the Excesses

**Limits of Liability Section 2 Third Party Liability**

**A\$200,000,000** ANY ONE OCCURRENCE UNLIMITED TO THE NUMBER OF OCCURRENCES DURING THE PERIOD OF INSURANCE BUT LIMITED TO **A\$200,000,000** IN THE ANNUAL AGGREGATE DURING EACH 12 MONTH PERIOD DURING THE PERIOD OF INSURANCE ARISING FROM PRODUCTS LIABILITY. SUCH LIMITS OF LIABILITY APPLY IN EXCESS OF THE EXCESSES.

**Excesses**

<b>Sections 1</b>	Contracts up to <b>A\$5,000,000</b>	<b>A\$15,000</b> any one occurrence
	Contracts between <b>A\$5,000,000</b> and <b>A\$20,000,000</b>	<b>A\$50,000</b> any one occurrence
	Contracts between <b>A\$20,000,000</b> and <b>A\$50,000,000</b>	<b>A\$100,000</b> any one occurrence
	Except: - Tunnelling Contracts <b>A\$250,000</b>	any one occurrence
<b>Section 2</b>	Worker to Worker	<b>A\$50,000</b>
	Products Liability	<b>A\$50,000</b>
	Underground Services	<b>A\$50,000</b>
	All Others	<b>A\$10,000</b>
	All any one occurrence	

## Insuring Clauses

### Section 1

The Insurers under this Section 1 will indemnify the Insured against Damage to the Insured Property from a cause not specifically excluded, occurring at Worksites or in transit within the Territorial Limits

The Insurers will indemnify the Insured in respect of their legal liability under the maintenance or defects liability clauses under any Contract in accordance with the Basis of Settlement for Damage to the Insured Property from a cause not specifically excluded, provided that such Damage:

- (a) manifests itself during the Defects Liability Period; and
- (b) originates from:
  - (i) a cause prior to the commencement of the Defects Liability Period; or
  - (ii) an act or omission of any of the Insured parties in the course of complying with the requirements of the Defects Liability Period provisions of the Contract.

### Section 2

The Insurers will indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of:

- Personal Injury;
- Property Damage; or
- Advertising Injury,

happening:

- (i) during the Construction Period or the Defects Liability Period in respect of the Insured Operations; or
- (ii) during the Period of Insurance in respect of the Insured's Products;

within the Territorial Limits in connection with the Business and related activities as a result of an Occurrence.

In addition to any indemnity:

- (iii) all legal costs and other expenses incurred with the written consent of the Insurer;
- (iv) all charges expenses and legal costs recoverable from the Insured by claimants;
- (v) all costs and expenses incurred by the Insured for legal representation at any coroner's inquest, fatal accident inquiry or court of summary jurisdiction;
- (vi) expenses incurred by the Insured for first aid rendered for injury to others at the time of an Occurrence.

## Exclusions Applicable to Section 1

### 1. Consequential Loss

Liquidated damages or penalties for non-completion of or delay in completion of the Contract or non-compliance with contract conditions or consequential loss, other than as specifically provided under this Section 1.

### 2. Wear and Tear

Damage directly caused by:

- (a) normal wear and tear;
- (b) rust, oxidation, corrosion or gradual deterioration, in each case when due to atmospheric conditions or other gradual causes;

but this Exclusion 2, shall be limited to that part of the Insured Property which is immediately affected and shall not apply to any other parts lost or damaged in consequence thereof.

### 3. Defects (LEG2/96)

All costs rendered necessary by defects of material workmanship design plan or specification and should damage occur to any portion of the Insured Property containing any of the said defects the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said damage. all costs rendered necessary by defects of material, workmanship, design, plan or specification, however should Damage (which for the purposes of this Exclusion 3 shall include any patent detrimental change in the physical condition of the Insured Property) occur to any portion of the Insured Property containing the said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material, workmanship, design, plan or specification.

### 4. Aircraft or Watercraft

Aircraft or Watercraft or plant and equipment permanently mounted thereon.

### 5. Disappearance or Shortage

Loss of the Contract Works due to disappearance or revealed by inventory shortage alone, unless the shortage can be reasonably attributed to burglary, theft, pilferage or like dishonesty of persons other than the Insured.

### 6. Money

Damage to cash, bank notes, treasury notes, cheques, postal orders and money orders, stamps or securities.

### 7. Transits Outside of Australia

Damage to Insured Property in the course of ocean marine shipment between countries or transit by air between countries.

### 8. Electronic Data Exclusion

Loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting there from, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

However, Exclusion 8 will not apply to physical damage occurring to Insured Property during the Construction Period or Defects Liability Period directly caused by a Defined Peril.

**9. Construction Plant and Equipment and its Breakdown**

- (a) Damage to Construction Plant and Equipment owned or the responsibility of any Insured except RTA (and then only where declared by the RTA).
- (b) Damage caused by mechanical or electrical breakdown of Construction Plant and Equipment, however this Exclusion 9(b) shall be limited to the part immediately affected and shall not extend to include other components or parts Damaged in consequence thereof.

**10. Vegetation**

Damage to vegetation which forms part of the Insured Property and which rises directly or indirectly from:

- (a) disease,
- (b) lack of water
- (c) excess water
- (d) moths, termites, or other insects, vermin, mildew, mould or wet or dry rot
- (e) replanting operations
- (f) transportation operations

## Exclusions Applicable to Section 2

**1. Employer's Liability**

Liability for which the Insured is entitled to indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers and workmen's compensation, whether or not the Insured has effected such a policy.

This Exclusion does not apply with respect to liability of others assumed by the Insured under written contract.

**2. Industrial Awards**

Liability to or of any Employee of the Insured imposed by the provisions of any industrial award or agreement or determination where such liability would not otherwise have attached.

**3. Aircraft and Watercraft**

Liability arising from the ownership, possession or use by the Insured of any Aircraft or Watercraft, but this Exclusion shall not apply to:

- (a) Aircraft or Watercraft which are not owned by the Insured when such craft are hired, leased or chartered to or by the Insured with a pilot/master and crew supplied;
- (b) liability arising out of construction plant or equipment mounted upon or operating from any Watercraft, but this Exclusion subclause 3(b) shall not apply to liability arising out of the use or operation of the Watercraft itself;
- (c) the use or existence of explosives on or from any marine craft or vessels whether in, over or under water or otherwise;
- (d) liability in respect of work undertaken on marine craft or vessels.

**4. Vehicles**

Liability arising from the ownership, possession or use by the Insured of any Vehicle in respect of which there is required by law, at the time of the Occurrence, to be in force compulsory third party bodily injury liability insurance. In the absence of indemnity afforded by any other insurance, this Exclusion 4 shall not apply to:

- (a) liability arising out of the loading or unloading of or the delivery or collection of goods to or from any Vehicle;
- (b) liability caused by or arising out of or in connection with the Vehicle working as a tool of trade on any site or at the premises of the Insured.

**5. Loss of Use**

Loss of use of tangible property that forms part of a Contract which has not been physically damaged or destroyed resulting from a delay in or lack of performance by or on behalf of the Insured of any Contract.



**6. Products and Work Performed**

Liability for:

- (a) the cost of making good, replacing or reinstating workmanship performed by the Insured or of any Product which is or is alleged to be defective or deficient;
- (b) the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement or loss of use of the Products or any property of which such Products form a part, if such Products or property are withdrawn from the market or from use solely because of any known or suspected defect or deficiency therein;

This Exclusion 6 shall apply only to the part which is defective or deficient and shall not apply to any other parts of the works, Products or any other property lost or damaged as a consequence.

**7. Professional Liability**

Liability arising out of the rendering of or failure to render professional advice or service given for a specific fee by the Insured or error or omission connected therewith, but this Exclusion 7 does not apply to:

Personal Injury or Property Damage arising there from; or

the rendering of or failure to render professional medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises.

**8. Pollution and Contamination**

- (a) Liability arising out of discharge, dispersal, seepage, release or escape of Pollutants into or upon land, the atmosphere, or water; but this Exclusion 8(a) does not apply if such discharge, dispersal, seepage, release or escape is sudden and accidental and neither expected nor intended from the standpoint of the Insured and occurs at a specific time and place.
- (b) Any costs and expenses incurred in the prevention, removing, nullifying or clean up of Pollutants, but this Exclusion 8(b) does not apply where clean up, removal or nullifying expenses are incurred consequent upon a sudden and accidental happening neither expected nor intended from the standpoint of the Insured, which results in Property Damage and/or Personal Injury.

**9. Fines and Penalties**

Liability arising from or attributable to:

- (a) an award of punitive, liquidated, aggravated or exemplary damages;
- (b) any fine or penalties, including but not limited to civil penalties;

but this Exclusion 9 does not apply to civil awards in the nature of compensatory damages.

**10. Advertising Injury**

Liability arising out of Advertising Injury for:

- (a) offences committed prior to the inception date of this Policy;
- (b) offences made at the direction of the Insured with knowledge of the illegality or falsity thereof;
- (c) breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (d) incorrect description of the price of the products, goods or services;
- (e) infringement of trade mark, service mark or trade name by use thereof as the trade mark, service mark or trade name of the products, goods or services sold, offered for sale or advertised, but this Exclusion 10 does not apply to titles or slogans;
- (f) failure of the products, goods or services to conform with advertised performance, quality, fitness or durability;
- (g) any Insured whose business is advertising, broadcasting, publishing or telecasting.

**11. Property owned by or in Care, Custody or Control of the Insured**

Damage to property:

- (a) owned by the Insured;

- (b) held in trust or in the custody or control of the Insured, but only to the extent that such damage is payable under Section 1 of this Policy.

## 12. Asbestos

Claims directly or indirectly caused by, contributed to by or arising from exposure to asbestos or materials containing asbestos.

# Exclusions Applicable to Sections 1 & 2

## 1. Nuclear Risks

The Insurers shall not be liable in respect of loss, damage or liability directly or indirectly caused by or contributed to by or arising from:

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel;  
for the purpose of this General Exclusion 1 (a) only, combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons materials.

This General Exclusion 1 shall not apply to liability resulting from the use of commercial radioactive isotopes.

## 2. War and Terrorism

Notwithstanding any provision to the contrary within this Policy or any endorsement thereto it is agreed that this Policy excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; Notwithstanding this clause 2(a), this Policy shall cover loss, damage or liability caused by missiles and/or mines and/or bombs and/or other explosives not discovered at the moment of commencement of this Policy as long as no state of war exists in the country where the loss occurs; or
- (b) any act of terrorism.

For the purpose of this clause an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 2(a) and/or 2(b) above.

In the event any portion of this General Exclusion clause 2 is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## 3. Contractors & subcontractors construction plant and equipment

No cover is provided in respect of contractors and subcontractors construction plant and equipment.

## Conditions Applicable to Sections 1 & 2

### 1. Escalation (section 1 only)

If during the Construction Period, the anticipated actual Project Value of a Contract or series of Contracts in connection with one project exceeds the Limit of Liability, then the Limit of Liability and Sub-Limits of Liability shall be increased by the percentage that represents the amount the anticipated actual Project Value for such Contract(s) exceeds the estimated Project Value at commencement of the Contract(s), but the total amount of all such increases shall not exceed 25% of the amount set against each item in the Limits of Liability and Sub-limits of Liability.

### 2. Claims Procedure (section 1 only)

For estimated Damage up to A\$100,000 the Insured is at liberty to immediately proceed with repairs or replacement and shall provide to the Insurers full details of the cause and circumstances of the Damage, followed by written notification of the claim, supported by the necessary invoices and other details.

For estimated Damage exceeding A\$100,000 the Insured is to defer proceeding with repairs or replacement until the Insurers or their representatives have made a preliminary survey or have agreed to the Insured proceeding with repairs or replacement.

The amounts stated in this Condition refers to estimates made by the Insured of amounts payable by Insurers after application of any relevant Excess.

### 3. Permission to Occupy and Operate (section 1 only)

Permission is granted by Insurers to the principal and/or owner or any other party to occupy and operate any portion of the construction site or works prior to practical completion and such occupancy or operation shall not constitute final acceptance handover of the Insured Property.

### 4. Limits of Liability

(a) No liability shall attach to the Insurers until the Damage or loss in respect of each Event/ Occurrence exceeds the amount of any relevant Excess stated in the Schedule. The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of the relevant Excess.

(b) (i) Section 1 – Material Loss or Damage

The liability of the Insurers under Section 1 for any one Event at any one Worksite shall not exceed the Limits of Liability and the accumulative amounts of the Sub-limits of Liability stated in the Schedule.

(ii) Section 2 – Legal Liability

The liability of the Insurers under Section 2 in respect of each Occurrence shall not exceed the Limit of Liability stated in the Schedule. All Personal Injury, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.

The total aggregate liability of the Insurers for all claims arising out of Products shall not exceed the Limits of Liability stated in the Schedule for each 12 month period from the inception date of this Policy.

### 5. Application of Excess

(a) The Insured shall be liable to pay the amount of the Excess in respect of each Event/Occurrence. If a series of claims are made under a Section of this Policy arising out of the one Event/Occurrence then only one Excess shall apply in respect of that Policy Section.

In respect to Section 2, the Excess is inclusive of Defence and Other Costs as described.

(b) Non-aggregation of Excesses

In respect of Section 1 only, should more than one Excess apply for any claim or series of claims arising from the one Event, such Excesses shall not be aggregated and only the highest single Excess shall apply.

- (b) 72 Hour Clause  
For the purpose of the application of any Excess under Section 1 only, all Damage resulting from fire, earthquake, cyclone, flood, hail, storm and/or tempest, occurring during each period of 72 consecutive hours shall be considered as one Event where such peril is sporadic in its sweep and scope. The Insured shall select the time from which any such period shall commence but no two selected periods shall overlap.
- (c) Inland Transit  
In respect of the transit Excess under Section 1 (if any), such Excess shall apply to Insured Property in the course of loading of the Insured Property, whilst in transit, including incidental storage until unloading at the point of discharge at the final destination.

## 6. Insurers' Rights

The Insured shall, at the request and the expense of the Insurers, do and concur in doing all such acts and things as the Insurers may reasonably require with a view to recovery of Damaged Insured Property or to preserve and enforce any rights the Insured may have against anyone in respect of Damage to Insured Property or liability for Personal Injury, Property Damage or Advertising Injury.

## 7. Subrogation and Settlement of Claims

- (a) The Insured shall inform the Insurers as soon as reasonably practicable of the happening of any Damage which may give rise to a claim under this Policy.
- (b) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurers shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (c) In respect of Section 2 of this Policy, no admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurers who shall be entitled, if the Insurers so desire, to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, however the Insurers shall discuss the conduct, defence, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.
- (d) The Insurers may pay to the Insured, the amount of the applicable Limit of Liability of the Insurers or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurers shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurers are liable hereunder incurred prior to the date of such payment.

## 8. Multiple Insureds Clause

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.
- (b) The insured parties will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.
- (c) The Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this General Condition as a "Vitiating Act".
- (d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (e) The Insurers agree to waive all rights of subrogation that they may have or acquire against:

- (i) any Insured or any individual or organisation affiliated or associated with, parent of or a subsidiary of any Insured other than those defined in the Insured iii.d. in circumstances where indemnity is not provided under this Policy;
- (ii) at the option of the Named Insured, any other parties or persons, subject to the Insured, waiving rights of subrogation prior to the loss, but only when required to do so under contract;

except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances the Insurers may enforce such rights against the party committing the Vitiating Act.

#### 9. Notices

- (a) Any notice(s) required by the Conditions of this Policy to be given to the Insurers shall be given by the Insured through any office of their insurance broker, Aon Risk Services Australia Limited (Aon) or direct to the Insurers. Any notice(s) given to any office of the appointed broker constitutes notice upon Insurers. Any such notice shall be deemed to be given on behalf of the Insured giving the notice and on behalf of all other Insureds.
- (b) Any notice(s) given by the Insurers to any party insured under this Policy shall also be given to all other named parties .
- (c) Any notice of claim given to the Insurers by any party insured under this Policy shall be accepted by the Insurers as a notice of claim given on behalf of all other parties insured under this Policy.
- (d) Subject to the Named Insured providing details to the Insurers of the name of the Nominee for Insurers' Notices and the relevant Contract provisions, the Insurers agree to provide 30 business days prior notice to that Nominee in the event of:
  - (i) the cancellation or expiry of this Policy before completion of the Construction Period and/or Defects Liability Period of the relevant Contract due to non payment of premium or any other cause;
  - (ii) the Insurers giving any notice under this Policy.

#### 10. Insolvency or Bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurers from any of their obligations assumed hereunder.

#### 11. Hold Harmless Agreements

Where, in connection with or in relation to a Contract, the Insured enters into an agreement with another party and where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any damage, defect or liability hereby insured against, it is understood and agreed that this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that the indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon the Insurers.

#### 12. Jurisdiction and Service of Proceedings

The Insurers agree that:

- (a) this Policy is governed by the laws of Australia;
- (b) in the event of a dispute arising under this Policy, Insurers at the request of the Insured will submit to the jurisdiction of any competent Court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such Court;
- (c) any summons notice or process to be served upon the Insurers may be served upon the Nominee For Legal Service stated in the Schedule. Such Nominee has authority to accept service and to enter an appearance on the Insurers' behalf. If directed by the Insured the Nominee shall give a written undertaking that the Nominee will enter an appearance on the Insurers' behalf;
- (d) if proceedings are instituted against any one of the Insurers, all Insurers hereon will abide by the decision of such Court or any competent Appellate Court.

**13. Cancellation/Non-renewal****(a) By the Insurers**

The Insurers may cancel this Policy for any of the reasons set forth in Section 60 of the Commonwealth Insurance Contracts Act 1984 by serving on the Named Insured sixty (60) days notice in accordance with Section 59 of that Act, in which case the Insured will be entitled to a pro-rata refund of the Premium.

**(b) By the Named Insured**

The Named Insured (on behalf of itself and all other Insureds (unless otherwise specified) may cancel any Section of this Policy or cancel cover in respect of any Contract or Insured Property at any time by giving notice in writing to the Insurers.

**(c) Run-off Cover:**

Notwithstanding the Period of Insurance, in the event of cancellation by either the Insurers or the Named Insured or non-renewal of this Policy, at the Named Insured's option, the insurance by this Policy shall continue for each Contract or Insured Property until:

- (i) expiration of the Construction Period and Defects Liability Period; or
  - (ii) the Named Insured formally advises the Insurers that the Contracts have been insured elsewhere;
- whichever occurs first.

In the event of cancellation or non-renewal of this Policy, the Premium will be adjusted or pro-rata for the period on risk if the outcome does not represent an equitable refund for the cancelled period. The Named Insured will be obliged to supply to the Insurers such information as is necessary to adjust the Premium.

**14. Alterations in Material Fact/Error or Omission**

- (a) The Insured will not be prejudiced under this Policy in the event of any alteration in material fact or otherwise regarding construction methods or procedures, an unintentional or inadvertent error, omission or misdescription or any other information contained or omitted from any underwriting information supplied to the Insurers.
- (b) The Named Insured undertakes to immediately notify the Insurers as soon as the alteration or omission becomes known to them, and the Insurers shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurers and the Insured.

**15. Progress Payments (applicable to Section 1 only)**

Provided that indemnity has been granted under this Policy, progress payments on account of any claim under Section 1 only shall be made to the Insured, at such intervals and for such amounts as may be agreed upon production of an acceptable report by the Agreed Loss Adjuster (if appointed), provided such payments shall be deducted from the amount finally determined upon adjustment of the claim.

**16. Engagement of Loss Adjusters**

- (a) Aon is authorised to appoint a loss adjuster from the panel of Agreed Loss Adjusters to investigate and quantify losses that are potentially identifiable under this Policy. Loss adjuster fees and expenses shall be payable by the Insurers.
- (b) The Insurers and Insured agree that the Agreed Loss Adjusters shall be agents of the Insurers and the Insured and all documents, transcripts, reports (verbal and written) shall be made available to the Insurers and the Insured.
- (c) If at any time there shall be any dispute or difference between the Insurers and the Insured in respect of the adjustment of a loss, then the Insurers or the Named Insured shall be entitled to appoint an independent loss adjuster.

**17. Loss Payee (Section 1 only)**

Any claim arising under Section 1 shall be settled with and paid to the Loss Payee stated in the Schedule or as they may direct.

**18. Currency**

- (a) All monetary amounts expressed in this Policy are in Australian dollars. The Premium and losses shall be paid in Australian dollars or as otherwise agreed between the Insurers and the Insured.
- (b) For the purposes of this Policy, the Insurers agree to the Named Insured's normal practice of converting currency to Australian dollars in accordance with the Insured's accounting practices.

**19. Difference In Conditions Cover**

In circumstances where an Underlying Insurance has been arranged, this Policy shall be deemed to be the 'Master Policy'.

- (a) In the event of the Insured being indemnified by an Underlying Insurance in respect of a claim for which indemnity is available under this Master Policy, the insurance afforded by this Policy shall be excess insurance over the applicable limit of indemnity of the Underlying Insurance.
- (b) Coverage under this Master Policy shall not apply unless and until a claim for payment is made under the Underlying Insurance up to the amount of the Underlying Limit which, save for the limit of indemnity of the Underlying Insurance, would be covered by this Master Policy.
- (c) If such Underlying Insurance provides indemnity to the Insured by virtue of its scope of cover, definitions or conditions in respect of loss, damage, legal liability, costs and expenses which are not provided under the terms, Conditions and Exceptions of this Master Policy, then this Master Policy shall provide such indemnity to the same extent as provided by the Underlying Insurance.
- (d) Should any such Underlying Insurance, by virtue of its scope of cover, definitions, deductibles or excesses, conditions or limits of indemnity, not indemnify the Insured in whole or in part in respect of a loss, damage, liability, costs or expenses indemnifiable under this Master Policy, this Master Policy will provide indemnity to the extent that such indemnity is not provided by the terms and conditions of such Underlying Insurance. For the purpose of clarity, it is intended that indemnity by this Policy extends to cover losses not covered under the Underlying Insurance by virtue of the fact that such Underlying Insurance has a higher deductible or excess than the Excess under this Master Policy.
- (e) In the event that the Insured cannot obtain an admission of liability from the insurer of an Underlying Insurance and/or Underlying Insurance fails or is reasonably likely not to indemnify the Insured, then the Insurers of this Master Policy shall be obligated to indemnify the Insured.
- (f) The provisions of this clause are subject always to the terms, Conditions and Exclusions of this Master Policy, except as provided under (c) above.
- (g) In the event of cancellation of an Underlying Insurance or reduction or exhaustion of the limits of indemnity thereunder, this Master Policy shall:
  - (i) in the event of reduction, pay in excess of the reduced Underlying Limit;
  - (ii) in the event of cancellation or exhaustion, continue in force as Underlying Insurance.
- (h) Appeals  
In the event the Insured or the insurers of the Underlying Insurance electing not to appeal a judgement in excess of the Underlying Limits, the Insurers may elect to make such appeal at their own cost and expense and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of the Insurers exceed the Limits of Liability excluding the costs and expenses of such appeal.

**20. Leading Insurer**

The Leading Insurer is the company named first in the Schedule. Each other company named in the Schedule agrees to accept the same terms and Conditions as the Leading Insurer and authorises the Leading Insurer to act on behalf of all the named companies for all purposes connected with this Policy and, without limiting the generality of the foregoing:

- (a) to accept all notices required under this Policy;
- (b) to interpret the meaning or intention of any word, expression, Exclusion or Condition of this Policy;
- (c) to accept increases in any Limit of Liability or Sub-limit of this Policy up to 10% of the limit existing at the time of the increase;
- (d) to agree amendments to the wording of this Policy;

- (e) to re-negotiate terms commensurate with any change in the risk;
- (f) to negotiate and settle claims under this Policy.

Subject otherwise to the terms and conditions of this Policy and to notification of each alteration as soon as practicable thereafter, each other company named in the Schedule agrees to accept and be bound by the decisions of the Leading Insurer.

#### **21. Referral Contracts**

Where any Contract

Exceeds \$50,000,000 any one contact site or  
construction period exceeds 48 months or

tunnelling component exceeds \$20,000,000 and

And the subject of referral to insurers for special acceptance

the Contract will be held covered for a period not exceeding 30 days from the commencement of the Construction Period, and thereafter will be covered subject to agreement by the Insurers.

#### **22. Other Insurance**

Where allowable by law, this Policy is excess over and above any other valid and collectible insurance and shall not respond to any loss until such times as the limit of liability under such other primary and valid insurance has been totally exhausted. The Treasury Managed Fund is not deemed to be regarded as a policy of insurance or Underlying Insurance, for the purposes of this policy.



## Extensions to Section 1

The following Extensions apply to this Policy

### 1. Additional Costs and Expenses

The Insurers shall, in addition to the Limits of Liability, pay the following extra costs and expenses necessarily and reasonably incurred by or on behalf of the Insured (over and above those already included in the Project Value), subject to the Sub limits of Liability stated in the Schedule (if any):

(a) Removal of Debris and Other Costs

(i) Debris

Costs and expenses necessarily incurred in respect of the demolition, removal, storage and/or disposal of debris, Insured Property (including Insured Property which is no longer useful for the purpose it was intended) and any other property or substances including ponded water affecting the Insured Operations arising out of Damage.

(ii) Temporary Protection

Costs and expenses incurred by or on behalf of the Insured:

- (1) for the removal of and/or the temporary protection and safety of Insured Property;
- (2) in the purchasing and/or hiring and in the erection and dismantling of hoardings, barriers, fences and any other forms of protection which the Insured must provide in order to comply with the requirements of any government, municipal or other statutory authority.

Provided that the indemnity afforded shall only apply where the costs and expenses are incurred as a result of Damage.

(iii) Shoring, Propping and Other Costs

Costs and expenses necessarily incurred in respect of shoring up, propping, underpinning and, temporary repairs, recovery and retrieval of Insured Property as a consequence of actual or imminent Damage.

(b) Expediting Expenses

Costs and expenses incurred in connection with or incidental to expediting the commencement, carrying out or completion of the repair, reinstatement or replacement of the Insured Property consequent upon Damage. Such costs and expenses shall include but not be limited to:

- (i) express or chartered carriage or delivery (including by sea or air);
- (ii) travel (including by sea or air) of the Insured's employees, agents, sub-contractors, consultants or representatives;
- (iii) overtime or penalty rates of wages and other related allowances and payments;
- (iv) hire of additional labour, plant, equipment, materials, expertise or services;
- (v) reasonable and necessary changes in the method of construction, the cost of earlier than usual delivery or manufacture and/or costs of purchasing resources;
- (vi) accommodation and boarding costs (including meals and other costs associated therewith);
- (vii) additional administrative and/or overhead expenses.

(c) Search and Locate Costs

Leak search and other costs incurred following irregularities discovered in the results of a hydrostatic or other testing procedure up to a maximum of \$100,000 any one Event. Such costs will include but not be limited to:

- (i) the cost of hiring, operating and transporting apparatus, the cost of operation;
- (ii) the cost of all associated earthworks;

and are payable notwithstanding that physical damage may not have occurred to the affected item.

(d) Professionals' Fees

The fees of project managers, architects, surveyors, quantity surveyors, engineers, legal and other consultants and clerks of works' salaries for estimates, plans, specifications, quantities, tenders and

supervision necessarily incurred in reinstatement consequent upon Damage to the Insured Property, but not for preparing any claim.

(e) Mitigation Expenses

Reasonable costs and expenses incurred by or on behalf of the Insured in connection with or incidental to mitigating, containing, eliminating or suppressing actual or imminent threat to life or actual or imminent Damage occurring at or adjacent to or immediately threatening the Insured Property.

Such costs and expenses shall include but not be limited to:

- (i) the payment for additional labour (including the Insured's employees), services or resources;
- (ii) the cost of replenishing fire fighting appliances or systems and costs and charges incurred for the purpose of shutting off the supply of water or any other substance following the accidental discharge or escape from intended confines of any such substance, whether from fire protection equipment or otherwise.

(f) Claims Preparation Costs

Reasonable costs and expenses up to \$100,000 any one Event as may be payable by the Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing or qualifying actual or imminent Damage being claimed under this Section excluding loss adjuster and legal adviser fees incurred by the Insured.

(g) Government and other Fees

- (i) Any fee, contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority other than the Named Insured, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate Insured Property.
- (ii) Any fee contribution or other impost (excluding fines and/or penalties) payable to any government, municipal or other statutory authority other than the Named Insured for services rendered or equipment supplied for the purpose of helping to prevent, mitigate or confine further actual Damage at or in the vicinity of the Worksite.

(h) Civil Authority

This Section is extended to include loss resulting from Damage by civil authority during a conflagration or other catastrophe incurred for the purpose of retarding the same.

## 2. Terrorism Cover

This insurance is an eligible insurance contract for the purposes of the terrorism act. The terrorist exclusion contained in this insurance is ineffective in relation to loss or liabilities arising from a declared terrorist incident affecting eligible property located in Australia.

## Definitions

For the purposes of this Policy the following Definitions/Interpretations will apply to all Policy Sections unless otherwise specified.

Definitions/Interpretation to All Sections of this Policy

**Aircraft** means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

**Business** includes works in progress or completed in respect of current or activities discontinued by the Insured, the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured's employees, first aid, security, fire and ambulance services and maintenance of the Insured's premises.

**Computer Virus** means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature.

**Construction Period** means, at the option of the Named Insured, that phase of a Contract:

- (i) until the Contract Works have been formally accepted in their entirety by the principal/owner as having achieved practical completion., notwithstanding the fact that portions of the Contract(s) may have been handed over, put into use and accepted by the principal/owner prior to that time, including any Performance Testing Periods; or
- (ii) with respect to each separable portion of the Contract Works, until the time it is taken over or put into use (whichever is the earlier) by the principal/owner.

The term of cover in respect of the Construction Period, shall be the period commencing with:

- (a) the entering into of each Contract; or
  - (b) the commencement date of the Period of Insurance;
- whichever is the later, until the completion of the Construction Period.

**Contract** means all works, contracts or agreements undertaken by or on behalf of the Insured in connection with the Insured Operations.

**Damage**, for the purposes of Section 1, means physical loss, destruction or damage with the word Damaged having a corresponding meaning.

**Defects Liability Period** means the period described in any Contract during which an Insured is obliged or legally liable to rectify defects, shrinkages, errors, omissions or other faults and/or to complete the maintenance or other obligations under such Contract (the original Defects Liability Period), which may include the granting of a further period, following rectification of defects under the original period. The original Defects Liability Period shall not exceed the Maximum Defects Liability Period stated in the Schedule in respect of any one Contract.

For the purposes of cover in respect of the Defects Liability Period, the term of cover in respect of the Defects Liability Period shall be the duration of the Defects Liability Period in each Contract.

**Defined Peril** means, fire, lightning, explosion, earthquake, aircraft or other aerial devices or articles dropped there from riot, commotion, strikes, locked-out workers, persons taking part in labour disturbances, malicious persons, storm, flood escape of water from any tank apparatus or pipe, impact by any road vehicle or animal, theft, accidental escape of water from any automatic sprinkler installation, subsidence, ground heave or landslide.

**Electronic Data** means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

**Event** means, for the purposes of Section 1, an occurrence or series of occurrences consequent upon or attributable to one source or original cause.

**Indemnity Value** means:

- (a) where the Damage to Insured Property can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to its former state of serviceability, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs. Deductions will not be made for depreciation in respect of parts replaced, but the salvage value of such parts shall be taken into account;
- (b) where the Insured Property is totally destroyed or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the Insurers will pay the market value of the item at the time of the Event. If due to the nature of the Insured Property, it is not possible to readily ascertain a market value, the basis of settlement shall be the replacement cost of the damaged property less due allowance for depreciation taking into consideration the anticipated useful life of the property and the nature of its usage.
- (c) if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with clause i.

**Insured** means:

- (i) the Named Insured;
- (ii) any parent or subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- (iii) any of the following persons or entities for whom or for which the insured parties under clauses i and ii above are obliged to arrange insurance by virtue of a contract or assumption of responsibility, but only to the extent required by such contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy:
  - any principal or owner or agent of the Principal or owner; or joint venture partner or alliance partner;
  - any construction manager or project manager;
  - any contractor or sub-contractor of any tier;
  - any architect, engineer or other consultant for their onsite activities only;
  - any lessor, financier, mortgagee or trustee;
  - any government body;
  - any other party with an insurable interest in the Contract(s);

It shall be noted that the architect, engineer or other consultant referred to in d. above shall not be construed as any other Insured,

- (iv) any director, executive officer, employee, contract staff or partner of any of the insureds under clauses i, ii or iii whilst acting as such;
- (v) any office bearer or member of any social, sporting, safety, security, medical or welfare facility of any of the insureds under clauses or whilst acting as such; and all for their respective rights and interests.

**Insured Property:**

- (i) **Contract Works** means property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Insured Operations. It shall include but not be limited to:
  - (a) the whole of the works, whether permanent or temporary works, structures, materials and supplies including free supplied materials;
  - (b) temporary buildings, camp buildings and all other Project buildings and their contents;
  - (c) formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
  - (d) consumables, drawings and other documents, plant and improvements;

- (e) but excluding Construction Plant and Equipment not specified above.
- (ii) **Existing Structures** being existing structures, plant, contents and real property of every description. Existing Structures are specifically excluded under Section 1 of this Policy unless an amount is specified against this item in the Schedule.
- (iii) Property defined in clauses (i) shall refer to property owned by the Insured or for which they are responsible or have assumed responsibility prior to any Event for which a claim may be made hereunder, or for which the Insured has agreed to insure, or in which the Insured otherwise has an insurable interest.

**Local Time**, which appears in the Schedule means the time at the Named Insured's principal location.

**Major Perils** means earthquake, fire, subterranean fire or volcanic eruption, subsidence, collapse, storm and/or tempest and/or rainwater and/or flood and/or tsunami and/or named cyclone.

**Performance Testing Period** means the period for the testing and/or commissioning of the Contracts Works or any of its component parts and begins when 'live load' is introduced, including the use of feedstock or other materials for processing or other media to simulate working conditions and in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit, or as more particularly described in a Contract, and ends at the completion of testing and commissioning under the Contract, but in no case exceeding the Maximum Performance Testing Period in the Schedule.

If as a result of Damage it becomes necessary to repeat any test, trial or to carry out subsequent test(s) and/or trial(s), the Insurers will bear the cost of any such repeated and/or subsequent test(s) or trial(s).

Performance Testing that exceeds the maximum period stated in the Schedule will only be covered subject to the prior approval of the Insurers.

**Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**Project Value** means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Contract Works and includes the value of principal supplied and other materials (if required to be insured under the Contract).

**Reinstatement Value** means:

- (i) where the Insured Property is lost or destroyed, the replacement thereof by similar property in a condition equal to, but not better nor more extensive than, its condition when new;
- (ii) where the Insured Property is Damaged and can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to a condition substantially the same as, but not better nor more extensive than its condition when new, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs;
- (iii) the work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but subject to the liability of the Insurers not being thereby increased), must be commenced and carried out with reasonable dispatch;
- (iv) where Insured Property has been Damaged and where the Named Insured elects not to reinstate such Insured Property, the Insurers will pay to the Named Insured an amount equal to the cost necessary to replace, repair or rebuild the Insured Property to a condition substantially the same as but not better nor more extensive than its condition at the time the Damage occurred;
- (v) if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with the above provisions (as applicable).

**Tunnelling** shall mean any work involving the excavation of any artificial subterranean passage. This definition shall not apply to open excavation work (e.g. trenches, foundation work pits, cuttings or cut and cover tunnels)

**Underground Services** means existing pipework, cables, conduits, conveying services such as electricity, gas, water, waste and electronic communications, located below the existing ground service.

**Underlying Insurance** means a policy of insurance arranged by or on behalf of an Insured either voluntarily or pursuant to a Contract (which may include a policy(ies) arranged by joint venture partners, principals, contractors, etc) that provides cover to the Insured for a risk, which save for the Underlying Insurance, would be covered by this Policy. Underlying Insurance includes those policies identified in the Schedule.

**Watercraft** means any vessel, craft or thing in excess of 8 metres in length (measured at the waterline) made or intended to float on or travel on or through water.

**Worksite** means any place where any work is performed for and/or in connection with the Insured Operations together with all surrounding areas, including whilst in storage.

#### **Singular/Plural**

In this Policy, where the context admits, words denoting the singular shall include the plural and vice versa.

#### **Headings**

Headings have been included for ease of reference. The terms and conditions of this Policy are not to be construed or interpreted by reference to such headings.

## **Definitions/Interpretations Specific to Section 2**

For the purposes of Section 2, the following Definitions will apply:

**Advertising Injury** means:

- (i) libel, slander or defamation;
- (ii) infringement of copyright or of title or of slogan;
- (iii) piracy or unfair competition or idea misappropriation under an implied contract;
- (iv) invasion of privacy;

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities or any advertising activities conducted on behalf of the Insured, in the course of advertising the Contract, Business, goods or services.

**Employee** means any person under a contract of service or apprenticeship with the Insured.

**Occurrence** means an event including continuous or repeated exposure to conditions that result in Personal Injury, Property Damage or Advertising Injury where such injury or damage is neither expected nor intended from the standpoint of the Insured.

**Personal Injury** includes:

- (i) bodily injury, illness, disease, disability, shock, fright, loss of consortium, loss of amenities, mental anguish or mental injury, including any resultant death;
- (ii) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (iii) the publication or utterance of libel or slander, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
  - (a) when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
  - (b) when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured;
- (iv) nuisance, wrongful entry or wrongful eviction or other invasion of the right to private occupancy;

- (v) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

**Products** means anything after it has left the custody or control of the Insured and upon expiry of the Construction Period, which has been or is deemed by law to have been manufactured, grown, produced, processed, formulated, built and/or constructed, assembled, erected, installed, sold, supplied, imported, exported, distributed, treated, serviced, altered or repaired by the Insured, which includes works performed by the Insured, containers, labels and packing materials, directions, instructions and advice given or omitted to be given in connection with such Products.

**Property Damage** means physical damage to or destruction of tangible property, including the loss of and loss of use of property, whether or not that property has been destroyed or damaged and includes, without limiting the foregoing:

- (i) denial of access to or interference with property, premises, services or facilities;
- (ii) interference with or stoppage of vehicular or pedestrian traffic.

**Vehicle** means any type of machine on wheels or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

**Worker to Worker Liability injury to Contractors** means legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law.

# Attachments

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Attachment 1 GC21 Start-up Workshop

Attachment 2 Performance Evaluation

Attachment 3 Performance Evaluation Record

Attachment 4 GC21 Subcontract





## Attachment 1

# The GC21 Start-up Workshop

The start-up workshop is held to encourage the parties and others concerned with the Contract and the Works to work co-operatively to achieve a successful project. This Attachment 1 is intended as a simple guide for the participants.

The workshop takes place within 28 days of the Date of Contract. The workshop should take half a day, although large or complex projects may require longer.

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## Participants

The workshop includes representatives of the Principal and Contractor together with others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

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## Program

### Opening

The first speaker's tasks should be to focus the participants on goals and on issues such as teamwork, co-operation, achieving a successful project, and the major foreseeable challenges.

### Discussions on co-operation

The parties aim to promote a culture of co-operation which participants in the workshop should understand and be committed to.

The workshop participants may break into small groups to discuss sections of the Contract dealing with co-operation, and how they apply to the Works.

### Communication framework and directory

The workshop participants should reach consensus on a framework to allow participants to co-operate on all aspects of the project. Communication arrangements should be recorded and names and contact information exchanged.

### Concerns and problems

The participants should identify concerns or possible future problems and jointly prepare an action plan for their resolution.

### Opportunities for innovation

The parties aim to encourage innovation. Opportunities may be lost if they are recognised too late. Participants may identify, discuss opportunities and plan for pursuing innovation and present them to the workshop. These ideas may then be developed if feasible and appropriate.

### Evaluation and monitoring process

This process is explained so that participants understand their roles at the regular monitoring meetings. The evaluation and monitoring forms are discussed, and altered if necessary to suit particular needs of the project and Contract. The participants decide when the regular monitoring meetings will occur, and who will attend.

### Conclusion

Before the workshop concludes, all participants should have an opportunity to comment and provide feedback for possible improvements to future workshops and monitoring meetings.



# Performance Evaluation

Refer to clause 6 of the General Conditions of Contract. (This form is provided for guidance only).

Contract title: »  
 Contract number: »  
 Date: »

**Rating system**  
 1 excellent  
 2 above expectation  
 3 meeting expectation  
 4 below expectation  
 5 unsatisfactory

Topic	Objectives	Your rating (this period)	Group rating (this period)
Communication	Open, honest, constructive, timely, efficient and effective communications. <ul style="list-style-type: none"> <li>Quality communications including co-operation between parties, observing the duty not to hinder performance, providing early warning, and evaluation and monitoring.</li> </ul> <i>Refer to Contract clauses 3 - 6</i>	<input type="text"/>	<input type="text"/>
Time	<i>Completion by Contractual Completion Dates</i> <ul style="list-style-type: none"> <li>time management - milestone achievement on or before the due date.</li> <li>extensions of time</li> </ul> <i>Refer to Contract clauses 25,54,69.</i>	<input type="text"/>	<input type="text"/>
Cost	Financial success for all parties by meeting or bettering budget targets <ul style="list-style-type: none"> <li>Cost/Financial management. Including early warning and agreement to <i>Variations</i>, pre-payment, quantity measurement, payments, final payment.</li> </ul> <i>Refer to Contract clauses 52,61-65</i>	<input type="text"/>	<input type="text"/>
Quality	Meets or exceeds specified/agreed requirements <ul style="list-style-type: none"> <li>Quality management. Including quality standards, <i>design</i> requirements, fitness for purpose, innovation, <i>faults</i> and <i>defects</i> rectification, defect free <i>completion</i>, post <i>completion</i>.</li> <li>Encourage continuous improvement and personnel development through planning, innovation, flexibility and common sense.</li> </ul> <i>Refer to Contract clauses 17, 43-46, 48, 50,69, and 71.</i>	<input type="text"/>	<input type="text"/>
Safety	Safe working environment for project team and general public. <ul style="list-style-type: none"> <li>Occupational health, safety and rehabilitation management. Including co-operation between parties, minimising OH&amp;S incidents, evaluation and monitoring</li> </ul> <i>Refer to Contract clause 15 in regard to OHS&amp;R.</i>	<input type="text"/>	<input type="text"/>
Claims and Issue Resolution	<ul style="list-style-type: none"> <li>Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency</li> </ul> <i>Refer to Contract clauses 72-75 in regard to Claims and issue resolution.</i>	<input type="text"/>	<input type="text"/>
Environment	Environmental management. Including planning energy & water conservation, waste management, resource conservation, pollution reduction, protection of environment, healthy work environment <ul style="list-style-type: none"> <li>Pro-active management of impacts and commitments.</li> <li>Minimise environmental incidents</li> </ul> <i>Refer to Contract clauses 18 and 29.</i>	<input type="text"/>	<input type="text"/>
Contract Relations	Co-operative contract relationships including compliance with NSW Government codes of practice and Guidelines; industrial relations management; and subcontractor, supplier and consultant performance, <ul style="list-style-type: none"> <li>Enjoy work and working together.</li> <li>Enhanced reputations of personnel and organisations involved.</li> </ul> <i>Refer to Contract clauses 13-20, 31-34</i>	<input type="text"/>	<input type="text"/>
Community Relations	<ul style="list-style-type: none"> <li>Proactively enhance and maintain good community relations</li> <li>Minimise impacts on the community.</li> <li>Proactive management of commitments to individuals and groups.</li> </ul> <i>Refer to clause 6</i>	<input type="text"/>	<input type="text"/>

Traffic Management	<ul style="list-style-type: none"><li>• Minimise disruption and inconvenience to traffic and provide safe traffic conditions.</li><li>• Safe access to the Site for the project team, subcontractors, suppliers and visitors.</li><li>• Safe access for adjacent residents.</li></ul>	<input type="checkbox"/>	<input type="checkbox"/>
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*The participants should decide on an action plan during the meeting, after discussing project and contract objectives, comments, observations and suggestions for improvement.*

# Performance Evaluation Record

The participants ratings for each topic are recorded here so that the overall performance can be assessed.

Contract title: »

Contract number: »

Date: »

## Rating system

- 1 excellent
- 2 above expectation
- 3 meeting expectation
- 4 below expectation
- 5 unsatisfactory

Objectives		Score	Comments
<b>Communication</b>	Open, honest, constructive, timely, efficient, effective		
<b>Time</b>	Milestone achievement on or before due date		
<b>Cost</b>	Meeting or bettering budget and avoiding cost overruns		
<b>Quality</b>	Meets or exceeds specified/agreed requirements		
<b>Safety</b>	Safe working environment for project team and general public.		
<b>Claim and Issue Resolution</b>	Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency		
<b>Environment</b>	Planning, conservation of resources, protection of environment, healthy work environment. Pro-active management of impacts and commitments. Minimise environmental incidents		
<b>Contract Relations</b>	Co-operative relationships, compliance with NSW Government codes of practice and Guidelines; I.R. management; and Subcontractor, Supplier and Consultant performance, Enjoy work and working together. Enhanced reputations.		
<b>Community</b>	Proactively enhance and maintain good community relations. Minimise impacts on the community. Proactive management of commitments to individuals and groups.		
<b>Traffic Management</b>	Minimise disruption and inconvenience to traffic and provide safe traffic conditions.		
<b>AVERAGE</b>			

Attachment 3 (continued)

# Performance Evaluation Record

The participants' ratings for each topic are recorded here so that the overall performance can be assessed.

**Group**

Contract title: »  
 Contract number: »  
 Date: »

**Rating system**

- 1 excellent
- 2 above
- 3 meeting
- 4 below
- 5 unsatisfactory

		RTA Team					Contractor team					Other										
Group Members						RTA					COMPANY					SUB					Other	Overall
											X											
1	Communication					0					0					0					0	
2	Time					0					0					0					0	
3	Cost					0					0					0					0	
4	Quality					0					0					0					0	
5	Safety					0					0					0					0	
6	Claim and Issue Resolution					0					0					0					0	
7	Environment					0					0					0					0	
8	Contract Relations					0					0					0					0	
9	Community Relations					0					0					0					0	
10	Traffic Management					0					0					0					0	
<b>AVERAGE</b>		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
No	Month																					
1	Jan-03																					
2	Feb-03																					
3	Mar-03																					
4	Apr-03																					
5	May-03																					
6	Jun-03																					
7	Jul-03																					
8	Aug-03																					
9	Sep-03																					
10	Oct-03																					
11	Nov-03																					
12	Dec-03																					

Attachment 4

# GC21 Subcontract

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GC21 Subcontract (with Schedules and Attachments)



