



CATHOLIC ARCHDIOCESE OF MELBOURNE

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THE ROMAN CATHOLIC TRUSTS  
CORPORATION FOR THE DIOCESE OF  
MELBOURNE

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# BUILDING WORKS AGREEMENT

(BASED ON AS4000 - 1997)

**Sample contract: current at August 2010**

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Revision E – August 2010

## Contents

- CD1** Formal Instrument of Agreement
  - CD2** General Conditions of Contract based on AS4000-1997
  - CD3** Annexure Part A and Part B of the General Conditions of Contract
  - CD4** Specification
  - CD5** Drawings
  - CD6** Schedule of Rates (if used)
  - CD7** Provisional Sums (if used)
  - CD8** Form of Statutory Declaration
- 

SAMPLE

Date

## PARTIES

THE ROMAN CATHOLIC TRUSTS CORPORATION FOR THE DIOCESE OF MELBOURNE ("*Principal*")

[CONTRACTOR NAME] of [Contractor Address] ("*Contractor*")

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## BACKGROUND

- A** The *Principal* wishes to engage the *Contractor* to carry out *the Works* in accordance with the requirements of the *Contract*.
- B** The *Principal* and the *Contractor* agree that the *Contractor* shall carry out *the Works* for the *Principal* on the terms of this *Contract*.
- 

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

Terms which are used in this instrument of agreement shall have the meaning given to each such term in the General Conditions of Contract AS4000-1997 (as amended) annexed to this instrument of agreement and marked CD2.

### 2 PERFORMANCE

- (a) The *Contractor* shall carry out *the Works* in accordance with the *Contract*.
- (b) The *Principal* shall pay the *Contractor* the *contract sum* at the times and in the manner provided for in the *Contract*.
- (c) Each of the parties shall perform the obligations imposed on it by the *Contract*.

### 3 CONTRACT DOCUMENTS

The *Contract* comprises the following documents marked as follows:

Document Description	Marking
This Formal Instrument of Agreement	CD1

General Conditions of Contract based on AS4000-1997	CD2
Annexures Part A and Part B of the General Conditions of Contract	CD3
Specifications	CD4
Drawings	CD5
Schedule of Rates (if used)	CD5
Provisional Sums (if used)	CD7
Form of Statutory Declaration	CD8

#### 4 ENTIRE CONTRACT

The documents listed in clause 3 constitute the entire agreement between the parties in respect of *the Works* and the *Contract* supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the *Contract*.

The *Contract* may be varied only by written instrument executed by both parties.

#### 5 PARTIES TO GIVE EFFECT TO THE *CONTRACT*

The parties agree that they shall do everything reasonably necessary to give effect to the *Contract*.

**Executed** as a deed.

Signed for and on behalf of **THE ROMAN** )  
**CATHOLIC TRUSTS CORPORATION FOR** )  
**THE DIOCESE OF MELBOURNE** )  
by..... )  
.....who certifies he/she is )  
the..... )

for **THE ROMAN CATHOLIC TRUSTS** )  
**CORPORATION FOR THE DIOCESE OF** )  
**MELBOURNE** in the presence of: )

.....  
Witness

.....  
Name Witness (print)

**Execution by Contractor**

**THE COMMON SEAL** of )  
..... )  
..... is )  
affixed in the presence of:

.....  
Secretary/Director

.....  
Director

.....  
Name of Secretary/Director (print)

.....  
Name of Director (print)

CD2

**GENERAL CONDITIONS OF CONTRACT**

Australian Standard®

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**General conditions of contract**

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# AS 4000 — 1997

**General conditions of contract**  
**(as amended)**

This Australian Standard was prepared by Committee OB/3 – General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 25 July 1997 and published on 5 August 1997.

The following interests are represented on the Committee OB/3:

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

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#### **Review of Australian Standards**

To keep abreast of progress in industry, Australian Standards are subject to periodic review and are kept up-to-date by the issue of amendments or new editions as necessary. It is important therefore that Standards users ensure that they are in possession of the latest edition, and any amendments thereto.

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Suggestions for improvements to Australian Standards, addressed to the head office of Standards Australia, are welcomed. Notification of any inaccuracy or ambiguity found in an Australian Standard should be made without delay in order that the matter may be investigated and appropriate action taken.

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### **Conditions of Contract**

The Conditions of Contract are based on the standard form AS4000-1997 edition (produced with the permission of Standards Australia).

Although the document is generally based on the AS4000-1997 form, many important amendments, deletions and additions have been made and the parties should examine the document closely. The Principal will make a copy of the Conditions of Contract showing the amendments, deletions and additions to AS4000-1997 in these Conditions of Contract available to the Contractor if requested.

SAMPLE

## Contents

Clause	Title	Page
1	Interpretation and construction of Contract.....	12
2	Nature of Contract.....	17
3	Provisional sums .....	18
3A	Rise and Fall.....	19
3B	Contractor to inform itself.....	19
3C	Contract sum Payment and Adjustment.....	19
4	Separable portions.....	19
5	Security.....	20
6	Not used .....	22
7	Service of notices .....	22
8	Contract documents.....	22
9	Assignment and subcontracting .....	24
10	Intellectual property rights.....	25
11	Legislative requirements.....	26
12	Protection of people and property.....	26
13	Urgent protection .....	27
14	Care of the work and reinstatement of damage.....	27
15	Damage to persons and property other than WUC .....	28
16	Insurance of the Works.....	29
17	Public liability insurance .....	29
18	Insurance of employees .....	30
19	Inspection and provisions of insurance policies .....	30
20	Superintendent .....	32
21	Superintendent's Representative.....	32
22	Contractor's representative.....	32
23	Contractor's employees and subcontractors.....	33
24	Site.....	33
25	Latent conditions.....	36

26	Setting out the Works .....	36
27	Cleaning up .....	37
28	Materials, labour and construction plant .....	37
29	Quality .....	38
30	Examination and testing .....	39
31	Working hours .....	40
32	Programming.....	40
32A	Acceleration .....	42
33	Suspension .....	43
34	Time and progress.....	43
35	Defects liability .....	47
36	Variations.....	48
37	Payment .....	50
38	Payment of workers and subcontractors.....	54
39	Default or insolvency .....	54
39A	Termination by the Principal for convenience.....	58
40	Termination by frustration.....	59
41	Notification of claims.....	59
42	Dispute resolution .....	60
43	Waiver of Conditions .....	61
44	Contractor's warranties .....	61
45	Access to documents .....	61
46	Notices.....	63
47	GST .....	63
48	Environment.....	64
49	Security of Payment Act.....	65
50	Site Management.....	66
51	Quality Assurance .....	67
52	Safety.....	67
53	Working with Children Check (WWCC) .....	67
	Annexure Part A.....	68

Annexure Part B .....74

SAMPLE

SAMPLE

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## 1 Interpretation and construction of Contract

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

<b>Item</b>	means an <i>Item</i> in Annexure Part A;
<b>bill of quantities</b>	means a document named therein as a bill of quantities issued to tenderers by or on behalf of the <i>Principal</i> , stating estimated quantities of <i>work</i> to be carried out;
<b>business day</b>	means a day which is not a Saturday, Sunday or public holiday in Victoria;
<b>certificate of practical completion</b>	has the meaning in subclause 34.6;
<b>compensable cause</b>	means: <ol style="list-style-type: none"> <li>a) any act, default or omission of the <i>Superintendent</i>, the <i>Principal</i> or its consultants, agents or other contractors (not being employed by the <i>Contractor</i>); or</li> <li>b) those causes listed in paragraphs (i), (ii), (iv), (vii) and (viii) of subclause 34.3(c);</li> </ol>
<b>confidential information</b>	means: <ol style="list-style-type: none"> <li>i) the <i>drawings</i> and <i>specifications</i> to the extent that they are not standard industry documents; and</li> <li>ii) information of a confidential character which is given to or obtained or learned by the <i>Contractor</i>, or developed by the <i>Contractor</i> for the purposes of <i>WUC</i>, including information about the <i>Principal's</i> business, operations, customers, products, marketing strategies and future development plans;</li> </ol>
<b>construction program</b>	has the meaning in clause 32;
<b>construction plant</b>	means appliances and things used in the carrying out of <i>WUC</i> but not forming part of the <i>Works</i> ;
<b>Contract</b>	means the agreement between the <i>Principal</i> and the <i>Contractor</i> which comprises the documents listed in clause 3 of the Formal Instrument of Agreement and includes a reference to this Agreement;
<b>contract sum</b>	means: <ol style="list-style-type: none"> <li>a) where the <i>Principal</i> has accepted a lump sum, the lump sum in <i>Item 6A</i>;</li> <li>b) where the <i>Principal</i> accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the priced <i>bill of quantities</i> or <i>schedule of rates</i>; or</li> <li>c) where the <i>Principal</i> accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),</li> </ol> <p>including <u>any</u> <i>provisional sums</i> but excluding any additions or deductions which may be required to be made under the <i>Contract</i>.</p>
<b>Contractor</b>	means the contractor stated in <i>Item 3</i> ;
<b>Contractor's acceleration proposal</b>	has the meaning set out in subclause 32A.1;

<b>date of acceptance of tender</b>	means the date which appears on the written notice of acceptance of the tender or, if there was no tender, the date which appears on the notice in writing by the <i>Principal</i> accepting the <i>Contractor's</i> offer to perform <i>WUC</i> on the terms of the <i>Contract</i> ;
<b>date for practical completion</b>	means: a) where <i>Item 7(a)</i> provides a date for <i>practical completion</i> , the date; b) where <i>Item 7(b)</i> provides a period of time for <i>practical completion</i> , the last day of the period,  but if any <i>EOT</i> for <i>practical completion</i> is directed by the <i>Superintendent</i> or allowed in any litigation, it means the date resulting therefrom;
<b>date of practical completion</b>	means: a) the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or b) where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date;
<b>deed of guarantee and indemnity</b>	has the meaning in subclause 5.6;
<b>defects</b>	means any: a) defect, error, omission, deficiency or other imperfection in <i>the Works</i> ; or b) aspect of <i>the Works</i> which is not in accordance with this <i>Contract</i> ;
<b>defects liability period</b>	has the meaning in clause 35;
<b>dispute</b>	has the meaning in clause 42;
<b>Direction</b>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
<b>Drawings</b>	means the drawings listed in document <b>CD5</b> and any modification of such drawings notified to the <i>Contractor</i> by the <i>Superintendent</i> and includes such other drawings as may from time to time be supplied to the <i>Contractor</i> by the <i>Superintendent</i> or the use of which has been permitted by the <i>Superintendent</i> for the purposes of the <i>Contract</i> ;
<b>Entitlement</b>	means an entitlement to: a) an <i>EOT</i> ; b) a declaration to the effect that time is at large; c) any adjustment to the <i>contract sum</i> or valuation under subclause 36.4, d) recover any loss, cost, damage or expense of any kind arising: i) under the <i>Contract</i> , or ii) out of or in connection with <i>WUC</i> or the performance of <i>the Works</i> (including a quantum meruit);
<b>environment</b>	has the meaning set out in subclause 48(a);

<b>EOT (from ‘extension of time’)</b>	has the meaning in subclause 34.3;
<b>excepted risk</b>	has the meaning in subclause 14.3;
<b>final certificate</b>	has the meaning in subclause 37.4;
<b>final payment</b>	has the meaning in clause 37;
<b>final payment claim</b>	means the final payment claim referred to in subclause 37.4;
<b>Intellectual property right</b>	means any patent, registered design, trademark or name, copyright, Moral Right or other protected right;
<b>Latent condition</b>	has the meaning in subclause 25.1;
<b>Legislative requirement</b>	includes: <ul style="list-style-type: none"> <li>a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where <i>WUC</i> or the particular part thereof is being carried out including the Building Code of Australia;</li> <li>b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of <i>WUC</i>; and</li> <li>c) fees and charges payable in connection with the foregoing;</li> </ul>
<b>Major Subcontractors and Suppliers</b>	means a subcontractor or supplier where the value of the subcontract or supply is equal to or greater than 3% of the <i>contract sum</i> ;
<b>Moral Right</b>	means any right arising under Statute (including Part IX of the Copyright Act 1968) or other law in Australia;
<b>pollution</b>	has the meaning set out in subclause 48(a);
<b>practical completion</b>	is that stage in the carrying out and completion of <i>WUC</i> when: <ul style="list-style-type: none"> <li>a) <i>the Works</i> are complete except for minor defects: <ul style="list-style-type: none"> <li>i) which do not prevent <i>the Works</i> from being reasonably capable of being used for their stated purpose;</li> <li>ii) which the <i>Superintendent</i> determines the <i>Contractor</i> has reasonable grounds for not promptly rectifying; and</li> <li>iii) the rectification of which will not prejudice the convenient use of <i>the Works</i>;</li> </ul> </li> <li>b) those <i>tests</i> which are required by the <i>Contract</i> to be carried out and passed before <i>the Works</i> reach <i>practical completion</i> have been carried out and passed; and</li> <li>c) documents and other information required under the <i>Contract</i> which, in the <i>Superintendent’s</i> opinion, are essential for the use, operation and maintenance of the <i>Works</i> have been supplied; and</li> <li>d) all debris, rubbish, building materials and <i>construction plant</i> have been removed from the <i>site</i> and the <i>site</i> has been cleaned;</li> <li>e) all certificates and approvals required to be given or issued under a <i>legislative requirement</i> before <i>the Works</i> and every part of <i>the Works</i> can be occupied and used for their intended purposes have been issued or given and handed to the <i>Principal</i>;</li> <li>f) the <i>Contractor</i> has provided to the <i>Superintendent</i> a certificate from a licensed surveyor certifying that <i>the Works</i> are located within the</li> </ul>

	boundaries of the <i>site</i> in the place and position required by the terms of the <i>Contract</i> ;
	g) the <i>Contractor</i> has provided to the Superintendent:
	i) “as built” <i>drawings</i> for the <i>Works</i> ;
	ii) all manuals required for the operation of the <i>Works</i> and for the operation of all plant and equipment contained in or forming part of the <i>Works</i> ; and
	iii) all deeds of warranty from subcontractors and suppliers required under subclause 9.6 of the <i>Contract</i> ; and
	h) the <i>Contractor</i> has successfully completed to the satisfaction of the <i>Superintendent</i> , all commissioning required by the <i>Contract</i> ; and
	i) all <i>legislative</i> requirements in relation to access to the <i>site</i> have been completed to the satisfaction of the relevant municipal, public or statutory authority.
<b>prescribed notice</b>	has the meaning in subclause 41.2(b);
<b>Principal</b>	means the Principal stated in <i>Item 1</i> ;
<b>progress certificate</b>	has the meaning in subclause 37.2;
<b>provisional sum</b>	has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;
<b>public liability policy</b>	has the meaning in clause 17;
<b>qualifying cause of delay</b>	has the meaning in subclause 34.3(c);
<b>schedule of rates</b>	means any schedule included in the <i>Contract</i> which, in respect of any section or item of <i>work</i> to be carried out, shows the rate or respective rates of payment for the execution of that <i>work</i> and which may also include lump sums, <i>provisional sums</i> , other sums, quantities and prices;
<b>security</b>	means a Bank Guarantee, which has the meaning given in clause 5.1;
<b>Selected subcontract work</b>	has the meaning in subclause 9.3;
<b>selected subcontractor</b>	has the meaning in subclause 9.3;
<b>separate contractors</b>	has the meaning in subclause 24.2;
<b>separable portion</b>	means a portion of the <i>Works</i> identified as such in the <i>Contract</i> or by the <i>Superintendent</i> pursuant to clause 4;
<b>site</b>	means the land or place described in <i>Item 4A</i> ;
<b>specification</b>	means the documents described in document CD4;
<b>Superintendent</b>	means the person stated in <i>Item 5</i> as the <i>Superintendent</i> or other person from time to time appointed in writing by the <i>Principal</i> to be the <i>Superintendent</i> and notified as such in writing to the <i>Contractor</i> by the <i>Principal</i> and, so far as concerns the functions exercisable by a <i>Superintendent’s Representative</i> , includes a <i>Superintendent’s Representative</i> ;
<b>Superintendent’s Representative</b>	means an individual appointed in writing by the <i>Superintendent</i> under clause 21;
<b>survey mark</b>	in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring <i>WUC</i> ;

<b>temporary works</b>	means <i>work</i> used in carrying out and completing <i>WUC</i> , but not forming part of <i>the Works</i> ;
<b>test</b>	has the meaning in subclause 30.1 and includes examine and measure;
<b>the Works</b>	means the whole of the <i>work</i> to be carried out and completed in accordance with the <i>Contract</i> , including <i>variations</i> provided for by the <i>Contract</i> , which by the <i>Contract</i> is to be handed over to the <i>Principal</i> ;
<b>variation</b>	has the meaning in clause 36;
<b>work</b>	includes the provision of materials;
<b>WUC (from 'work under the Contract')</b>	means the <i>work</i> which the <i>Contractor</i> is or may be required to carry out and complete under the <i>Contract</i> and includes <i>variations</i> , remedial <i>work</i> , <i>construction plant</i> and <i>temporary works</i> , and like words have a corresponding meaning.

Unless expressed to the contrary, in this *Contract*:

- a) words in the singular include the plural and vice versa;
- b) any gender includes the other genders;
- c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- d) "includes" means includes without limitation;
- e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- f) a reference to:
  - i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - v) a right includes a benefit, remedy, discretion or power;
  - vi) time is to local time in the place stated in *Item 2*;
  - vii) "\$" or "dollars" is a reference to Australian currency;
  - viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
  - ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
  - x) this *Contract* includes all schedules and annexures to it; and
  - xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this *Contract*; and

- g) if the date on or by which any act must be done under this document is not a *business day*, the act must be done on or by the next *business day*;

Headings do not affect the interpretation of this document.

This document is governed by and is to be construed in accordance with the laws applicable in the State or Territory in *Item 8*.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that place and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## 2 Nature of Contract

### 2.1 Performance and payment

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

The *Principal* shall pay the *Contractor*:

- a) for *work* for which the *Principal* accepted a lump sum, the lump sum stated in *Item 6A*; and
- b) for *work* for which the *Principal* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Contract* by the rate accepted by the *Principal* for the section or item in the *schedule of rates*,

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

### 2.2 Bill of quantities

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

#### **Alternative 1**

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

#### **Alternative 2**

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

### 2.3 Priced bill of quantities

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

- a) all items included in the *bill of quantities* shall be priced and extended by the *Contractor* and the prices as extended shall on addition equal the sum accepted by the *Principal* for carrying out the whole of the *work* to which the *bill of quantities* relates;
- b) the *Contractor* shall lodge the *bill of quantities* so priced and extended with the *Superintendent* before the expiration of the time for lodgement stated in *Item 10(c)* or such further time as may be directed by the *Superintendent* from time to time;
- c) notwithstanding any other provision of the *Contract*, the *Contractor* shall not be entitled to payment until the *Contractor* has lodged the *bill of quantities* so priced and extended.

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

## 2.4 Quantities

If the *contract sum* is a lump sum:

- (a) a *schedule of rates* shall only be used to calculate the price of *variations* for the purposes of subclause 36.4; and
- (b) *the Contractor* shall have no *entitlement* as a consequence of the actual quantity of an item in the *schedule of rates* being greater or less than the quantity shown in the *schedule of rates*.

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

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

## 3 Provisional sums

A *provisional sum* included in the *Contract* (including those *provisional sums* specified in CD 7, if any) shall not itself be payable by the *Principal* but where pursuant to a *direction* the *work* or item to which the *provisional sum* relates is carried out or supplied by the *Contractor*:

- (a) the *Contractor* shall submit the price for the *work* or item in accordance with clause 36.2 as if the *Superintendent's* *direction* was a *direction* to submit a price for the *work* or item pursuant to clause 36.2; and
- (b) the *Superintendent* may exercise any of the rights in clause 36.2 in respect of the price submitted by the *Contractor*. If the *work* or item is to be carried out or supplied by the *Contractor*, then the *work* or item shall be valued under clause 36.4.

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

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

plus an amount for profit and attendance calculated by using the percentage thereon stated in *Item 12* or elsewhere in the *Contract*, or, if not so stated, as assessed by the *Superintendent*. The *Superintendent* must only include an allowance for profit or attendance for *work* or an item in the price payable to the *Contractor* under this clause 3 if the aggregate total of all *provisional sums* approved by the *Superintendent* at any point in time has exceeded the aggregate total allowed for *provisional sums* under the *Contract*. If the *Superintendent* is required to make such an allowance, the allowance must only be applied to the amount by which the aggregate total of all approved *provisional sums* at any point in time exceeds the total amount allowed for *provisional sums* under the *Contract*.

### 3A Rise and Fall

The *Contractor* acknowledges and agrees that:

- (a) the *Contract Sum* is not subject to any adjustment or invoices in respect of Site allowances or because of fluctuations in changes in the costs of labour and materials or otherwise; and
- (b) the *Contractor* is not entitled to any reimbursement whatever in respect of any payments which the *Contractor* may be obliged to make on behalf of their employees in respect of any superannuation fund, scheme or arrangement for the benefit of workers or otherwise which is in existence at the date of the *Contract* or which comes into existence after the date of the *Contract*.

### 3B Contractor to Inform Itself

Without limiting any other provisions in the *Contract*, the *Contractor* agree that it has:

- (a) informed itself completely of the nature and requirements of the work and materials necessary for the execution of the *Works* and the means of access to and facilities at the *Site* and transport facilities for deliveries to or from the *Site*;
- (b) informed itself as to the availability and cost of labour including, without limitation, the costs of complying with obligations imposed by an agreement between the relevant building industry unions and employers relating to the execution of construction and building work nationally and in the State or Territory in which the *Works* are situated and the materials required;
- (c) satisfied itself as to the correctness and sufficiency of the *Contract Sum* and that the *Contract Sum* covers the cost of complying with all its obligations under the *Contract* and of all matters and things necessary for the due and proper performance and completion of the *Works*, taking account of all exigencies or risks inherent in the performance of the work under the *Contract* or assumed by the *Contractor* under the *Contract*;
- (d) informed itself of all *Legislative Requirements* in relation to the *Works*.

Failure by the *Contractor* to do all or any of the things it is deemed to have done under this Clause 3B will not relieve the *Contractor* of its liability to perform and complete the *WUC* in accordance with its terms and conditions.

### 3C Contract Sum Payment and Adjustment

Subject only to an adjustment required by this *Contract*, the *Contract Sum* is the fixed lump sum price for the *WUC*.

## 4 Separable portions

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

- a) portion of *the Works*;
- b) *date for practical completion*; and

- c) respective amounts for *security*, bonus, liquidated damages and delay damages (which, unless otherwise provided for in the *direction*, will be calculated pro-rata according to the ratio of the *Superintendent's* valuation of the *separable portion* to the *contract sum*).

## 5 Security

### 5.1 Provision

At the date of this Agreement or within but no later than seven (7) days after the date of this Agreement, the Contractor shall provide security to the amount or percentage of the *contract sum* stated in *Item 13* as the amount of security for the due performance of the Contractor's obligations under this Agreement.

Security shall be in the form of an unconditional (including as to time) undertaking or undertakings or certificate or certificates in a form approved by the Principal and given by a financial institution approved by the Principal ("**Bank Guarantees**"):

- (a) The *Contractor* shall provide two Bank Guarantees for fifty percent (50%) of the amount referred to in *Item 13*.
- (b) The Bank Guarantee or Bank Guarantees shall be maintained effective until the issue by the Superintendent of a certificate of Practical Completion.
- (c) Unless and until the *Contractor* has provided the security required by this clause:
  - (i) the *Principal* shall not be required to make the *site* available to the *Contractor*; and
  - (ii) the *Contractor* shall not in any circumstances be entitled to payment from the *Principal* under this Contract.

### 5.2 Recourse

*Security* is provided to ensure the due and proper performance of the *Contract* by the *Contractor*.

The *Principal* may, at any time, have recourse to the *security* or convert *security* that does not consist of money, into money.

If the *Contractor* was not in default of the due and proper performance of the *Contract* at the date of conversion into money, the *Principal* shall:

- a) treat the money converted as if it was retention moneys held under the *Contract*; and
- b) pay interest on the amount converted at the rate appearing in *Item 13(g)* from the date of conversion until the first to occur of the date of repayment or the date that the *Contractor* does default in the due and proper performance of the *Contract*.

#### 5.2A No entitlement to injunction

Except as provided in subclause 5.2, the *Contractor* shall have no other *entitlement* as a consequence of the conversion of the *security* into money.

The *Contractor* acknowledges that:

- a) the *Principal* has a right to convert security which does not consist of money into money at any time;
- b) in the event of such conversion, the amounts payable by the *Principal* under subclause 5.2 are an adequate remedy for the *Contractor*; and
- c) the *Contractor* has no entitlement to obtain an injunction preventing the *Principal* from converting the *security*.

### 5.3 Not Used

### 5.4 Reduction and release

Within 14 days of the issue of a Certificate of Practical Completion, the *Principal* shall return one Bank Guarantee to the value of fifty percent (50%) of the amount referred to in *Item 13* the *Contractor*.

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

The *Principal* shall release to the *Contractor* the balance of the *security* then held by the *Principal*:

- i) if the *final certificate* certifies a nil balance or a balance owing by the *Principal* to the *Contractor*, within 14 days after the issue of the *final certificate*; or
- ii) if the *final certificate* certifies a balance owing by the *Contractor* to the *Principal*, within 14 days of the payment by the *Contractor* to the *Principal* of all amounts owing by the *Contractor* to the *Principal* under the *Contract*.

If the *Contractor* has provided additional *security* pursuant to subclause 37.3, the *Principal* shall release that additional *security* within 14 days of the incorporation into *the Works* of the unfixed plant or materials in respect of which the additional *security* was furnished.

### 5.5 Not Used

### 5.6 Deed of guarantee, undertaking and substitution

Where the *Contractor* is a corporation, the *Contractor* shall lodge with the *Principal* within 14 days of a request by the *Principal* to do so, a *deed of guarantee and indemnity*, duly executed by both the *Contractor* and a related entity to the *Contractor* the identity of which is satisfactory to the *Principal*.

The *Contractor* shall supply to the *Principal* such financial or other information as the *Principal* may require to satisfy the *Principal* that the related entity is an appropriate body or person with sufficient means to satisfy the guarantee and indemnity.

For the purpose of subclause 5.6, the terms 'corporation' and 'related entity' have the meanings given to them in the Corporations Act as amended from time to time.

### 5.7 Retention of security

Even if the *Principal* is otherwise required to release *security*, the *Principal* has a right to retain from the *security* an amount sufficient to cover any outstanding claim alleged by the *Principal* against the *Contractor* under or

in connection with the Contract (whether or not that claim has at that time been liquidated).

**6**      **Not used**

**7**      **Service of notices**

Any notice, consent or demand required or authorised to be given in connection with this *Contract* which is required to be given in writing shall be:

- a) delivered by hand to the address of the addressee set out in the Annexure Part A or as subsequently notified in writing to the other party, in which case it shall be deemed to have been given upon delivery;
- b) sent by postage pre-paid to that address, in which case it shall be deemed to have been given on the third *business day* after posting; or
- c) sent by facsimile to the facsimile number of the addressee set out in the Annexure Part A or subsequently notified to the other party in which case if at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages in the notice have been successfully transmitted it shall be deemed to have been given:
  - i) if transmission was successfully completed before 4.00 pm on a *business day*, on the day it was sent; and
  - ii) otherwise on the next *business day*.

**8**      **Contract documents**

**8.1**    **Rules of construction**

When construing the documents which form the *Contract* the following rules of construction apply:

- a) in the event of any inconsistency between the documents which form the *Contract*, the documents comprising the *Contract* shall be construed in the order of precedence they are listed in the Formal Instrument of Agreement;
- b) notwithstanding the previous subparagraph (a):
  - i) where inconsistent levels of quality are required, the higher level of quality shall apply;
  - ii) figured dimensions shall take precedence over scaled dimensions; and
  - iii) *drawings* made to larger scales shall take precedence over *drawings* made to smaller scales;
- c) where the requirements of quality or any aspect of *WUC* are not expressly specified or depicted, the quality shall be consistent with the intended purpose of *the Works*; and
- d) *drawings* showing particular parts of *WUC* shall take precedence over *drawings* for more general purposes.

Where the *Contractor* considers that there is an ambiguity or discrepancy between the documents comprising the *Contract*, it shall promptly advise the *Superintendent* in writing, who shall give the *Contractor* a *direction* as to the interpretation to be followed.

The *Contractor* shall have no *entitlement* as a consequence of a *direction* given by the *Superintendent* under this subclause which is consistent with the rules of construction in this subclause.

## 8.2 Principal-supplied documents

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

They shall:

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

## 8.3 Contractor-supplied documents

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

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

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

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

## 8.4 Availability

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

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

## 8.5 Confidential information

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

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after *final certificate* or earlier termination of the *Contract*. If so required by the

*Contractor*, the *Principal* shall ensure that the *Superintendent* also enters into such an agreement.

#### **\*8.6 Media**

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

## **9 Assignment and subcontracting**

### **9.1 Assignment**

The *Contractor* shall not, without the prior written approval of the *Principal* and except on such terms and conditions as are determined in writing by the *Principal*, assign the *Contract* or any payment or any other right or benefit or interest under the *Contract*. Any cost incurred by the *Principal* in relation to an assignment by the *Contractor* shall be a debt due and owing by the *Contractor* to the *Principal*.

The *Principal* may assign the *Contract* or a payment or other right or benefit or interest under the *Contract* without the approval of the *Contractor*.

### **9.2 Subcontracting generally**

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

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

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

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

Approval may be conditional upon the subcontract including:

- a) provision that the subcontractor shall not assign nor subcontract without the *Contractor's* written consent; and
- b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*; and
- c) a requirement that the subcontractor executes a deed of in favour of the *Principal*.

### **9.3 Selected subcontract work**

If the *Principal* has included in the invitation to tender a list of one or more *selected subcontractors* for particular *work*, the *Contractor* shall

subcontract that *work* to a *selected subcontractor* and thereupon give the *Superintendent* written notice of that *selected subcontractor's* name.

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

#### **9.4 Novation**

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

#### **9.5 Contractor's responsibility**

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

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

#### **9.6 Subcontractor warranties**

The *Contractor* shall procure a warranty from all subcontractors and suppliers listed in the *specification* (or whose trades or areas of work are listed) and for the periods set out in the *specification*.

The warranty shall be a deed in a form to be approved by the *Principal* in its absolute discretion. Where such warranty is not procurable from a subcontractor or supplier, the *Contractor* shall itself provide an equivalent warranty. The *Contractor* shall hand over to the *Principal* all such warranties prior to and as a condition precedent to *practical completion*.

#### **9.7 Product warranties**

The *Contractor* shall procure and deliver to the *Principal* prior to *practical completion* a warranty executed as a deed for the benefit of the *Principal* in the form of a deed (which form shall be approved by the *Principal* in its absolute discretion) from each *subcontractor*, manufacturer or supplier providing the work material or goods forming part of the works described in the *specification* and for the warranty period stipulated in the *specification* in respect of that work, material or goods.

## **10 Intellectual property rights**

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

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

Each party shall indemnify the other against such respective infringements.

## 11 Legislative requirements

### 11.1 Compliance

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 19(a)* or directed by the *Superintendent* to be satisfied by or on behalf of the *Principal*.

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

### 11.2 Changes

If a *legislative requirement*:

- a) necessitates a change:
  - i) to the *Works*;
  - ii) to so much of *WUC* as is identified in *Item 19(b)*;
  - iii) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - iv) in a fee or charge or payment of a new fee or charge;
- b) comes into effect after the 14th day before the closing of tenders but could not reasonably then have been anticipated by a competent *Contractor*; and
- c) causes the *Contractor* to incur more or less cost than otherwise would have been incurred,

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

## 12 Protection of people and property

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

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

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

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

## 13 Urgent protection

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

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

## 14 Care of the work and reinstatement of damage

### 14.1 Care of WUC

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

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

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

### 14.2 Reinstatement

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

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

### 14.3 Excepted risks

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

- a) any negligent act or omission of the *Superintendent*, the *Principal* or its consultants, agents, employees or other contractors (not being employed by the *Contractor*);
- b) any risk specifically excepted elsewhere in the *Contract*;
- c) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or

- military or usurped power, martial law or confiscation by order of any Government or public authority;
- d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the *Contractor* or its subcontractors or either's employees or agents;
- e) use or occupation of any part of *WUC* by the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); and
- f) defects in the design of *WUC*, other than design provided by the *Contractor*.

## 15 Damage to persons and property other than *WUC*

### 15.1 Indemnity by Contractor

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

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

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

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

This subclause shall not apply to:

- i) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- ii) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- iii) things for the care of which the *Contractor* is responsible under subclause 14.1;
- iv) damage which is the unavoidable result of the construction of the *Works* in accordance with the *Contract*; and
- v) claims in respect of the *Principal's* right to have *WUC* carried out.

### 15.2 Indemnity by Principal

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

## 16 Insurance of the Works

### *Principal to insure*

The *Principal* has in the name of the *Principal*, the *Contractor*, all sub-contractors and any *separate contractors* (all of whom are referred to in this Clause as "the Insured"), effected insurance on agreed terms and conditions including exclusions and excesses (if any) as referred to in **Clause 19.7** or failing such agreement as shall be reasonably required by the *Principal* under a contract works insurance policy or policies which shall at all times cover the whole of *the Works* including any associated temporary works and including material incorporated or to be incorporated therein the property of the Insured or for which they are responsible and whilst on or adjacent to the *Site of the Works*, in storage off-site and in transit within Australia to or from the *Site*, all of which are in this clause 16 only called "*the Works*", in respect of loss, destruction or damage of or to the property insured for the full reinstatement and replacement cost. Within 14 days of a request by the *Contractor*, the *Principal* shall provide a copy of the insurance effected under this clause 16.

The sum insured shall take into account but not be limited to:

- (a) the full amount of the *contract sum*;
- (b) an amount of not less than that stated in *Item 20(b)* to provide for additional costs of demolition and of removal of debris;
- (c) the percentage stated in *Item 20(c)* for consultant's fees;
- (d) the value stated in *Item 20(d)* of any materials or things to be supplied by the *Principal* for the purposes of *the Works*; and
- (e) the additional amount or percentage (if any) stated in *Item 20(e)* of the total of the items referred to in sub-paragraphs (i) to (iv) of this paragraph inclusive to provide for escalation costs (including such costs as may be incurred during any period of reinstatement and/or replacement) during the period up to *practical completion* of the *Works*.

## 17 Public liability insurance

### *Contractor to insure*

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

The policy shall:

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

of the parties, the *Superintendent*, all subcontractors and any *separate contractors* from time to time, whenever engaged in *WUC*;

- c) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 21(b)*; and
- f) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

## 18 Insurance of employees

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

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

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

## 19 Inspection and provisions of insurance policies

### 19.1 Proof of insurance

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

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

### 19.2 Failure to produce proof of insurance

If after being so requested, a party fails promptly to provide satisfactory evidence of compliance with clause 16, 17 or 18, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Contractor*, the *Principal* may refuse payment until such evidence is produced by the *Contractor*.

### 19.3 Notices from or to insurer

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

- a) requires the insurer to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;
- b) provides that a notice of claim given to the insurer by either party, the *Superintendent* or a subcontractor shall be accepted by the insurer

as a notice of claim given by both parties, the *Superintendent* and the subcontractor; and

- c) requires the insurer, whenever the party fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

#### **19.4 Notices of potential claims**

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

#### **19.5 Settlement of claims**

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

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

#### **19.6 Cross liability**

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

#### **19.7 Excesses and Exclusions**

The policy for the insurance referred to in clause 16 is subject to the exclusions, conditions and excesses (if any) noted in the policy. Such excesses (if any) are as set out and referred to in *Item 20(f)*.

The policy for the insurance required to be effected by the *Contractor* under clause 17 must not have an excess greater than the excess stated in *Item 21(c)*.

The *Contractor* must pay all excesses payable under each insurance policy required under this *Contract* except where the event giving rise to the insurance claim is caused by an act or omission of the *Principal*.

The *Contractor* shall be at liberty but at the *Contractor's* own cost to take out and maintain any additional insurances as the *Contractor* may desire so as to be covered in respect of any such exclusions, conditions or excesses.

## 20 Superintendent

The *Principal* shall ensure that at all times there is a *Superintendent* and that:

a) when exercising the role of certifier, assessor or valuer in assessing the price under subclause 29.4 for a *variation*, granting extensions of time under subclause 34.5, assessing delay costs under subclause 34.9, valuing variations under subclause 36.4, certifying progress payments under subclause 37.2, certifying *practical completion* under subclause 34.6, certifying the *final certificate* under subclause 37.4, and certifying costs under subclause 39.6 when work is taken out of the hands of the *Contractor*, the *Superintendent* –

i) acts honestly;

ii) arrives at a reasonable measure or value of work, quantities or time,

but this shall not prevent or place any restriction upon the *Superintendent* discussing with or receiving submissions or representations from either the *Principal* or the *Contractor* about certification, assessment, or valuation before or after it is made, nor place the *Superintendent* under any obligation to seek any response from a party to, or otherwise raise with that party, any such discussion with or submission or representation received from the other party; and

b) acts within the time prescribed under the *Contract*, or where no time is prescribed, within a reasonable time.

## 21 Superintendent's Representative

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

a) no aspect of any function shall at any one time be the subject of delegation to more than one *Superintendent's* Representative;

b) delegation shall not prevent the *Superintendent* exercising any function;

c) the *Superintendent* forthwith gives the *Contractor* written notice of respectively:

i) the appointment, including the *Superintendent's Representative's* name and delegated functions; and

ii) the termination of each appointment; and

d) if the *Contractor* makes a reasonable objection to the appointment of a *Superintendent's Representative*, the *Superintendent* shall terminate the appointment.

## 22 Contractor's representative

The *Contractor* shall superintend *WUC* personally or by a competent representative. Matters within a *Contractor's* representative's knowledge

(including *directions* received) shall be deemed to be within the *Contractor's* knowledge.

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

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

A *Contractor's* representative identified in the written notice must be on *site* and at all other places where *WUC* is being carried out at all times while *WUC* is being carried out.

## 23 Contractor's employees and subcontractors

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

## 24 Site

### 24.1 Possession

Provided the *Contractor* has complied with subclause 19.1, the *Principal* shall before the expiry of the time in *Item 22*, give the *Contractor* possession of sufficient of the *site* for commencement of *WUC* on *site*. If the *Principal* has not given the *Contractor* possession of the whole *site*, the *Principal* shall give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract* but may justify an *EOT*. The *Contractor* is not entitled to exclusive access to or exclusive possession of the *site*.

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

### 24.2 Access for Principal and others

The *Principal* and the *Principal's* employees, consultants and agents may at any time after reasonable written notice to the *Contractor*, have access to any part of the *site* for any purpose.

The *Principal* may arrange for or allow other contractors ("separate contractors") to work upon the *site* to perform concurrently with the execution by the *Contractor* of the Works any:

- a) work other than work which pursuant to this *Contract* is to be performed by the *Contractor*;
- b) work which has been omitted from *WUC* by variation under clause 36; or
- c) works required by the *Principal* in relation to the occupation or operation of the Works, including the fitout and the delivery,

installation, connection and commissioning of any furniture, fixtures and equipment.

The *Superintendent* shall notify the *Contractor* in writing of the identity of separate contractors.

The *Contractor* shall co-operate with separate contractors for the co-ordination of their *work* with *the Works* as a whole and the *Contractor* shall use its best endeavours to co-ordinate the execution of *work* by separate contractors. In particular, the *Contractor* shall make available and co-ordinate with such separate contractors:

- d) to the extent that they are available on *site* and not reasonably required by the *Contractor* for its own use:
  - i) access to lifts for workers and materials;
  - ii) services connections and interfaces; and
  - iii) use of construction amenities; and
- e) the protection of materials and works completed by such separate contractors.

The *Contractor* shall be responsible for any damage to *the Works* caused by any act or default of separate contractors to the extent that such an act or default is caused or contributed to by the *Contractor's* failure to comply with the provisions of this subclause.

The *Principal* shall ensure that none of the persons referred to in this clause 24.2 impedes the *Contractor*.

#### **24.3 Minerals, fossils and relics**

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

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

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

#### **24.4 Work on or to adjoining properties**

Where the nature of *the Works* requires that the *Contractor* execute *work* over, on, to, under or near an adjoining site or property, then:

- a) the *Principal* shall, at its own cost, obtain the written consent of the adjoining owner, which may be subject to conditions as to working space, period of time, hours of work. or otherwise;
- b) the *Contractor* shall comply with all conditions attaching to such consent and in any event shall make good at its own cost and with the least possible delay, or at the option of the adjoining owner, meet the cost of making good, any damage to adjoining properties arising out of its operations; and
- c) the *Contractor* shall at its own cost, procure all consents from any municipal, public or statutory authority that may be necessary to execute any work over, on, to or near an adjoining site or property.

## 24.5 Site part of existing operation of the Principal

The *Contractor* acknowledges that, while *WUC* is being performed:

- a) the *Principal* may continue to conduct its business from the *site*;
- b) the *Contractor* shall have no right of exclusive occupation of any part of the *site* and shall access the *site* only in accordance with the *directions* of the *Superintendent*;
- c) members of the public, clients, tenants, employees and agents of the *Principal* shall have access to the *site* to conduct business with the *Principal*;
- d) the *Contractor* shall:
  - i) perform *WUC* in such a manner as to interfere to the least extent possible with the conduct of the business of the *Principal* and of any tenants or invitees of the *Principal* on the *site*;
  - ii) only access the *site* during the hours and on the days provided for in the *Contract*;
  - iii) take all steps necessary to protect the safety of the *Principal*, tenants employees, agents and invitees of the *Principal* and of members of the public from risks to safety caused by the performance of *WUC*;
  - iv) complete such safety or other training or induction as the *Superintendent* from time to time directs;
  - v) comply with all procedures, policies and rules adopted from time to time by the *Principal* in connection with the *site*;
  - vi) keep itself informed as to the requirements of, comply with and not do anything which may place the *Principal* in breach of laws and legal requirements applying to the *site* and the operation of the *Principal*'s business or the business of any tenant;
  - vii) erect appropriate signage for the benefit of employees, agents and invitees of the *Principal* and members of the public at the *site* to enable them to find their way around the *site*;
  - viii) keep the *site* clean and tidy at all times;
  - ix) keep the *Superintendent* and the *Principal* informed as frequently as possible and at least on a daily basis of the operations of the *Contractor* which may affect the conduct of the business of the *Principal* or any tenant of the *Principal* at the *site*; and
  - x) consult and co-operate with the *Superintendent*, the *Principal* and any tenant of the *Principal* and attend meetings as required by the *Superintendent* in relation to the interface between the business operations of the *Principal* and its tenants and the performance of *WUC*.

The *Contractor* shall not have any *entitlement* as a consequence of the *Principal* and its tenants conducting its business from the *site*. Any costs, losses and damages incurred by the *Contractor* as a consequence of the *Principal* conducting its business on the *site* are deemed to be included in the *contract sum*.

## 25 Latent conditions

### 25.1 Scope

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

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

### 25.2 Notification

If during the execution of *WUC*, the *Contractor* becomes aware of a *latent condition*, the *Contractor* shall, if possible before the *latent condition* is disturbed and in any event within 7 days of the discovery of the *latent condition*, give the *Superintendent* a written notice which contains the following information:

- a) the *latent condition* encountered and the respects in which it differs materially;
- b) the additional *work*, resources, time and cost which the *Contractor* estimates to be necessary to deal with the *latent condition*; and
- c) other details reasonably required by the *Superintendent*.

### 25.3 Deemed variation

The *Contractor* shall have no *entitlement* as a consequence of a *latent condition* in relation to which the *Contractor* has not given the *Principal* written notice strictly in accordance with subclause 25.2. If the *Contractor* has given the *Principal* a written notice strictly in accordance with subclause 25.2, the *work* associated with the *latent condition* shall be priced under subclause 36.4 and may be the subject of an *EOT* under clause 34.

## 26 Setting out the Works

### 26.1 Setting out

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

### 26.2 Errors in setting out

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

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

### 26.3 Care of survey marks

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

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

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

## 27 Cleaning up

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

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

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

If:

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

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

## 28 Materials, labour and construction plant

Except where the *Contract* otherwise provides, the *Contractor* shall, **at its own expense**, supply everything **reasonably necessary or which may be reasonably inferred from the *Contract*** for the proper performance of the *Contractor's* obligations and discharge of the *Contractor's* liabilities.

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

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

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

## 29 Quality

### 29.1 Quality of material and work

Unless otherwise provided the *Contractor* shall use suitable new materials and proper and tradesmanlike workmanship. Such materials shall be of merchantable quality.

### \*29.2 Quality assurance

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

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

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

### 29.3 Defective work

If the *Superintendent* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Superintendent* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Superintendent* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

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

If:

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

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

### 29.4 Acceptance of defective material or work

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

The price for the *variation* shall be a decrease in the *contract sum* of the greater of the following as assessed by the *Superintendent*:

- a) the cost of remedying the material or *work* valued under subclause 36.4; or
- b) the resulting decrease in the value to the *Principal of the Works* and any other loss which the *Principal* is likely to suffer, including the likely increase in operational and maintenance costs which may be incurred by the *Principal* if it accepts the material or *work*.

### 29.5 Timing

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

## 30 Examination and testing

### 30.1 Tests

At any time before the expiry of the last *defects liability period*, the *Superintendent* may direct that any *WUC* be tested. The *Contractor* shall give such assistance and samples and make accessible such parts of *WUC* as may be directed by the *Superintendent*.

### 30.2 Covering up

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

### 30.3 Who conducts

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

### 30.4 Notice

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

### 30.5 Delay

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

### 30.6 Completion and results

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

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

### 30.7 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Principal* except where the *Contract* otherwise provides or the *test* is

consequent upon, or reveals a failure of the *Contractor* to comply with the *Contract* (including this clause).

## 31 Working hours

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

## 32 Programming

### 32.1 Construction program

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

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

The *Superintendent* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out. If the *Contractor* can reasonably comply with the *direction*, the *Contractor* shall do so. If the *Contractor* cannot reasonably comply, the *Contractor* shall give the *Superintendent* written notice of the reasons **which notice must be given within 7 days of the direction**.

Within 14 days of the date of this *Contract*, the *Contractor* shall submit to the *Superintendent* a *construction program* comprising at least a time scaled bar-chart (the "*bar-chart*") detailing the dates by which, or times within which, the various stages or portions of *WUC* are to be carried out or completed and the method proposed for completion of the *WUC*.

The *bar-chart* shall clearly show for each item of work, or activity, its planned start and finish date. The *bar-chart* shall contain such information as may be requested by the *Superintendent* from time to time including but not limited to:

- (a) a critical path which shall indicate the sequence of activities which constitute the critical path. This should be clearly indicated on the *bar-chart*;
- (b) break-up of the *WUC* to enable the *Superintendent* to accurately monitor progress of the *WUC* both on and off the *Site*;
- (c) all activities necessary for the constructions of the *WUC*;
- (d) the time for provision of prototypes and samples;
- (e) the times for commissioning, final inspections, verification works and handovers;

- (f) off-site activities including prefabrication and equipment orders; and
- (g) the *Date for Practical Completion*.

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

Any construction program prepared or provided by the *Contractor* shall not be used as a *construction program* for the purposes of this clause unless it has been approved by the *Superintendent*.

### 32.2 Directions in relation to construction program

Any comment by the *Superintendent* in relation to a *construction program* or draft construction program shall not be construed as a *direction* to accelerate.

The power of the *Superintendent* to require the *Contractor* to provide a *construction program* includes a power to direct:

- a) the *Contractor* to provide an updated *construction program* where there has been a change in the *date for practical completion* or where there have occurred any circumstances which have affected the progress of *WUC*; and
- b) what form the *construction program* shall take, what information shall be contained in it and the level of detail required of that information.

The *Superintendent* may direct the *Contractor* to furnish the *Superintendent* with 'as built' construction programs (in the same form as the *construction program*) with each progress payment or at such other time as the *Superintendent* may require which show the 'as built' progress of *WUC* in sufficient detail to enable a comparison to be made between the 'as-built' progress of *WUC* and the progress of *work* contemplated under the *construction program*.

The power of the *Superintendent* to direct at what time the various stages or portions of *WUC* shall be carried out includes a power to direct the *Contractor* to accelerate the progress of *WUC* and to bring forward the *date for practical completion* by a reasonable period.

Notwithstanding the provisions of this clause 32.2 and review or approval by the *Superintendent* of any documents submitted to the *Superintendent*, the *Contractor* is and shall remain responsible for all construction methods, means, techniques, sequences and procedures employed in and about the excavation of the *WUC*.

### 32.3 Entitlement in relation to construction program

The *Contractor* shall not have any *entitlement* in relation to any acceleration of *WUC* or a change to the order or timing of *WUC* unless:

- a) either:
  - i) the *Contractor* has received from the *Superintendent* a *direction* to accelerate under clause 32 and within 7 days after receipt by the *Contractor* of the *direction* and before the *Contractor* gives effect to the *direction*, the *Contractor* has notified the *Superintendent* in writing that the *direction* shall result in the *Contractor* incurring more cost (together with an estimate of that cost); or
  - ii) the *Superintendent* has accepted the *Contractor's Acceleration Proposal* in accordance with subclause 32A.3(a); and
- b) the *Contractor* has achieved the acceleration or change required by the *direction*; and
- c) the need to accelerate *WUC* out any part of it or to change the order or time in which *WUC* is performed does not result from any negligent act, breach, omission or default by the *Contractor* (including a requirement that the *Contractor* perform *WUC* in accordance with the provisions of the *Contract*).

### 32A Acceleration

32A.1 The *Superintendent* may at any time *direct* the *Contractor* in writing to provide the *Superintendent* with the following information in relation to the proposed acceleration of *WUC* ("*Contractor's Acceleration Proposal*"):

- a) details of the additional labour and *construction plant* which the *Contractor* considers shall be required to comply with the proposed acceleration;
- b) an estimate of the hours of work which shall be required to be performed by the *Contractor* outside the working hours or the working days defined in the *Contract* and the *construction program* to enable the *Contractor* to achieve the proposed acceleration;
- c) details of additional supervision which the *Contractor* shall be required to provide to achieve the proposed acceleration;
- d) the *Contractor's* extra costs and expenses which it may reasonably incur in achieving the proposed acceleration; and
- e) a draft revised *construction program* showing the proposed revised *date for practical completion* which shall be implemented to achieve the proposed acceleration.

32A.2 The *Contractor* shall provide the *Superintendent* with the *Contractor's Acceleration Proposal* within 7 days of receipt of the *direction* given under subclause 32A.1:

32A.3 On receipt of the *Contractor's Acceleration Proposal*, the *Superintendent* may do any one of the following:

- a) advise the *Contractor* by notice in writing which expressly refers to the *Contractor's Acceleration Proposal* that the *Principal* accepts the *Contractor's Acceleration Proposal* in which case the *date for practical completion* shall be revised to the date contained in the *Contractor's Acceleration Proposal* and the *contract sum* shall be adjusted by the amount accepted by the *Principal* in the *Contractor's Acceleration Proposal*; or

- b) reject the *Contractor's Acceleration Proposal*; or
- c) give the *Contractor* a *direction* under clause 32 to accelerate *WUC* in which case the provisions of clause 32 shall apply to that *direction*.

## 33 Suspension

### 33.1 Superintendent's suspension

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

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

### 33.2 Contractor's suspension

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

### 33.3 Recommencement

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

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

### 33.4 Cost

If the *Contractor* incurs more or less cost than it would have incurred if a suspension had not occurred then the difference shall be assessed by the *Superintendent* and added to or deducted from the *contract sum* EXCEPT that, where the reason for the suspension was caused or contributed to by an act, default, or omission of the *Contractor* or an employee, subcontractor or agent of the *Contractor*, no amount shall be added to the *contract sum*.

## 34 Time and progress

### 34.1 Progress

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

### 34.2 Superintendent may extend

The *Superintendent* may, at any time, from time to time and for any reason, by notice in writing to the *Contractor*, direct an *EOT*. The *Superintendent* is under no obligation to exercise this discretion fairly, reasonably or for the benefit of the *Contractor*, including where the *Contractor* is delayed by any cause listed in subclause 34.3(d) but has failed to satisfy the requirements of subclause 34.3(b).

### 34.3 Claim

- a) Notwithstanding subclause 34.2, the *Contractor* shall be entitled to an extension to the time for *practical completion* only when:
  - i) it can demonstrate that it has been delayed in reaching *practical completion* by the *date for practical completion* by a *qualifying cause of delay*;
  - ii) the *Contractor* can demonstrate that the *qualifying cause of delay* has delayed activities on the critical path in the most recent approved *construction program*; and
  - iii) it has given all the notices strictly in accordance with the requirements of this subclause 34.3;
- b) The *Contractor* shall not be entitled to an *EOT* for a particular delay unless it has satisfied the requirements of subclause 34.3(a) in relation to that delay.
- c) Subject to subclauses 34.3(d) and 34.3(e) the *qualifying causes of delay* are:
  - i) an act of public enemy or a declaration of war;
  - ii) an earthquake, fire or other catastrophic event by natural causes;
  - iii) an industrial dispute which is not restricted to sites under the control of the *Contractor*;
  - iv) a civil commotion or riot which prevents *the Works* from being performed;
  - v) a *direction* for a *variation* where either a *direction* has been given by the *Superintendent* under subclause 36.1A(a) or a notice has been given by the *Contractor* strictly in accordance with subclause 36.1A(b);
  - vi) delays by municipal, public or statutory authority which a competent and experienced contractor could not reasonably have anticipated at the time of tender;
  - vii) an order of a court which restrains the *Contractor* from or disrupts the *Contractor* in carrying out *the Works* (except where the order arises as a consequence of a breach of a duty owed at law by the *Contractor* to any person);
  - viii) proceedings being taken by adjacent or neighbouring owners or occupiers;
  - ix) any act or omission of the *Superintendent*, the *Principal* or any employee, consultant or agent of the *Superintendent* or the *Principal* which is not in breach of the *Contract*;

- x) any act or omission of the *Superintendent*, the *Principal* or any employee, consultant or agent of the *Superintendent* or the *Principal* which is in breach of the *Contract*;
  - xi) subject to subclause 24.5, any act or omission of a separate contractor;
  - xii) inclement weather; or
  - xiii) any other cause which is expressly stated in the *Contract* to justify an *EOT*.
- d) The causes referred to in subclause 34.3(c) shall only be a *qualifying cause of delay* when:
- i) the cause was beyond the reasonable control of the Contractor;
  - ii) the *Contractor* did not contribute to the cause; and
  - iii) the *Contractor* has taken all reasonable steps to mitigate the effect of the delay.
- e) Within 7 days of it becoming evident to the *Contractor* that it has been or might be delayed in reaching *practical completion*, the *Contractor* shall give the *Superintendent* notice in writing which contains full details of the cause of the delay, the date the delay might commence (or, if the delay has already commenced, the date the delay commenced), the estimated period of the delay and whether the *Contractor* shall be making a claim for an *EOT* in relation to that delay.
- f) Where the *Contractor* wishes to make a claim for an *EOT* and it is delayed by one cause for a period of 10 days or more then the *Contractor* shall give the *Superintendent* the following written notices:
- i) every 14 days from the commencement of the delay, a notice which contains full details of all the facts and matters on which the claim is based, including the date the delay commenced, the cause of the delay, the period of the delay already suffered and the estimated period of the delay; and
  - ii) within 7 days of the date that the delay ceases, a notice which contains details of the notices already provided by the *Contractor* in relation to that delay (by identifying number or date), and full details of all the facts and matters on which the claim is based, including the cause of the delay, the date that the delay commenced, the date that the delay ceased and the claimed period of the *EOT*.
- g) Where the *Contractor* wishes to make a claim for an *EOT* for a delay which is for a period of less than 10 days, then within 14 days of the commencement of the delay the *Contractor* shall give the *Superintendent* a written notice which contains full details of all the facts and matters on which the claim is based including details of the cause of the delay, the date the delay commenced, the date that the delay ceased and the claimed period of the *EOT*.
- h) A delay by the *Principal* or the failure of the *Superintendent* to grant a reasonable *EOT* shall not cause the *date for practical completion* to be set at large but nothing in this subclause shall prejudice the right of the *Contractor* to damages.

#### 34.4 Assessment

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

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

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

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

#### 34.5 Extension of time

Within 28 days after receiving the *Contractor's* claim for an *EOT* in respect of which the *Contractor* has an entitlement under subclause 34.3, the *Superintendent* shall give to the *Contractor* and the *Principal* a written *direction* evidencing the *EOT* so assessed.

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

#### 34.6 Practical completion

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

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

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

#### 34.7 Liquidated damages

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

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

The *Contractor* acknowledges that the liquidated damages provided for in this clause are a genuine pre-estimate of the *Principal's* loss and not a penalty.

If *Item 24* is completed by words which indicate that liquidated damages shall not apply to this *Contract* (whether by the use of the words "nil", "not applicable" or otherwise), the *Contractor* shall indemnify the *Principal* from any loss, damage, cost

or expense suffered or incurred by the *Principal* by reason of the *Contractor's* delay in the execution of *WUC* including the *Contractor's* failure to bring the *Works* to *practical completion* by the *date for practical completion*.

### 34.8 [Not Used]

### 34.9 Delay disruption costs

The entitlement of the *Contractor* to recovery of damages or reimbursement of costs and expenses incurred by the *Contractor* as a result of delay in the progress of the *Works* shall be subject to compliance with all of the following conditions:

- (a) an *EOT* has been granted for a *compensable cause*;
- (b) the *Contractor* has taken all practicable steps to keep any such damages, costs and expenses to a minimum;
- (c) any such damages, costs and expenses have not been and should not be included in the value of a variation under clause 36; and
- (d) the *Contractor* has given to the *Superintendent* a claim that complies with clause 41 and includes written details substantiating such damages, costs and expenses and the actual or closely estimated amounts of those damages, costs and expenses.

Subject to compliance with this clause 34.9, any such damages, costs and expenses shall be ascertained by the *Superintendent* and:

- (e) where the cause of delay was such as is referred to in paragraph (a) of the definition of *compensable cause*, then the amount of damages so ascertained shall be added to the *contract sum*; or
- (f) where the cause of delay was such as is referred to in paragraph (b) of the definition of *compensable cause*, then 50% of the amount of the cost and expenses so ascertained shall be added to the *contract sum*.

The amount payable by the *Principal* to the *Contractor* under this subclause is the agreed damages payable by the *Principal* to the *Contractor* and is in full satisfaction of all claims, demands, actions, proceedings or suits for damages which the *Contractor* may make or bring against the *Principal* arising in connection with all and any delay or disruption however caused or encountered by the *Contractor* in the execution of *WUC*.

## 35 Defects liability

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

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

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

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

- a) shall identify the *defect* and the date for completion of its rectification; and
- b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding that in *Item 27*, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

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

## 36 Variations

### 36.1 Directing variations

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

The *Superintendent*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following:

- a) increase, decrease or omit any part including omitting any part of *WUC* with a view to retaining a third party to perform it either prior to or after the *date of practical completion* (with no liability to compensate the *Contractor* for any loss of profit);
- b) change the character or quality;
- c) change the levels, lines, positions or dimensions;
- d) carry out additional *work*;
- e) demolish or remove material or *work* no longer required by the *Principal*.

#### 36.1A Notices

This subclause 36.1A applies notwithstanding any other provision of the *Contract* to the contrary.

The *Principal* shall only be liable to the *Contractor* for an amount calculated under subclause 36.4 or for an extension of time for *practical completion* for a *variation* where either:

- a) the *direction* to perform the *variation* given by the *Superintendent* is in writing, expressly states that the *direction* constitutes a *direction* for a *variation* and identifies the *work* the subject of the *direction*; or
- b) before performing the *variation* and in any event within 7 days of receiving the *direction* to perform the *variation*, the *Contractor* has given the *Superintendent* a notice in writing which identifies:
  - i) the date the *direction* was given;
  - ii) whether the *direction* was given orally or in writing;
  - iii) the substance of the *direction* (if it was in writing a copy should be attached);
  - iv) the approximate cost of the *variation* including a detailed breakdown calculated in accordance with subclause 36.4; and

- v) whether a claim will be made for an *EOT* as a consequence of the *variation* and if so, an estimate of the period.

Except where the *Contractor* is entitled to make a claim under this clause, the *Contractor* shall have no *entitlement* as a consequence of complying with a *direction* for a *variation*.

Where the *Contractor* wishes to make a claim for an *EOT* as a consequence of a *variation*, in addition to the notices it is required to give under this subclause, the *Contractor* shall give all notices required under subclause 34.3.

### 36.2 Proposed variation

The *Superintendent* may direct the *Contractor* to submit a price for a proposed *variation*. The *Contractor* shall submit the price within the time specified in the *direction* or, if no time is specified, within 7 days of the *direction*.

The *Contractor* shall provide the following information with the price submitted in response to such a *direction*:

- a) a detailed scope of the proposed *variation* (including any *drawings* or technical details);
- b) a detailed breakdown of the price for which the *Contractor* would carry out the proposed *variation* (including any delay or disruption costs which may be incurred by the *Contractor* as a consequence of the proposed *variation*);
- c) the effect (if any) of the proposed *variation* on the *date for practical completion*; and
- d) the expiry period for acceptance of the *variation* proposal which shall be not less than 7 days (or, for *urgent work*, such shorter time as the *Superintendent* may, in writing allow), from the date of receipt by the *Superintendent* of the *variation* proposal.

Upon receipt of a *variation* proposal provided in this clause, the *Superintendent* may in the sole discretion of the *Superintendent* do any one of the following:

- a) *direct* the *Contractor* to provide further information;
- b) accept the *variation* proposal and give the *Contractor* a *direction* to carry out the *variation* on the terms contained in the *variation* proposal in which case a valuation under subclause 36.4 shall not be made and the addition or deduction to the *contract sum* shall be the amount contained in the *variation* proposal;
- c) negotiate different terms with the *Contractor* upon which the *variation* shall be carried out;
- d) give the *Contractor* a *direction* to carry out the *variation* but on the terms calculated in accordance with the *Contract*; or
- e) reject the *variation* proposal.

### 36.3 Variations for convenience of contractor

If the *Contractor* requests the *Superintendent* to direct a *variation* for the convenience of the *Contractor*, the *Superintendent* may do so. The *direction* shall be written and may be conditional. Unless the *direction*

provides otherwise, the *Contractor* shall be entitled to neither extra time nor extra money.

### 36.4 Pricing

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

- a) prior agreement;
- b) applicable rates or prices in the *Contract*;
- c) rates or prices in a priced *bill of quantities*, *schedule of rates* or *schedule of prices*, even though not *Contract* documents, to the extent that it is reasonable to use them; and
- d) reasonable rates or prices, which shall include the percentage in *Item 27A* for profit and overheads, except in the case of the valuation of *provisional sums* pursuant to clause 3(b), in which case the reasonable rates and prices shall include an amount of 5 per cent for profit and overheads. The *Superintendent* must only include an allowance for profit and overheads in the price payable to the *Contractor* if the aggregate total of all *provisional sums* approved by the *Superintendent* at any point in time has exceeded the aggregate total allowed for *provisional sums* under the *Contract*. If the *Superintendent* is required to make such an allowance, the allowance must only be applied to the amount by which the aggregate total of all approved *provisional sums* at any point in time exceeds the total amount allowed for *provisional sums* under the *Contract*,

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

## 37 Payment

### 37.1 Progress claims

The *Contractor* shall claim payment progressively in accordance with *Item 28*.

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

Each progress claim shall be given in writing to the *Superintendent* and shall include details of:

- a) the *Contractor's* valuation of work executed, including *variations* completed or partly completed;
- b) the *Contractor's* valuation of any unfixed materials and/or goods intended for and delivered on or adjacent to the *Works* and which is included in such claim;
- c) the amount and particulars of any adjustments to the *contract sum* in terms of this Agreement;
- d) the total amount previously certified pursuant to clause 37.2;
- e) the total amount previously paid or in terms of this Agreement deemed to have been paid to the *Contractor*;
- f) the amount then claimed by the *Contractor* identified in two separate parts as follows:

- Part A: The amount claimed for all Major Subcontractors and Suppliers. Part A must contain a list of each Major Subcontractor or Supplier and nominate the amount that is being claimed in respect of each;
- Part B: The balance of the progress claim after Part A above has been accounted for; and
- g) if so requested by the *Superintendent*, a statement signed by the *Contractor* that all wages due to his employees on the Works have been paid.

With each such claim or part thereof the *Contractor* shall furnish to the *Superintendent* particulars showing all adjustments to the *contract sum* as having been made pursuant to this Agreement up to the date on which the particular claim is submitted but since submission by the *Contractor* of any immediately preceding progress claim.

With each such claim or part thereof the *Contractor* shall also furnish to the *Superintendent* a copy of the statutory declaration acknowledging payment of each Major Subcontractor or Supplier in respect of any previous progress certificate.

The progress claim shall include evidence of the amount due, and such information as the *Superintendent* may reasonably require. If the *Superintendent* considers information submitted with the claim is insufficient to enable it to make a proper assessment of the claim, the *Superintendent* may delay the issue of a payment certificate until the *Contractor* has provided the information required by the *Superintendent*.

### 37.2 Certificates

The *Superintendent* shall, within 7 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- a) a progress certificate evidencing the *Superintendent's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('progress certificate') including:
- (i) the amount certified for payment in respect of Part A of the *Contractor's* progress claim; and
  - (ii) the amount certified in respect of Part B of the *Contractor's* progress claim (as described in clause 37.1).
- b) a certificate evidencing the *Superintendent's* assessment of retention moneys and moneys due from the *Contractor* to the *Principal* pursuant to the *Contract*.

If the *Contractor* does not make a progress claim in accordance with *Item 28*, the *Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

It is understood and acknowledged that the *Contractor* will engage subcontractors and suppliers for the purpose of performing the *Contractor's* obligations under this *Contract*. It is expressly intended and agreed that the *Contractor* must pay its subcontractors and suppliers promptly and that the *Contractor* itself shall not be entitled to receive payment under this *Contract* unless and until it has met its commitments to such subcontractors and suppliers, as required by this clause. The *Contractor* acknowledges and agrees that if it in any way misleads or deceives the *Principal* or the *Superintendent* in relation to the payment of such subcontractors or

suppliers, such conduct entitle the *Principal* to determine the *Contractor's* employment under this *Contract* pursuant to clause 39.

- c) On the *Contractor* presenting to the *Principal* a progress certificate issued under Clause 37.2, the *Principal* shall pay the *Contractor* the total amount specified under Part A of the progress certificate within ten (10) days.
- d) The *Contractor* shall within six (6) days of receipt of payment pursuant to paragraph (c) pay the amount specified in Part A of the progress certificate to each of the Major Sub-contractors or Suppliers of services referred to in the progress certificate unless the *Superintendent* has authorised the *Contractor* in writing to pay a lesser sum.
- e) The *Contractor* shall provide the *Superintendent* with a [statutory declaration in the form of CD8 as proof of](#) payment of each Major Sub-contractor or Supplier in respect of each payment required to be made by the *Contractor* pursuant to paragraph (d).
- f) Following receipt by the *Superintendent* of all written acknowledgments required to be provided by the *Contractor* pursuant to paragraph (e) and confirmation of the same by the *Superintendent* to the *Principal*, the *Principal* shall pay the *Contractor* the amount certified in relation to Part B of the progress certificate within five (5) days, after deducting retention moneys and setting off such of the certificate in paragraph (b) as the *Principal* elects to set off. If that setting off produces a negative balance, the *Contractor* shall pay that balance to the *Principal* within 7 days of receiving written notice of that negative balance.

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

### 37.3 Unfixed plant and materials

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

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

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

### 37.4 Final payment claim and certificate

Within 28 days after the [last to occur of the expiry of the last defects liability periods or the rectification by the Contractor of all defects in accordance with clause 35](#), the *Contractor* shall give the *Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 14 days after [receipt of the final payment claim](#), the *Superintendent* shall issue to both the *Contractor* and the *Principal* a *final certificate* evidencing the moneys finally due and payable between the *Contractor* and the *Principal* on any account whatsoever in connection with the subject

matter of the *Contract*. If the *Contractor* fails to lodge a *final payment claim*, the *Superintendent* may, in his or her discretion, issue a *final certificate* in accordance with this clause.

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

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

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

### **37.5 Interest**

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

### **37.6 Other moneys due**

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

### **37.7 Principal may deduct**

Without limiting the *Principal's* rights under any provision in the *Contract* and notwithstanding the issue of a *progress certificate* by the *Superintendent*, the *Principal* may deduct from moneys due to the *Contractor* (including from a *progress certificate*) any sum which the *Principal* asserts is or may become payable by the *Contractor* to the *Principal*, whether or not:

- a) the *Principal's* right to payment arises by way of damages (whether liquidated or unliquidated), debt, restitution or otherwise; or
- b) the factual basis giving rise to the *Principal's* right to payment arises out of this *Contract*, any other contract, or is independent of any contract.

If the moneys payable to the *Contractor* are insufficient to discharge the liability of the *Contractor* to pay such sum to the *Principal*, the *Principal* may have recourse to the *security*. Nothing in this clause shall affect the right of the *Principal* to recover from the *Contractor* the whole of any such moneys or any balance that remains owing.

## 38 Payment of workers and subcontractors

### 38.1 Workers and subcontractors

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

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

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

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

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

### 38.2 Withholding payment

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

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

### 38.3 Direct payment

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

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

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

## 39 Default or insolvency

### 39.1 Preservation of other rights

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

### 39.2 Contractor's default

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

Substantial breaches include, but are not limited to:

- a) failing to:

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

### 39.3 Principal's notice to show cause

A notice under subclause 39.2 shall state:

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

### 39.4 Principal's rights

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

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

### 39.5 Take out

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

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

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

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

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

### **39.6 Adjustment on completion of work taken out**

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

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

### **39.7 Principal's default**

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

Substantial breaches include, but are not limited to:

- a) failing to:
  - i) provide *security*;
  - ii) produce evidence of insurance;
  - iii) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 31*; or
  - iv) make a payment due and payable pursuant to the *Contract*.

### **39.8 Contractor's notice to show cause**

A notice given under subclause 39.7 shall state:

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

### 39.9 Contractor's rights

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

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

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

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

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

### 39.10 Termination

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

### 39.11 Insolvency

If:

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

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

then, where the other party is:

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

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

### 39.12 Quantum meruit

If the *Principal* repudiates and the *Contractor* terminates the *Contract*, the *Contractor* is:

- a) only entitled to claim damages for breach of contract; and
- b) not entitled to a quantum meruit.

This subclause shall survive termination of the *Contract*.

## 39A Termination by the Principal for convenience

Without prejudice to any of the *Principal's* other rights and powers under this *Contract*, the *Principal* may at any time for any reason within its sole discretion upon 14 days written notice to the *Contractor* terminate the *Contract*. Upon receipt of such notice the *Contractor* shall remove its *construction plant* from the *site*, shall otherwise cease the performance of its obligations under the *Contract* and shall endeavour to mitigate any expense or losses that it or any subcontractor may incur or has incurred in relation to its obligations under the *Contract*.

If the *Principal* terminates the *Contract* under this clause then the *Principal* shall be liable to pay the *Contractor* the total of:

- a) for *work* executed prior to the date of termination, the amount which would have been payable if the *Contract* had not been terminated and the *Contractor* had made a progress claim on the date of termination;
- b) subject to the obligation of the *Contractor* to mitigate its costs and expenses, the cost of materials reasonably ordered by the *Contractor* for *WUC*, which the *Contractor* is liable to accept, but only if the materials become the property of the *Principal* upon payment;

- c) all *security*;
- d) the reasonable cost of removal of *construction plant*; and
- e) an amount equal to 2% of the unpaid portion of the *contract sum* as it has been adjusted under the *Contract* at the date of termination,

up to a maximum amount of the balance of the *contract sum* (as it is adjusted pursuant to the *Contract*) unpaid at the date of termination and other amounts payable pursuant to the *Contract* at the date of termination.

The amounts to which the *Contractor* is entitled under this clause shall be in full satisfaction and compensation of the *Contractor* in relation to the termination and the *Contractor* shall have no other *entitlement* as a consequence of the termination under this clause or in relation to carrying out *WUC* to the date of termination.

## 40 Termination by frustration

If the *Contract* is frustrated:

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

## 41 Notification of claims

### 41.1 Applies to all claims

This clause applies to all claims by the *Contractor* in relation to any matter or thing arising under this *Contract* or out of the performance of *WUC* except for those under clauses 36 and 37.1.

## 41.2 Time

The *Contractor* shall:

- a) within 28 days of the date upon which the *Contractor* could reasonably have become aware that there would be an adverse impact on the *Contractor* as a consequence of the events or circumstances on which the claim is based, provide the *Principal* and the *Superintendent* with written notice of its intention to lodge a claim, giving details of the nature of the claim; and
- b) within 28 days of the completion of the occurrence of the events or circumstances on which the claim is based, provide the *Principal* and the *Superintendent* with a *prescribed notice* which contains detailed particulars of the claim sufficient to identify the matter at issue and to enable the *Principal* and the *Superintendent* to understand the precise nature and content of the claim which includes:
  - i) each item of claim and the basis for it;
  - ii) the clauses in this *Contract* and the documents upon which each item of claim is based;
  - iii) if a *direction* of the *Superintendent* or any other person is relied upon, the date of the *direction*, who gave it, whether it was given orally or in writing, and the terms of the *direction*;
  - iv) if an act or omission of the *Superintendent*, *Principal* or any employee or agent of the *Superintendent* or *Principal* is relied upon, the nature of the act or omission, the date of the act or omission, whether it was oral or in writing, and the terms of the act or omission;
  - v) the amounts (including particulars of those amounts) claimed in respect of each item of claim or if no amount is claimed, a statement to that effect; andany other decision sought in respect of the *dispute*.

### 41.2A Crystallised claim

Notices shall be given in accordance with this clause 41 whether or not the event or circumstance upon which the claim is based is continuing and whether or not the loss, expense or damage has crystallised or can be fully particularised. The details omitted shall be provided within 7 days of the day that they do crystallise or can be fully particularised.

## 41.3 Response

The *Principal* shall respond to a *prescribed notice* within 30 days of receiving it or, if subclause 41.2A applies, within 30 days of receiving the further particulars provided under that subclause. If the *Principal* fails to respond in that time, the parties shall be deemed to be in dispute.

## 42 Dispute resolution

### 42.1 Notice of dispute

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

- a) a *Superintendent's direction*; or

- b) a claim:
  - i) in tort;
  - ii) under statute;
  - iii) for restitution based on unjust enrichment or other quantum meruit; or
  - iv) for rectification or frustration,

or like claim available under the law governing the *Contract*,

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

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

#### **42.2 Conference**

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

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, either party may commence litigation proceedings.

#### **42.3 Not Used**

#### **42.4 Summary relief**

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

### **43 Waiver of conditions**

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

### **44 Contractor's warranties**

The *Contractor* warrants to the *Principal* that the *Contractor* shall:

- a) at all times be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of *WUC*; and
- b) execute and complete *WUC* in accordance with the *Contract* so that *the Works*, when completed, will comply with all of the requirements of the *Contract*, all statutory requirements and the requirements of all relevant authorities.

## 45 Access to documents

- 45.1 The *Contractor* shall make and keep and shall use its best endeavours to ensure all subcontractors make and keep accurate records of its tender and of *WUC*, whether in writing or stored on any other medium whatsoever, including:
- a) all documents referred to in the *Contract*;
  - b) design calculations;
  - c) tender estimates, calculations and make-ups;
  - d) records as to progress of the *work* including diary records of daily tasks, photographic records and manning and equipment records;
  - e) results of the examination and testing of any *work* or materials;
  - f) quality assurance records and reports;
  - g) cost to date records, cost to complete calculations, time records, all cost records relating in any way to delays, *variations* and day works;
  - h) all consultants' reports and opinions obtained by the *Contractor* in relation to the matters referred to in this subclause; and
  - i) all necessary supporting correspondence, internal memoranda, minutes, technical and other documents, invoices, records and related financial statements.
- 45.2 Subject to the *Contractor's* right to claim privilege in respect of any record, the *Principal* and the *Superintendent* shall at any time have the right to inspect and to copy the whole or part of any record referred to in subclause 45.1. Notwithstanding anything to the contrary contained in this *Contract*, the *Superintendent* may defer any *direction* or certification required of him under any provision of this *Contract* until after such inspection. If any such record is stored on a medium other than in writing, the *Contractor* shall make available immediately upon request such facilities as may be necessary to enable a legible reproduction of the record to be produced to the *Principal* or *Superintendent*. Where the information referred to in subclause 45.1 is in electronic format, the *Contractor* shall provide the *Principal* with a non-exclusive licence to use the software necessary to view and, where relevant, analyse, the information.
- 45.3 The *Contractor* shall not be entitled to refuse inspection of any record on any basis other than on the basis that legal professional privilege attaches to the record.
- 45.4 The *Contractor* shall co-operate with the *Principal* or the *Superintendent* when making an inspection. Co-operation shall include the explanation of all filing and costing systems and the extraction of requested categories of documentation from files upon request.
- 45.5 The *Contractor* shall not destroy the records referred to in subclause 45.1 without the prior written approval of the *Principal* and shall, if so required by the *Superintendent*, hand over such of

those records as are identified by the *Superintendent* to the *Principal* at *practical completion*.

- 45.6 The *Principal* shall not without the consent of the *Contractor* divulge the contents of any record inspected or copied pursuant to this clause to any other person other than an employee or agent of the *Principal*, or use them for any purpose except with respect to the resolution of any *dispute* with the *Contractor*.

## 46 Notices

- 46.1 Notices referred to in this *Contract* shall be given within the time provided for in the *Contract*. If the *Contractor* fails to give a notice in that time, the *Contractor* shall have no *entitlement* in relation to the matters which were or should have been the subject of the notice, including where the *Contractor* has been delayed by the *Principal* in the execution of *WUC*.
- 46.2 A notice shall be given in writing and shall include all of the details required under the *Contract*. For the purposes of subclause 46.1, a notice shall be deemed to have not been given in time if it does not contain all of the information required by the *Contract*.
- 46.3 The requirement to give a notice including all of the detail required under the *Contract* cannot be waived by the *Superintendent* and can only be waived by the *Principal* by a notice in writing.
- 46.4 The *Contractor* acknowledges that:
- a) notices are required to be delivered by the *Contractor* in the forms and within the times provided for under this *Contract* so that the *Superintendent* and the *Principal* have an opportunity to assess the matters the subject of the notice in sufficient time:
    - i) for the *Principal* and the *Superintendent* to consider (in their absolute discretion) taking action to minimise the *Principal's* exposure to a claim; and
    - ii) for the details surrounding the claim to be assessed by the *Superintendent* at the time that the claim arises; and
  - b) if the notice is not given within the time or does not contain all of the information required under this *Contract*, an action for damages shall not be satisfactory for the *Principal*.

## 47 GST

- a) In this clause the expressions “adjustment note”, “consideration”, “GST”, “input tax credit”, “supply”, “tax invoice”, “recipient” and “taxable supply” have the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- b) Unless otherwise stated, all amounts payable under this *Contract* include GST at the rate of 10%.
- c) If the rate of GST is varied, the consideration payable for any supply under this *Contract* shall be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.

- d) If this *Contract* requires a party to reimburse or indemnify the other party for any expense, loss or outgoings (“*reimbursable expense*”) the amount required to be paid by the first party shall be the sum of:
  - i) the amount of the *reimbursable expense* net of input tax credits (if any) to which the other party is entitled in respect of the *reimbursable expense* (“*net amount*”); and
  - ii) if the other party’s recovery from the first party is a taxable supply, any GST payable in respect of that supply.
- e) If a GST inclusive price is charged or varied, the supplier shall deliver to the recipient a valid tax invoice or adjustment note at or before the time of the supply. The recipient can withhold payment of the GST until the supplier provides a valid tax invoice or adjustment note as appropriate.
- f) The *Principal* is authorised to withhold from payments to the *Contractor*, a subcontractor or worker such amounts as are required under the Pay as you go (PAYG) system.

## 48 Environment

- a) For the purpose of this clause:
 

“*environment*” includes any aspect of the *site* and the surroundings of the *site* including;

  - i) the physical characteristics such as the land, the waters and the atmosphere;
  - ii) the biological characteristics such as the animals, plants and other forms of life; and
  - iii) the aesthetic characteristics such as their appearance, sounds, smells, tastes and textures.

“*pollution*” includes any solid, liquid gas, odour, heat, sound, vibration, radiation or substance which makes or may make the *environment*:

  - i) unsafe or unfit for habitation or occupation by human beings or animals;
  - ii) degraded in its capacity to support plant life;
  - iii) contaminated; or
  - iv) otherwise environmentally degraded.
- b) Except and only to the extent permitted by the relevant municipal, public or statutory authority, the *Contractor* shall not cause *pollution* to occur or obstruct or damage the *environment*.
- c) The *Contractor* shall immediately remove and make good any *pollution*, to the *environment* caused by the *Contractor* or by a subcontractor, employee or agent of the *Contractor* or as a consequence of or as an incident to the performance of *WUC*.
- d) In the event of the *Contractor*’s failure to comply with this clause 48:

- i) the *Principal* may have the remedial work carried out by others and the cost of so doing shall be a debt due by the *Contractor* to the *Principal*; and
  - ii) the *Contractor* shall indemnify the *Principal* against any loss, cost, damage or expense (including any fine or penalty imposed by any statutory authority) which the *Principal* may incur as a consequence of that failure. The amount of such loss, cost, damage or expense shall be a debt due by the *Contractor* to the *Principal*.
- e) In addition to any other provision of the *Contract*, the *Contractor* acknowledges that it is fully responsible for and shall bear all costs associated with the removal and disposal of any *pollution* including any hazardous material encountered in the execution of *WUC*.
- f) The *Contractor* shall take all possible precautions and avoid nuisance to or trespass onto, or disturbance of, adjacent or adjoining properties to the *site*, the occupiers of those properties, and the general public, caused by dust, debris, obstruction, vibration or by workmen or from any other cause whatsoever.

## 49 Security of Payment Act

If the Building and Construction Industry Security of Payment Act 2002 (Vic) (“*Security of Payment Act*”) applies:

- a) the *Contractor* must ensure that, within 24 hours after any notice is given or received under the *Security of Payment Act* by the *Contractor* or any *subcontractors*, a copy of that notice is given to the *Principal* and the *Superintendent*;
- b) the *Superintendent* shall act as the *Principal*’s agent only in receiving payment claims or issuing payment schedules pursuant to the *Security of Payment Act*;
- c) a failure by the *Superintendent* to set out in a payment schedule an amount which the *Principal* is entitled to retain, deduct, withhold or set-off (whether under this *Contract* or otherwise) from the amount which would otherwise be payable to the *Contractor* by the *Principal* will not prejudice the *Principal*’s right to subsequently exercise that right to retain, deduct, withhold or set-off;
- d) the parties agree that for the purpose of the *Security of Payment Act* the authorised nominating authority shall be a person authorised by the Building Commission under section 42 of the *Security of Payment Act* to nominate persons to determine adjudication applications;
- e) if the *Principal* becomes aware that a *subcontractor* is entitled to suspend work under the subcontract pursuant to the *Security of Payment Act* because of a failure by the *Contractor* to pay moneys due and payable to the subcontractor, the *Principal* may (in its absolute discretion) pay to the *subcontractor* the amount owing to the subcontractor in respect of that work, and any amount paid by the *Principal* shall a debt due from the *Contractor* to the *Principal*;

- f) if the *Principal* is required to make a direct payment to a *subcontractor* pursuant to section 35 of the *Security of Payment Act* (“**direct subcontractor payment**”), then the *Contractor* is not entitled to claim payment from the *Principal*, and the *Principal* is forever released from payment to the *Contractor* of the same amount as the direct *subcontractor* payment; and
- g) the *Contractor* must indemnify the *Principal* against all damages, loss (including consequential and economic loss) and expense (including legal costs) of any nature suffered or incurred by the *Principal* by reason of the *Contractor’s* failure to pay the *subcontractor*. The *Principal’s* right of indemnity is without prejudice to any liability of the *Contractor* to pay the *Principal* liquidated damages under the *Contract*.

## 50 SITE MANAGEMENT

### 50.1 Industrial relations

The *Contractor* warrants that the *Contract Sum* includes an allowance which will compensate the *Contractor* for all risks arising out of or connected with industrial or workplace relations at or affecting the *Site* or the *WUC* including demarcation disputes, increases in labour costs and site allowances, any reduction in construction industry working hours per week, demonstrations or labour disputation, special allowances or compensation or any reduction in labour or hours worked on the *WUC*.

### 50.2 Workplace Management

The *contractor* shall:

- (a) implement and maintain an effective workplace relations programme;
- (b) manage workplace relations on the *Site*;
- (d) negotiate and enter into all appropriate site agreements to ensure that all employees of the *Contractor*, and its subcontractors are employed and remunerated in accordance with all applicable industrial agreements, awards or other *Legislative Requirements*;
- (e) promptly notify the *Principal* of any actual or impending industrial claim, dispute or disturbance arising in connection with the carrying out of the *WUC*; and
- (f) do all things necessary to reasonably maintain good industrial relations with all employees of the *Contractor*, and its subcontractors employed in connection with the carrying out of the *WUC*.

**50.3 No Claim for Costs**

For the avoidance of doubt, it is intended and agreed that the *Contractor* assumes all risks associated with, and shall have no entitlement to an extension of time, variation or adjustment to the *Contract Sum* in respect of, industrial relations or associated issues of any kind at sites within the *Contractor's* control.

**50.4 Industrial Relations Indemnity**

The *Contractor* indemnifies and agrees to keep indemnified the *Principal* from and against any loss, cost or expense which is incurred by the *Principal* as a result of any failure by the *Contractor* or *Building Contractor* to comply with clause 52.

**51 Quality Assurance**

The *Contractor* shall:

- (a) plan, establish and maintain a quality assurance system to the reasonable satisfaction of the *Superintendent*; and
- (b) ensure that the *Superintendent* has access to the quality assurance system and relevant records so as to enable monitoring and quality assurance system and relevant records so as to enable monitoring and quality auditing.

**52 Safety**

The *Contractor* acknowledges and accepts responsibility in all respects regarding the safety of the *Site* and its employees and subcontractors' employees, including providing helmets, safety boots, protective clothing, and any other protective equipment or apparel as may be appropriate to all employees.

At all times, the *Contractor* shall comply with and be responsible for all Occupational Health and Safety requirements (including all laws and *legislative requirements*) relating to the *site*.

**53 Working with Children Check (WWCC)**

The *Principal* requires that all workers attending the *Site* in relation to the *WUC*, possess a Working With Children Check ("WWCC") as defined under the Working with Children Act (Vic) 2005 ("the Act").

The *Contractor* acknowledges and accepts responsibility in all respects regarding compliance with the Act and procuring WWCC's for all its employees and subcontractors' employees entering the *Site* and shall take all reasonable steps to ensure compliance with this clause 53.

The *Contractor* shall have no entitlement to claim additional costs, expense of damage whatsoever arising out of compliance with this clause and shall protect and hold harmless the *Principal* in the event of a breach of this clause or the Act by the *Contractor*, its employees or subcontractors.

CD3

ANNEXURE PART A OF AS4000-1997

**Part A**

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

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

- |    |  |  |
|----|--|--|
| 1  | <i>Principal</i><br>(clause 1)                                   | The Roman Catholic Trusts Corporation for the Diocese of Melbourne |
| 2  | <i>Principal's address</i>                                       | 383 Albert Street, Melbourne                                       |
| 3  | Contractor<br>(clause 1)   |  |
| 4  | <i>Contractor's address</i>                                      |  |
| 4A | <i>Site</i><br>(clause 1)  |  |
| 5  | <i>Superintendent</i><br>(clause 1)                              |  |
| 6  | <i>Superintendent's address</i>                                  |  |
| 6A | <i>contract sum</i><br>(clause 1)                                | The lump sum amount of \$  |
| †7 | (a) <i>Date for practical completion</i><br>(clause 1)           |  |
|    | OR   |  |
|    | (b) <i>Period of time for practical completion</i><br>(clause 1) |  |

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

8	Governing law (page 5, clause 1(h))	Victoria
9	Not used	
10	<i>Bills of quantities</i> (subclauses 2.2 and 2.3)	
	(a) Alternative applying (subclause 2.2)	Alternative 2
	(b) Is the <i>bill of quantities</i> to be priced? (subclause 2.2)	No. Bill of quantities not to be priced.
	(c) Time for lodgement of <i>bill of</i> <i>quantities</i> (subclause 2.3)	Not applicable.
11	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5(b))	Upper Limit    Not applicable. Lower Limit    Not applicable.
12	<i>Provisional sum</i> , percentage for calculating adjustment to <i>contract</i> <i>sum</i> (clause 3)	5 %
†13	<i>Contractor's security</i>	
	(a) Not used	
	(b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	\$ If nothing stated, 10% of the contract sum
	(c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	Not applicable.
	(d) Time for provision (except for retention moneys) (clause 5)	Prior to commencing <i>WUC</i>

(e)	Additional <i>security</i> for unfixed plant and materials (subclauses 5.4 and 37.3)	Not applicable.	
(f)	<i>Contractor's security</i> upon <i>certificate of practical completion</i> (subclause 5.4)	Principal to retain one 50% Bank Guarantee	
(g)	Interest rate on conversion of security (subclause 5.2)	The current bank overdraft rate charged by the Principal's bank	
†14	Not used		
15	<i>Principal-supplied</i> documents (subclause 8.2)	Document  If nothing stated, 5 copies of the drawings, specification, bill of quantities or schedule of rates (if any)	No of copies
16	Time for <i>Superintendent's direction</i> about documents (subclause 8.3)	5 business days If nothing stated, 14 days	
17	Subcontract <i>work</i> requiring approval (subclause 9.2)		
18	Novation (subclause 9.4)	Subcontractor [Subcontractors to be novated]	Particular part of <i>WUC</i> [ <i>WUC</i> to be novated]
19	<i>Legislative requirements</i>		
(a)	Those excepted (subclause 11.1)	None.	
(b)	Identified <i>WUC</i> (subclause 11.2(a)(ii))	None.	

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

20	Insurance of <i>the Works</i> (clause 16)	
	(a) Alternative applying	<i>Principal</i> to insure <i>the Works</i>
	(b) Provision for demolition and removal of debris	
	(c) Provision for <i>consultants'</i> fees	
	(d) Value of material or things to be supplied by the <i>Principal</i>	% of the <i>contract sum</i>
	(e) Additional amount or percentage	OR % of the total of paragraphs (a) to (d) in clause 16
	(f) Excess payable	\$5,000 payable by the <i>Contractor</i>
21	Public liability insurance (clause 17)	
	(a) Alternative applying	<i>Contractor</i> to take out Public Liability insurance
	(b) Amount per occurrence shall not be less than	\$20,000,000
	(c) Maximum excess payable	
22	Time for giving possession (subclause 24.1)	Within 20 Business Days of <i>date of acceptance of tender</i> If nothing stated, 14 days.
23	Not used	
†24	Liquidated damages, rate (subclause 34.7)	\$ per day
†25	Not Used	
†26	Not used	

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

27	<i>Defects liability period</i> (clause 35)	52 Weeks
27A	Percentage for overhead and profit (clause 36.4)	... % If nothing stated, 10%
28	Progress Claims (subclause 37.1)	
	(a) Times for progress claims	Last day of each month for <i>WUC</i> done to the last day of that month
	OR	
	(b) Stage of <i>WUC</i> for progress claims	Not applicable
29	Unfixed plant and materials for which payment claims may be made (subclause 37.3)	Not applicable.
30	Interest rate on overdue payments (subclause 37.5)	The current bank overdraft rate charged by the Principal's bank
31	Time for <i>Principal</i> to rectify inadequate possession (subclause 39.7)	10 Business Days
32	Not used	

SAMPLE

SAMPLE

# Part B

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

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## Deletions, amendments and additions

### Conditions of Contract

The Conditions of Contract are based on the standard form AS4000-1997 edition (produced with the permission of Standards Australia).

Although the document is generally based on the AS4000-1997 form, many important amendments, deletions and additions have been made and the parties should examine the document closely. The Principal will make a copy of the Conditions of Contract showing the amendments, deletions and additions to AS4000-1997 in these Conditions of Contract available to the Contractor if requested.

SAMPLE

**CD4**  
**SPECIFICATION**  
(clause 1)

Note 2

SAMPLE

**CD5**  
**DRAWINGS**  
(clause 1)

Note 1

SAMPLE

**CD6**

**SCHEDULE OF RATES (IF ANY)**

SAMPLE

**CD7**

**PROVISIONAL SUMS (IF ANY)**

(clause 3)

SAMPLE

**CDS**

**FORM OF STATUTORY DECLARATION**

(clause 37.2)

I, **(name)** of **(address)**  
**(occupation)** do solemnly and sincerely declare, for the purpose of Clause 37.2 of the contract between The Roman Catholic Trusts Corporation for the Diocese of Melbourne **(Principal)** and **(Contractor)** dated **(date)** for the project at **(insert project name and location)** say as follows:

1. I hold the position of **(title)** with the Contractor and am duly authorised by the Contractor to make this declaration on its behalf.
2. To the best of my knowledge and belief after making all appropriate enquiries, each Major Sub-contractor or Supplier identified in Part A of progress claim **(number)** dated **(date)** has been paid the money certified in *progress certificate* **(number)** dated **(date)** issued by the *Superintendent*.

I acknowledge that this declaration is true and correct and I make it in the belief that a person who makes a false declaration is liable to the penalties of perjury.

**Subscribed and declared** )  
at )  
this day of 20 )  
Before me: )

.....