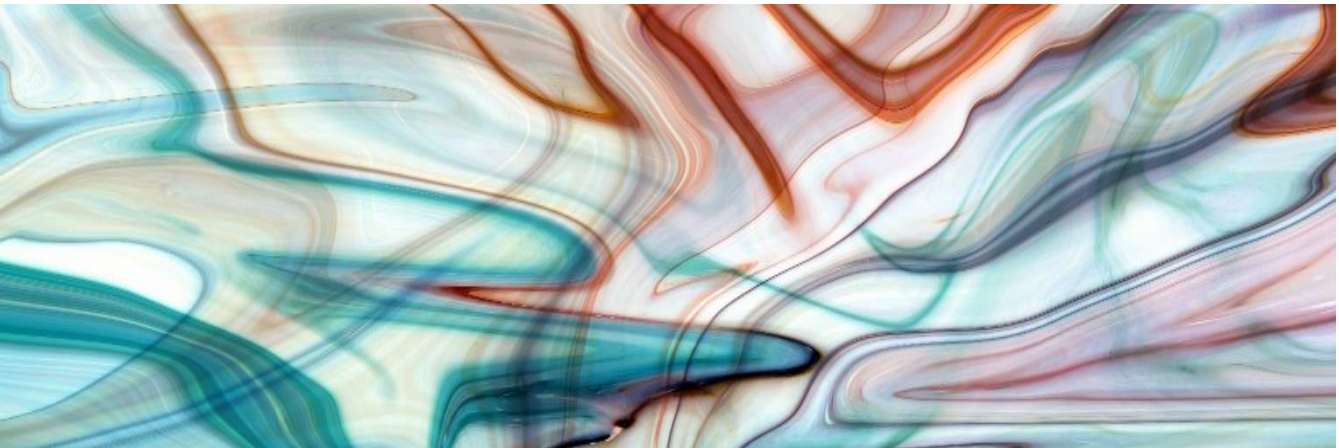




**AS4902-2000**

**DESIGN AND CONSTRUCT CONTRACT**

**PROFORMA**



**Revision: 3**

**Released: September 2023**



## REVISION CONTROL

### Current Revision

Revision	Issued To	Company	Approved	Date Issued
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Document Title: AS4902 General Conditions of Contract – Proforma

Document No: Rev 3

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1	General Web Site Revision	HARRADYNAMICS Pty Ltd		March 2021
2	General Web Site Revision	HARRADYNAMICS Pty Ltd		November 2022



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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 7 September 1999 and published on 27 December 2000.

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The following interests are represented on Committee OB/3:

Association of Consulting Engineers Australia  
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 of the Australian Industry Group  
Process Engineers and Constructors Association  
Royal Australian Institute of Architects

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*This Standard was issued in draft form for comment as DR 97528.*

## PREFACE

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

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

AS 4902—2000 *General conditions of contract for design and construct*, is a part of the suite of conditions of contract based on AS 4000—1997 *General conditions of contract*.

This Standard covers the following types of project procurement methods:

- (a) design and construct;
- (b) design development and construct; and
- (c) design, novate and construct.

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 9 and 10;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 9 and 10; and would complete Annexure Part A Item 19 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

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

### Warnings

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

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

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

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.
- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

## STANDARDS AUSTRALIA

## Australian Standard

## GENERAL CONDITIONS OF CONTRACT FOR DESIGN AND CONSTRUCT

## 1 INTERPRETATION AND CONSTRUCTION OF CONTRACT

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

- Item** means an *Item* in Annexure Part A;
- Agreed Margin** has the meaning in Annexure Part F;
- business day** means a day which is not a Saturday, Sunday, bank holiday or public holiday in Queensland, Australia, or 27, 28, 29, 30 or 31 December;
- certificate of Performance Testing Completion** has the meaning in clause 30A.3;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Principal's Representative*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
  - (b) those listed in *Item 30*;
- consequential loss** means:
- (a) indirect or consequential loss or damage of any nature; or
  - (b) loss of profit, revenue, business, contracts or anticipated savings,
- except any liquidated damages payable under the *Contract* which may have been calculated with reference to such loss;
- construction plant** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract** means the agreement between the *Principal* and the *Contractor* which comprises the documents listed in the *Formal Instrument of Agreement*;
- contract sum** means the sum calculated in accordance with Annexure Part F.
- Contractor** means the person bound to carry out and complete *WUC*;

- Contractor Approvals** means the approvals which are identified as the responsibility of the *Contractor* and other authorities, consents, licences, permits, notifications, exemptions, registrations, accreditations and approvals required by any *legislative requirement* or lawfully required by any *Government Authority* to undertake the *WUC*, other than the *Principal Approvals*.
- Contractor Material** means all documents, equipment, information and data (however stored) that is owned by the *Contractor* (or which the *Contractor* otherwise has the right to use) prior to the commencement of the performance of the *WUC* or acquires independently of this *Contract* and that is provided by the *Contractor* to the *Principal* for the purposes of this *Contract* and performing the *WUC*.
- Contractor's Representative** means the person stated in *Item 4A* or other person from time to time appointed in writing by the *Contractor* and approved by the *Principal* in writing;
- Contractor's design obligations** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item 9* as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;
- date for practical completion** means:
- (a) where *Item 6(a)* provides a date for *practical completion*, the date;
  - (b) where *Item 6(b)* provides a period of time for *practical completion*, the last day of the period,
- but if any *EOT* for *practical completion* is directed by the *Principal's Representative* or allowed in any arbitration or litigation, it means the date resulting there from;
- date for Performance Testing Completion** means the date that is six weeks after the *date of practical completion*;
- date of Performance Testing Completion** means:
- (a) the date evidenced in a *certificate of Performance Testing Completion*; or
  - (b) where another date is determined by a dispute resolution mechanism under this *Contract* or litigation, as the date upon which *Performance Testing Completion* was reached, that other date.
- date of practical completion** means:
- (a) the date evidenced in a *certificate of practical completion* as the date upon which *practical completion* was reached; or
  - (b) where another date is determined in any arbitration or litigation as the date upon which *practical completion* was reached, that other date;



<b>deed of guarantee, undertaking and substitution</b>	has the meaning in subclause 5.6;
<b>defects</b>	has the meaning in clause 35 and includes omissions;
<b>defects liability period</b>	has the meaning in clause 35;
<b>design documents</b>	means the drawings, specifications and other information, samples, models, patterns and the like required by the <i>Contract</i> and created (and including, where the context so requires, those to be created by the <i>Contractor</i> ) for the construction of <i>the Works</i> ;
<b>direction</b>	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
<b>dispute</b>	has the meaning in clause 42;
<b>Entitlement</b>	means an entitlement in the <i>Contract</i> to: <ul style="list-style-type: none"><li>(a) an <i>EOT</i>;</li><li>(b) a declaration that time is at large;</li><li>(c) any adjustment to the <i>contract sum</i> or valuation under clause 36.4; or</li><li>(d) recover any loss, cost, damage or expense of any kind arising under the <i>Contract</i> or out of or in connection with the <i>WUC</i> (including a quantum meruit claim).</li></ul>
<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>Existing Works</b>	means works existing on <i>site</i> prior to this <i>Contract</i> and into which the <i>WUC</i> is to be integrated or upon the adequacy of which the <i>WUC</i> is in any dependent.
<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>Force Majeure</b>	means one of the following events: <ul style="list-style-type: none"><li>(a) flood at the <i>site</i> as a consequence of rain, cyclone or other unusual and severe weather event;</li><li>(b) explosion, earthquake, landslide, fire or other natural disaster;</li><li>(c) loss, destruction or damage arising from nuclear weapons material;</li><li>(d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (and for the purpose of this</li></ul>

definition, combustion includes any self-sustaining process of nuclear fission);

- (e) war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or destruction or requisition by order of the Government or any public authority; or
- (f) terrorism;

which prevents the *Contractor* from carrying out the *Works*, but only to the extent that the event or circumstance:

- (i) is not within the control of the *Contractor* or a related body corporate; and
- (ii) is not reasonably able to be avoided by the *Contractor* by the exercise of reasonable diligence or effort;

**Formal Instrument of Agreement** means the document of that name executed by the parties and forming part of the *Contract*;

**Government Authority** means the crown, a minister, a government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, and any officer, employee or agent of any of the foregoing acting as such;

**inclement weather** means a weather event that prevents the performance of *the Works* at the *site* for greater than 4 hours on a given day, provided that the *Contractor* has consulted with the *Principal's Representative* regarding the prevention and that all steps to mitigate the prevention have been taken by the *Contractor*.

**intellectual property right** means any patent, registered design, trademark or name, copyright or other protected right;

**latent condition** has the meaning in subclause 25.1;

**legislative requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations (including the Building Code of Australia) of the jurisdiction where *WUC* or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of *WUC*; and
- (c) fees and charges payable in connection with the foregoing;

**long lead time contracts** means the contracts specified in *Item 8A*

**Management Plan** means the plans referred to in clause 11A submitted by the *Contractor* and the components of which the *Principal's Representative* has given permission to use under clause 11A.3, as amended and updated from time to time in accordance with the *Contract*.

**Milestone** means the milestones specified in Annexure Part F.

- Mine** means the Project Coal Mine
- Notice to Proceed** means a notice issued in accordance with *clause 4*.
- OHS Legislation** means the *Occupational Health and Safety Act 2000* and its subordinate legislation;
- Payments Act** means the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- Performance Testing** means the testing and commissioning obligations specified in the *Principal's project requirements*
- Performance Testing Completion** has the meaning in clause 30A.1;
- practical completion** means that stage in the carrying out and completion of *WUC* when:
- (a) the *Works* are complete except for minor defects:
    - (i) which do not prevent the *Works* from being reasonably capable of being used for their stated purpose;
    - (ii) which the *Principal's Representative* determines the Contractor has reasonable grounds for not promptly rectifying; and
    - (iii) the rectification of which will not prejudice the convenient use of the *Works*;
  - (b) except for the *Performance Testing*, those tests which are required by the *Contract* to be carried out and passed before the *Works* reach practical completion have been carried out and passed; and
  - (c) except for the results of the *Performance Testing*, documents and other information required under the *Contract* which, in the *Principal's Representative's* opinion, are essential for the use, operation and maintenance of the *Works* have been supplied;
  - (d) all debris, rubbish, building material, constructional plant and equipment has been removed from the *site* and the *site* has been cleaned;
  - (e) all certificates and approvals required to be given or issued by any *Government Authority* or other certificate required at law before the *Works* and every part of the *Works* can be occupied and used for their intended purpose or purposes have been issued or given and handed to the Principal;
  - (f) the Contractor has provided the *Principal's Representative* with a certificate from the designer or the designers of the *Works* that the *Works* have been constructed in accordance with the *design documents* and all legislative requirements which have an impact on the design have been satisfied.

- (g) the Contractor has provided to the *Principal's Representative* a certificate from a licensed surveyor certifying that the *Works* are located within the boundaries of the site in the place and position required by the terms of the *Contract*
- (h) the Contractor has provided to the *Principal's Representative*:
  - (i) "as built" drawing for the *Works*
  - (ii) all manuals required for the operation and maintenance of the *Works* and of all plant and equipment contained in or forming part of the *Works*; and
  - (iii) all deeds of warranty from the subcontractors and suppliers required under clause 9.6 of this *Contract*; and
- (i) except for the *Performance Testing*, the Contractor has successfully completed, to the satisfaction of the *Principal's Representative*, all commissioning required by the *Contract*;
- (j) all requirements of any *Government Authority* in relation to access to the *site* have been completed to the satisfaction of the *Government Authority*;

**preliminary design** means the documents stated in *Item 10*;

**prescribed notice** has the meaning in subclause 41.1;

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

**Principal Approvals** means the approvals which in *Item 5* are identified as the responsibility of the *Principal*.

**Principal's project requirements** means the *Principal's* written requirements for *the Works* described in the documents in Annexure Part J

- (a) shall include the stated purpose for which *the Works* are intended;
- (b) may include the *Principal's* design, timing and cost objectives for *the Works*; and
- (c) shall include all work and requirements which can necessarily or reasonably be inferred from the *Contract* and from the purpose for which *the Works* are intended; and
- (d) shall include the information obtained by the *Contractor* from the *Principal* under clause 6A.2;

**Principal's Representative** means the person stated in *Item 2A* as the *Principal's Representative* or other person from time to time appointed in writing by the *Principal* to be the *Principal's Representative* and notified as such in writing to the *Contractor* by the *Principal*;

**Principal Supplied Information** has the meaning in clause 6B.3.

- Principal supplied Materials** are materials described in Item 21A;
- program** has the meaning in clause 32;
- progress certificate** has the meaning in subclause 37.2;
- provisional sum** has the meaning in clause 3 and includes monetary sum, contingency sum and prime cost item;
- public liability policy** has the meaning in clause 17;
- qualifying cause of delay** means:
- (a) an act of public enemy or a declaration of war;
  - (b) an earthquake or fire;
  - (c) an industrial dispute which is not restricted to sites under the control of the *Contractor*;
  - (d) a civil commotion, blockade or riot which prevents the *WUC* from being performed;
  - (e) a variation but only if a notice has been given by the *Contractor* strictly in accordance with clause 36.2A;
  - (f) any act or omission of the *Principal*, the *Principal's Representative* or any employee, consultant or agent of the *Principal* or the *Principal's Representative* which does not constitute, or amount to, a breach of the *Contract* by the *Principal*;
  - (g) delays of Authorities which the *Contractor* could not reasonably have anticipated at the date 60 days prior to the date of acceptance of tender had it made all relevant enquiries at that time;
  - (h) an order of a court which restrains the *Contractor* from or disrupts the *Contractor* in carrying out the *WUC* (except where the order arises as a consequence of a breach of a duty owed at law by the *Contractor* to any person);
  - (i) a breach of this *Contract* by the *Principal*;
  - (j) a delay in giving access to the *site*;
  - (k) a direction by the *Principal's Representative* to suspend the carrying out of a whole or part of the *WUC* except 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*; and
  - (l) *inclement weather* not otherwise excluded under *Item 27*; and
  - (m) the circumstances in clause 24.7 are satisfied.
- revised program** has the meaning in clause 32.2;

- schedule of rates** means any schedule included in the *Contract* which, in respect of any section or item of *work* to be carried out, shows the rate or respective rates of payment for the execution of that *work* and which may also include lump sums, *provisional sums*, other sums, quantities and prices;
- security** means:
- (a) an unconditional, on call bank guarantee from a financial body approved by the *Principal*; or
  - (b) other form approved by the party having the benefit of the security;
- selected subcontract work** has the meaning in subclause 9.3;
- selected subcontractor** has the meaning in subclause 9.3;
- separable portion** means a portion of *the Works* identified as such in the *Contract* or by the *Principal's Representative* pursuant to clause 4;
- separate contractors** means contractors other than the *Contractor* engaged by the *Principal* to carry out work on or adjacent to the *site*, including with respect to any *Existing Works*;
- Shutdown** means where any plant or equipment at the *site* which is turned off or temporarily rendered inoperative for the purpose of performing the *WUC*;
- site** means the lands and other places to be made available and any other lands and places made available to the *Contractor* by the *Principal* for the purpose of the *Contract*;
- subcontractor** in clauses 3 and 9 includes a *consultant*;
- survey mark** in clause 26 means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUC*;
- temporary works** means *work* used in carrying out and completing *WUC*, but not forming part of *the Works*;
- test** has the meaning in subclause 30.1 and includes examine and measure;
- the Works** means the whole of the *work* to be carried out and completed in accordance with the *Contract*, including *variations* provided for by the *Contract*, which by the *Contract* is to be handed over to the *Principal*;
- variation** has the meaning in clause 36;
- work** includes the provision of materials;
- WUC (from 'work under the Contract')** means the *work* which the *Contractor* is or may be required to carry out and complete under the *Contract* and includes *variations*, remedial *work*, *construction plant* and *temporary works*,  
and like words have a corresponding meaning.



In the *Contract*:

- (a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;
- (b) time for doing any act or thing under the *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;
- (c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;
- (d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;
- (e) communications between the *Principal*, the *Principal's Representative* and the *Contractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 7*;
- (g) unless otherwise provided, prices are in the currency in *Item 8(a)* and payments shall be made in that currency at the place in *Item 8(b)*;
- (h) the law governing the *Contract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 7*; and
- (i) if pursuant to Annexure Part E to these General Conditions, clauses or their parts in these General Conditions are deleted, the *Contract* shall be read and construed as though the clause or its part has been deleted, whether or not that particular clause or its part has been struck from these General Conditions.

## 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* the *contract sum*, calculated in accordance with Annexure Part F as adjusted by any additions or deductions made pursuant to the *Contract*. The *contract sum* is not subject to adjustment for rise and fall, escalation, foreign exchange, inflation or any other change, except as may be expressly provided in the *contract sum*.

Nothing in this Contract creates any partnership, agency or joint venture with respect to any one or more of the parties.

## 2.2 CONTRACTOR'S WARRANTIES

Without limiting the generality of subclause 2.1, the *Contractor* warrants to the *Principal* that:

- (a) the *Contractor*:
  - (i) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the carrying out and completion of *WUC*;
  - (ii) has examined any *preliminary design* (whether or not it is included in the *Principal's project requirements*) and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Principal's project requirements*;
  - (iii) shall carry out and complete the *Contractor's design obligations* to accord with the *Principal's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Principal's* consultants for any *work* the subject of a prior contract with the *Principal*; and
  - (iv) shall carry out and complete *WUC* in accordance with the *design documents* and *Principal's Project Requirements* so that *the Works*, when completed, shall:
    - (A) be fit for their stated purpose (including for any design calculations or other specifications provided); and
    - (B) comply with all the requirements of the *Contract*; and
    - (C) comply with all *legislative requirements*; and
- (b) subject to clause 9, the *consultants* identified in the *Contractor's* tender are suitably qualified and experienced;
- (c) the *Contractor* will ensure that *the Works* are carried out in such a manner as to not have any negative impact on the operation of the *Mine*.

The *Contractor* acknowledges that, in entering into the *Contract*, the *Principal* relied on the representation described in this clause.

## 2.3 WARRANTIES UNAFFECTED

The warranties remain unaffected notwithstanding:

- (a) that design *work* (including the *preliminary design*) has been carried out by or on behalf of the *Principal* and included in the *Principal's project requirements*;
- (b) that the *Contractor* has entered into a novation of any prior contract between the *Principal* and a *Principal's* consultant under subclause 9.4 and thereafter has retained that consultant in connection with *WUC*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Principal's Representative*; or
- (d) any *variation*;
- (e) any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, and permission, rejection, request or requirement by the *Principal*, the *Principal's Representative* or any agent, employee or consultant of the *Principal* or the *Principal's Representative*;
- (f) any change made to the *design documents* as a consequence of or in accordance with a direction of the *Principal's Representative* or the *Principal*;

- (g) any failure by the *Principal's Representative* to respond to a request given under clause 6B.1(c); or
- (h) the consent of the *Principal's Representative* to use the *design documents* under clause 6A.2(b).

### 3 PROVISIONAL SUMS

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

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

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

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

### 4 SEPARABLE PORTIONS

The following works, as more particularly described in the *Principal's Project Requirements* will be *separable portions*:

- (a) **separable portion 1** – detailed design and engineering works;
- (b) **separable portion 2** – procurement of major plant, equipment, and long lead time items as defined by the *Principal*;
- (c) **separable portion 3** – construction and the balance of the works.

Subject to the preceding paragraph, *separable portions* will be as set out in Annexure Part A, clearly identifying 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.

The interpretations of -

- (a) *date for practical completion*;
- (b) *date of practical completion*;
- (c) *practical completion*,

and Clauses 5.7, 34 and 35, shall apply separately to each *separable portion* and references therein to *the Works* and to *WUC* shall mean so much of *the Works* and the *WUC* as is comprised in the relevant *separable portion*.

The *Contractor* must not commence a *separable portion* until it has received a written notice from the *Principal* authorising it to do so (**Notice to Proceed**). Before issuing a *Notice to Proceed* the *Principal* may require the *Contractor* to have met the necessary preconditions for each *Notice to*

*Proceed* as set out in Annexure Part H. The *Principal* may, in its absolute discretion, waive any of the necessary preconditions to a *Notice to Proceed*, but is not obliged to do so for the benefit of the *Contractor*.

Where the *Principal* is entitled to, and does withhold the issue of a *Notice to Proceed*, then clause 24.1A will apply.

## 5 SECURITY

### 5.1 PROVISION

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

### 5.2 RECOURSE

*Security* shall be subject to recourse by the *Principal* at any time for all sums due and owing to the *Principal* under this *Contract* or to otherwise ensure the due and proper performance of the *Contractor's* obligations and protect the *Principal's* rights under this *Contract*.

In the event that the *Principal* has recourse to *security* under this clause, the *Contractor* must within five Business Days issue to the *Principal* a further *security* for the amount specified in *Item 13* upon receipt of which, the *Principal* will return to the *Contractor* the unused balance (if any) of the *security* to which the *Principal* had recourse.

Notwithstanding the preceding paragraph, the *Contractor* will not be required to provide *security* with an aggregate value (over the term of this *Contract*) of greater than 10% of the *contract sum*.

### 5.3 REDUCTION AND RELEASE

Upon the issue of a *final certificate* the *Principal* shall release to the *Contractor* the balance of any retention moneys or *security* then held by the *Principal*:

- (a) if the *final certificate* certifies a nil balance or balance owing by the *Principal* to the *Contractor*, then within 14 days after issue of the *final certificate*; or
- (b) 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*.

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

### 5.4 TRUSTS AND INTEREST

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

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

## 5.5 DEED OF GUARANTEE, UNDERTAKING AND SUBSTITUTION

Where the *Contractor* is a related or subsidiary corporation (as defined in the applicable corporations law of the jurisdiction), that party shall, within 14 days after receiving a written request from the other party, provide a *deed of guarantee, undertaking and substitution*, in a form acceptable to the *Principal*, duly executed and enforceable.

## 6A DESIGN OBLIGATIONS

### 6A.1 CONTRACTOR'S DESIGN OBLIGATIONS

The *Contractor* must:

- (a) design *the Works* so that, at final completion, they satisfy the warranties in clause 2;
- (b) ensure that the *design documents* (including the *preliminary design*, any *design documents* even if they were not produced by the *Contractor* and any *design documents* which are *Principal Supplied Information*) satisfy the *Principal's Project Requirements*;
- (c) ensure that the *design documents* contain sufficient detail to construct *the Works* so that *the Works*, when completed, satisfy the warranties in Clause 2;
- (d) ensure that the details contained in the *design documents* are co-ordinated with the details contained all other *design documents*;
- (e) ensure that any building and environmental approvals required from the relevant *Government Authorities* in relation to the *design documents* can be obtained;
- (f) comply with the obligations of a designer under the *OHS Legislation* and supply the *Principal* with all documents required by the *OHS Legislation*;
- (g) allow the *Principal's Representative*, the *Principal* or any person nominated by the *Principal* access to partially completed *design documents* at any time;
- (h) keep the *Principal's Representative* informed of the progress of the *design documents*;
- (i) conduct the measurements referred to in clause 26.1;
- (j) design *the Works* so that *the Works*, when constructed, shall be structurally and aesthetically sound despite any conditions which were ascertainable by conducting the investigations and measurements referred to in clause 26.1 of the issues ;
- (k) ensure that an appropriately skilled, experienced and qualified person acceptable to the *Principal's Representative* at all times supervises and co-ordinates:
  - (i) the design and specification of *the Works* and the preparation of the *design documents*; and
  - (ii) the construction of *the Works* in accordance with the *design documents*;
- (l) provide such additional information in relation to the *design documents* as the *Principal's Representative* requires in a form required by the *Principal's Representative* without any addition to the *contract sum* (and ensure that the appropriate personnel are available to attend meetings in order to provide that information); and

- (m) obtain the consent of the *Principal's Representative* to the *design documents* in accordance with the procedure in Clause 6A.2 prior to commencing *the Works* in accordance with the *design documents*.

## 6A.2 SUBMISSION OF THE DESIGN DOCUMENTS

- (a) The *Contractor* shall submit the proposed *design documents* to the *Principal's Representative* within the time periods specified in Item 16.
- (b) Within a reasonable time of receipt by the *Principal's Representative* of the proposed *design documents* the *Principal's Representative* may do any one of the following:
  - (i) consent to the use of the proposed *design documents* for the *WUC*;
  - (ii) consent to the use of the proposed *design documents* for the *WUC* subject to modifications listed in the consent; or
  - (iii) reject the proposed *design documents* with reasons for the rejection.
- (c) If the *Principal's Representative* rejects the proposed *design documents*, the *Contractor* shall resubmit the proposed *design documents* until the *Principal's Representative* consents to the use of them.
- (d) Neither the *Principal* nor the *Principal's Representative* are obliged to check the *design documents* or any proposed *design documents* for errors, omissions or compliance with the requirements of the *Contract*. Neither the consent of the *Principal's Representative* under Clause 6A.2(b)(i) or (ii), nor anything said by the *Principal* or the *Principal's Representative* or any agent or employee of the *Principal* or the *Principal's Representative* in relation to the *design documents* or any proposed *design documents* shall relieve the *Contractor* from responsibility for the *Contractor's* errors or omissions or departure from the *Contractor's* design obligations or other requirements of the *Contract*.
- (e) The *Principal's Representative* may direct the *Contractor* to supply any additional document which the *Principal's Representative* considers necessary to reflect and convey the design of *the Works* to form part of the *design documents*.

## 6A.3 VARIATIONS TO THE DESIGN DOCUMENTS

A change to the *design documents* or the *WUC* shall constitute a variation to *WUC* only if the *design documents* or the *WUC*, before such variation, relevantly complied with the *Principal's Project Requirements*.

## 6A.4 ERRORS IN DESIGN DOCUMENTS - DISCREPANCIES

Where there is any error, ambiguity, inadequacy or deficiency ("Error") in the *design documents* (including where the *design documents* fail to satisfy the *Principal's Project Requirements*), then the *Contractor* shall:

- (a) rectify the *design documents* and the *WUC* at no cost to the *Principal*;
- (b) have no Entitlement as a consequence of such Error; and
- (c) indemnify the *Principal* for any costs losses and expenses which are incurred by the *Principal* as a consequence of the Error.



## 6B INFORMATION RELATING TO DESIGN FROM PRINCIPAL

### 6B.1 ADDITIONAL INFORMATION FOR PRINCIPAL'S PROJECT REQUIREMENTS

The *Contractor* shall:

- (a) ensure that the information provided to it defines the *Principal's Project Requirements* in sufficient detail for the *Contractor* to complete the *design documents*; and
- (b) determine what additional information it needs from the *Principal* to clarify the *Principal's Project Requirements*; and
- (c) make requests in writing to the *Principal's Representative* to provide that information and include with that request whatever information the *Principal's Representative* may reasonably require including any information which would have an impact on any decision the *Principal* may have to make in relation to the issue.

If in the *Principal's Representative's* opinion the information sought by the *Contractor* under this Clause is reasonably necessary to clarify the *Principal's Project Requirements*, the *Principal's Representative* may refer the request to the *Principal* and obtain a response to such request.

### 6B.2 FORM OF INFORMATION SUPPLIED BY PRINCIPAL'S REPRESENTATIVE

No information provided to the *Contractor* by the *Principal* or the *Principal's Representative* shall form part of the *Principal's Project Requirements* unless it is in writing, expressly provides that the "information forms part of the *Principal's Project Requirements*" and is signed by the *Principal's Representative*.

### 6B.3 PRINCIPAL SUPPLIED INFORMATION

"*Principal Supplied Information*" means any information except for the *Principal's Project Requirements* which is in any form supplied or made available to the *Contractor* by or on behalf of the *Principal*:

- (a) whether it was made available before the execution of the *Contract* or after the execution of the *Contract*;
- (b) whether or not it forms part of the *design documents*; and
- (c) whether or not it is listed in the *Formal Instrument of Agreement* as a document which forms part of the *Contract*.

The Preliminary Design is deemed to be Principal Supplied Information.

### 6B.4 NO WARRANTIES AS TO PRINCIPAL SUPPLIED INFORMATION

Except to the extent that the *Contractor* is entitled to make a claim pursuant to clause 25, the *Contractor* acknowledges that:

- (a) the *Principal* makes no warranties as to the sufficiency or accuracy of the *Principal Supplied Information*;
- (b) unless pursuant to clause 6B.2 the *Principal* supplied information forms part of the *Principal's Project Requirements*,, the *Principal* makes no warranty as to whether

- the *Principal Supplied Information* satisfies or forms part of the *Principal's Project Requirements*;
- (c) any error or omission in the *Principal Supplied Information* shall have no effect on:
    - (i) the warranties provided by the *Contractor* under clause 6 or any other provision of this *Contract*; or
    - (ii) the obligations of the *Contractor* under the *Contract*;
  - (d) the *Contractor* has not and shall not rely on the *Principal Supplied Information* for any purpose unless the *Contractor* has first independently verified the accuracy of the *Principal Supplied Information*;
  - (e) the *Contractor* shall assess the *Principal Supplied Information* and shall draw its own conclusions as to:
    - (i) the accuracy and sufficiency of the *Principal Supplied Information*,
    - (ii) whether the *Principal Supplied Information* satisfies the *Principal's Project Requirements*; and
    - (iii) whether the *Principal Supplied Information* should properly form part of the *design documents*; and
  - (f) the *Contractor* shall have no entitlement as a consequence of the provision of the *Principal Supplied Information* even if that *Principal Supplied Information* is or proves to be inaccurate, incomplete, or inadequate for any reason.

## 7 SERVICE OF NOTICES

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

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

## 8 CONTRACT DOCUMENTS

### 8.1 DISCREPANCIES

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

The *Contractor* shall bear the cost of compliance with a *direction* under this subclause to the extent that any inconsistency, ambiguity or discrepancy in the *design documents* or between the *design documents* and the *Principal's project requirements* necessitates the *direction*.

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

## 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 *Principal's Representative* the documents and number of copies at the times or stages stated in *Item 16*.

Other documents and information required by the *Contract*, unless elsewhere stated in the *Contract*, shall be supplied not less than 14 days before the *work* described in the documents is commenced and shall be in a form satisfactory to the *Principal's Representative*.

If the *Contractor* submits a document to the *Principal's Representative*, then except where the *Contract* otherwise provides:

- (a) the *Principal's Representative* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;
- (b) notwithstanding subclause 2.1, any *Principal's Representative's* acknowledgment or approval shall not prejudice the *Contractor's* obligations; and
- (c) if the *Contract* requires the *Contractor* to obtain the *Principal's Representative's direction* about that document, the *Principal's Representative* shall give, within the time stated in *Item 17*, the appropriate *direction*, including reasons if the document is not suitable.

A *direction* by the *Principal's Representative* to vary anything in the *design documents* shall be a *variation* to *WUC* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Principal's project requirements*.

Copies of documents supplied by the *Contractor* shall be the *Principal's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of *the Works*.

## 8.4 AVAILABILITY

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

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

## 8.5 CONFIDENTIAL INFORMATION

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

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

## 8.6 MEDIA

The *Contractor* shall not, without the *Principal's* prior written approval (including terms), provide information regarding the project to the Media. The Media is any form of public disclosure whether it is spoken, written, or otherwise transmitted to any party not authorised to receive information by the *Principal*.

- \* The *Contractor* shall refer to the *Principal* any enquiries from any media concerning the project.

## 9 ASSIGNMENT AND SUBCONTRACTING

### 9.1 ASSIGNMENT

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

### 9.2 SUBCONTRACTING GENERALLY

The *Contractor* shall engage and retain the consultants identified in the *Contractor's* tender.

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

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

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

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

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\* See Preface

Approval may be conditional upon the subcontract including:

- (a) provision that the *subcontractor* shall not assign nor subcontract without the *Contractor's* written consent;
- (b) provisions which may be reasonably necessary to enable the *Contractor* to fulfil the *Contractor's* obligations to the *Principal*;
- (c) provision that if the *Contract* is terminated and upon the *subcontractor* being paid the sum certified by the *Principal's Representative* as owing to the *subcontractor*, the *Contractor* and the *subcontractor* shall, after the *Principal* has done so, promptly execute a deed of novation in the form of Annexure Part C.

For the purpose of effecting such novation only, the *Contractor* hereby irrevocably appoints the *Principal's Representative* to be the *Contractor's* attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Contractor* accordingly; and

- (d) where the *subcontractor* is a *consultant*, provision that the *subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 23(c)* and *23(d)*.

### 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 *Principal's Representative* written notice of that *selected subcontractor's* name.

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

### 9.4 NOVATION

This subclause applies only where the *Principal's project requirements* include a *preliminary design*, the *Contract* includes *selected subcontract work*.

When directed by the *Principal*, the *Contractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Principal*, the *Contractor* and the *subcontractor* or the *selected subcontractor* stated in *Item 19* for the particular part of the *preliminary design* or *selected subcontract work*.

### 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 deliver to the *Principal* before *Practical Completion* deeds of warranty in a form approved by the *Principal* and complying with clause 9.7, from the *subcontractors* and suppliers who provide the work identified in *Item 18*.

Where any *subcontractor* or supplier has provided warranties or guarantees in relation to any work, plant or equipment incorporated into *the Works* (other than work identified in Item 19 in relation to which the preceding paragraph applies) which have not expired within 14 days after the expiration of the defects liability period then:

- (a) so far as they are capable of assignment, the *Contractor* shall, within 14 days of the expiration of the defects liability period, assign to the *Principal* the benefit of such warranties and guarantees; and
- (b) so far as they are not capable of assignment, the *Contractor* by this clause irrevocably appoints the *Principal* its attorney for the purposes of enforcing the benefit of those warranties and guarantees and shall provide the *Principal* with copies of those warranties and guarantees prior to the date of practical completion or within 7 days of an earlier request from the *Principal*.

## 9.7 EQUIPMENT WARRANTIES

The *Contractor* shall procure warranties in respect of those parts of *the Works* listed in Annexure Part O from the relevant *subcontractors*.

Such warranties shall be:

- (a) in the form in, Annexure Part O; and
- (b) in favour of the *Principal* and the *Contractor*.

The *Contractor* shall obtain other warranties from the remaining *subcontractors* for the benefit of the *Principal* and the *Contractor*. As a minimum, each such warranty shall provide that:

- (a) the thing warranted shall be of merchantable quality and fit for the purpose or purposes stated in the *Contract*;
- (b) it will commence:
  - (i) in respect of services performed by the *subcontractor*, on the date the services are completed; and
  - (ii) in respect of any other items, on the date on which the item is incorporated into *the Works*;
- (c) it will end 12 months after the *Date of Performance Testing Completion*;
- (d) to the extent that the warranty relates to spares held by the *Principal*, it shall commence upon the spare being incorporated into *the Works* and end 12 months later;
- (e) if instructed by the *Principal's Representative*, the rectification or repair work is to be carried out on *site*; and
- (f) it may be assignable by the *Principal* without the *subcontractor's* consent.

If, notwithstanding the foregoing provisions of this clause, the *Contractor* procures any warranty solely in its own name, then, as a condition to the issue of the *final certificate*, the *Contractor* must assign the benefit of the warranty to the *Principal*.

## 9.8 PRINCIPAL SUPPLIED MATERIALS

The *Principal* will supply the *Principal supplied Materials* specified in Item 21A to the *Contractor* free of cost and delivered to the site. The *Principal supplied Materials* will not form part of the *contract sum* and the *Contractor* will not be entitled to any *Agreed Margin* on the *Principal supplied*



*Materials*. Once delivered to the *Contractor* at the site care for the materials and risk in the materials will be the responsibility of the *Contractor* in accordance with clause 28A.

## 9.9 LONG LEAD TIME CONTRACTS

The *long lead time contracts* will be treated by the parties as follows:

- (a) the *Principal* will assign and the *Contractor* will accept assignment of all rights under the *long lead time contracts*;
- (b) any assignment under this clause must be made in writing and signed by both the *Principal* and *Contractor* and notified to the other parties under the *long lead time contracts*
- (c) the *Principal* will, after assignment remain responsible for:
  - (i) commercial negotiation of contract terms with the contractors for *long lead time contracts*;
  - (ii) execution of the *long lead time contracts* and placing any subsequent orders under those *long lead time contracts*;
  - (iii) cost of transportation or freight under *long lead time contracts*
  - (iv) payment of all amounts owing under the *long lead time contracts*;
- (d) the *Principal* will retain title in all equipment or goods provided under *long lead time contracts* but the *Contractor* will have care and custody of equipment or goods provided under *long lead time contracts* once those equipment or goods are on *site* until *performance testing completion*;
- (e) the *Contractor* will after assignment be responsible for:
  - (i) managing all other aspects of the *long lead time item contracts* and will be entitled to and must as necessary enforce all rights under the *long lead time contracts* to meet the *Contractors* obligations under this *Contract*, including ensuring that the equipment or goods supplied under the *long lead time contracts* allow the relevant *Performance Testing* requirements to be met;
  - (ii) interfacing with the contractors for the *long lead time contracts* to resolve issues regarding detailed engineering requirements;
  - (iii) scheduling deliveries and expediting of equipment or goods to be supplied under *long lead time contracts*;
  - (iv) receipt and storage of equipment or goods to be supplied under *long lead time contracts*, on *site*;
  - (v) notification of the *Principal* where deliverables or other preconditions for payment under the *long lead time contracts* have been met;
- (f) the *Contractor* will, as the *Contractor's* sole entitlement under or with respect to the rights and obligations under this clause, be paid, 2% of the contract price of each *long lead time contract* assigned to the *Contractor*. The payment will be claimed as a *variation* without any further margin and will not increase the *GMP*; and
- (g) nothing in this clause diminishes or otherwise alters the *Contractor's* other obligations under the *Contract*.

## 10 INTELLECTUAL PROPERTY RIGHTS

### 10.1 WARRANTIES AND INDEMNITIES

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

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

The *Principal* grants to the *Contractor* a non-exclusive royalty free licence until the end of the last *defects liability period*, to use any *intellectual property right* held by the *Principal*, necessary for the purposes of complying with the obligations under this *Contract*. The *Contractor* shall not use or otherwise deal with the *Principal's intellectual property rights*, or allow any other person to do the same for any other purpose.

Each party shall indemnify the other against such respective infringements.

### 10.2 NEWLY CREATED IP

- (a) Subject to clause 10.2(b), title to, copyright in and other *intellectual property rights* in any documents or other property created by the *Contractor* for or in connection with the *WUC* vests in the *Principal* on creation and the *Principal* grants an irrevocable licence to the *Contractor* to use those documents or other property in connection with the performance of the *WUC*.
- (b) Where the *intellectual property rights* referred to under paragraph 10.2(a) are created by the *Contractor* and are a modification or improvement to the *Contractor's* existing *intellectual property rights*, then the *Contractor* shall own the title to, copyright in and other *intellectual property rights* in that modification or improvement and the *Contractor* grants the an irrevocable licence to the *Principal* to use those documents or other property in connection with the performance of the *WUC* and for the ongoing maintenance and renovation of the *Works*, for the life of the *Mine*.

### 10.3 CONTRACTOR MATERIAL

- (a) The *Contractor*:
  - (i) grants to the *Principal* a perpetual worldwide, non-exclusive, royalty-free licence (including the right to sub-licence to third persons and *related bodies corporate*) to use, reproduce, modify, adapt and otherwise exercise all *intellectual property rights* in the *Contractor Material* including those referred to in clause 10.2(b) to the extent necessary for the *Principal* to be able to fully use, operate and maintain the *Works*, for the life of the *Mine*;
  - (ii) must obtain, at the *Contractor's* cost, all third party assignments, licences, consents and waivers, including waivers of moral rights, to give effect to this *Contract* and to enable the *Principal* to exercise its *intellectual property rights* under paragraph (i); and
  - (iii) undertakes to, and to procure any person to, do anything reasonably required by the *Principal's Representative* to perfect the licence granted under this clause.

- (b) The *Contractor* warrants to the *Principal* that it, and its suppliers' or subcontractors' use of the *Contractor Material*, and the *Works* does not breach any other persons *intellectual property rights*.

## 11 LEGISLATIVE REQUIREMENTS

### 11.1 COMPLIANCE

The *Contractor* shall satisfy all *legislative requirements* except those in *Item 21(a)* or directed by the *Principal's Representative* to be satisfied by or on behalf of the *Principal*.

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

### 11.2 CHANGES

If a *legislative requirement*:

- (a) necessitates a change:
- (i) to the *Principal's project requirements*;
  - (ii) to *the Works*;
  - (iii) to so much of *WUC* as is identified in *Item 21(b)*;
  - (iv) being the provision of services by a municipal, public or other statutory authority in connection with *WUC*; or
  - (v) 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 *Principal's Representative* and added to or deducted from the *contract sum*. The *Contractor* is not otherwise entitled to an adjustment to the *contract sum* for compliance with the *legislative requirements*. This clause does not apply to a change in income tax rates, but may apply to other new or adjusted taxes that directly effect the cost of carrying out the *WUC*.

### 11.3 APPROVALS

- (a) The *Principal* will obtain the *Principal Approvals*.
- (b) The *Contractor* will obtain the *Contractor Approvals*.
- (c) Each party will advise the other of any conditions or obligations imposed in relation to the *Approvals* for which they are responsible.
- (d) The *Contractor* and the *Principal* will comply with all conditions and obligations imposed in relation to the *Approvals* (insofar as they relate to *the Works* or the *WUC*).

## 11.4 OH&S LEGISLATION

- (a) To the extent that it is able to do so, the *Principal* appoints the *Contractor* to be the Principal Contractor pursuant to the *OH&S Legislation* for all construction work carried out at the workplace.
- (b) To the extent that it is able to do so, the *Contractor* accepts the appointment and will assist the *Principal* to complete all prescribed forms and attend to all statutory requirements to ensure that the *Contractor* is appointed as principal contractor and the *Contractor* will pay all fees and charges payable under the *OH&S Legislation* in connection with the appointment or the execution of *the Works*.
- (c) To the extent that the *OH&S Legislation* applies, the *Contractor* shall, in respect of *the Works*, be responsible for the performance of the functions of the principal contractor within the meaning of the *OH&S Legislation* and Regulations in force under the *OH&S Legislation*; and

the appointment will terminate on the earlier of:

- (a) *performance testing completion*;
- (b) termination of the contract; and
- (c) the date it is expressly revoked by the Principal.
- (d) To the extent that the *OH&S Legislation* does not apply, then the *Contractor* must comply with all directions regarding health and safety issued by the Operator for the coal operation in accordance with clause 72 of the *Coalmine Health and Safety Act 2002*.

The *Contractor* shall notify the *Principal* of every serious bodily injury, dangerous event, work caused illness and work injury which occurs on site as soon as possible but not later than twenty four (24) hours after such occurrence.

The *Principal* shall ensure that the *separate contractors* and any other persons other than the *Contractor* given access to the *site* by the *Principal* comply with all directions given by the *Contractor* in relation to workplace health and safety for work carried out at the *workplace* and the *Principal* authorises the *Contractor* to exercise as much of the *Principal's* authority as necessary to discharge the *Contractor's* obligations as principal contractor.

The *Contractor* in complying with this clause must also comply with the Project Site Safety Obligations set out in Annexure Part L.

## 11.5 PORTABLE LONG SERVICE LEAVE LEVY

To the extent that any levy or charge is payable, in respect of the execution of *the Works* under any legislation dealing with portable long service leave (or similar) entitlements for workers in the construction industry, the *Contractor* must pay the levy or charge.

## 11.6 CPRS

If a carbon pollution reduction scheme or emissions trading scheme becomes law and applies to the *WUC* at any time before *practical completion*, clause 11.2 will apply in respect of the scheme.

## 11.7 ENVIRONMENT

The *Contractor* must comply with the *Principal's* environmental requirements set out in Annexure Part M.

## 11A MANAGEMENT PLAN

### 11A.1 PREPARATION OF MANAGEMENT PLAN

The *Contractor* must, within 30 *business days* of the date of execution of this *Contract* prepare and submit to the *Principal's Representative*, *Management Plan* which includes the following plans:

- (a) Site Establishment and Management Plan;
- (b) Construction EMP;
- (c) Quality Management Plan;
- (d) Safety Management Plan;
- (e) Local Participation Plan;
- (f) Traffic Management Plan;
- (g) Employment IR Management Plan and
- (h) Procurement Plan.

The *Management Plan* and each of the plans included within it must not be inconsistent with the *Principal's project requirements*. The *Management Plan* must take into account the requirements of any utilities or service providers. If the requirements of the utilities or service providers are not included in, the *Principal's project requirements* or are subsequently amended by the service or utility provider, then if the *Contractor* incurs additional cost in complying with such requirements then the *Contractor* may claim those costs as a *variation*.

### 11A.2 COMPONENTS OF MANAGEMENT PLAN

#### (a) Site Establishment, Management and Construction Workplace Plan

The *Contractor* must prepare a Site Establishment, Management and Construction Workplace Plan describing the nature and timing of the mobilisation of resources and other *Site* establishment activities.

The *Contractor* must provide details of how it proposes to undertake *the Works* within the prescribed time frame and site constraints. If this involves a number of simultaneous work 'fronts' then these need to be defined individually.

Where progressive *site* access or possession is identified the *Contractor* shall indicate how he intends to stage the works and manage any interfaces with others.

Within the *Contractors* Site Establishment, Management and Construction Workplace Plan it must identify and provide all appropriate Work Method Statements for its workforce and those of its subcontractors in a manner consistent with the safety Legislation covering the works.

### (b) Construction EMP

The *Contractor* must prepare a draft Environmental Management Plan - Construction (Construction EMP) consistent with this *Contract* (including clause 11.7) and all relevant legislative requirements.

The *Contractor* must employ a suitably qualified person as a Site environmental officer to monitor compliance by the *Contractor* and subcontractors with the Construction EMP.

### (c) Quality Management Plan

The *Contractor* must prepare a draft Quality Management Plan (including any test plan and quality assurance requirements) consistent with this *Contract* including Annexure Part N, and all relevant legislative requirements.

### (d) Safety Management Plan

The *Contractor* must prepare a Safety Management Plan (consistent with clause 11.4) broken into two parts as follows:

- (i) detailing the key construction risks associated with the *WUC* and explaining how these risks are managed during construction;
- (ii) detailing an Occupational Health and Safety Plan, consistent with this *Contract*, and legislative requirements relating to workplace health and safety.

### (e) Local Participation Plan

The *Contractor* must prepare a Local Participation Plan detailing the extent of local participation expected in the project.

### (f) Traffic Management Plan

The *Contractor* must prepare a Traffic Management Plan detailing how traffic management issues and risks will be dealt with during construction and how the movement of vehicles and pedestrians will be managed. The Traffic Management Plan must be consistent with traffic management plans for the *Mine* and must be updated as necessary to ensure continued consistency.

### (g) Employment IR Management Plan

The *Contractor* must prepare an Employment and Industrial Relations Management Plan detailing how employees and subcontractors industrial agreements, selection processes, fatigue management & other HR/IR processes will be implemented and managed for the *WUC*.

### (h) Procurement Plan

The *Contractor* must prepare a Procurement & Contracting Plan detailing the procurement processes, the equipment or goods being procured, *subcontractors* and a timetable for procurement consistent with the *program*.

## **11A.3 PERMISSION AND COMPLIANCE**

### **(a) Use of Plans**

The *Contractor* must submit the plans required by clauses 12.2(a) - 12.2(f) to the *Principal's Representative* for permission to use within 30 *business days* of the execution of the *Contract*. The *Principal's Representative* must, within 10 *business days* of receipt, advise whether or not the plan is accepted and permission to use the plan is given.



If the plan is not accepted, the *Contractor* must amend the plan and resubmit it within 10 *business days* of being advised the plan is not accepted for approval under this clause.

**(b) Compliance with Plans**

The *Contractor* must at all times comply with the plans for which permission to use has been granted under clause 11A.3(a) and also the other plans that form part of the *Management Plan*.

**(c) Amendment of Management Plan**

The parties acknowledge that the *approvals* to be issued after the date of execution of this *Contract* may impact on the plans included in the *Management Plan*. Within 15 *business days* of the *Contractor* obtaining a *Contractor's Approval* or being given notice of a *Principal's Approval*, the *Contractor* must provide amended plans that comply with the relevant *Approval* to the *Principal's Representative* for approval. The *Principal's Representative* must, within a reasonable time of receipt of the amended plan, advise whether or not it is accepted and permission to use the plan is given.

If the plan is not accepted, the *Contractor* must amend the plan and resubmit it within 5 *business days* of being advised the plan is not accepted.

**(d) Remedial Action**

The *Contractor* shall provide to the *Principal* copies of any notices, correspondence or directions of whatsoever nature issued by any relevant *Government Authority* concerning an *Environmental Requirement* or a regulating workplace health and safety requirement within 24 hours of the dispatch and/or receipt of such notice, correspondence or direction and shall immediately ensure that its employees, contractors and subcontractors comply with it.

**(e) Contractor not Relieved**

Compliance with a plan does not relieve the *Contractor* from its general obligation to comply with this *Contract* and all *legislative requirements*.

Receiving permission to use a plan or the *Management Plan* from the *Principal's Representative* does not relieve the *Contractor* of its responsibilities in relation to the plan or the *Management Plan*.

## 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 *Principal's Representative* has given reasonable written notice to the *Contractor* and in addition to the *Principal's* other rights and remedies, may have the obligation performed by others. The cost thereby incurred shall be certified by the *Principal's Representative* as moneys due from the *Contractor* to the *Principal*.

## 13 URGENT PROTECTION

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

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

## 14 CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

### 14.1 CARE OF WUC

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

- (a) the whole of *WUC* from and including the date of commencement of *WUC* to 4:00 pm on the *date of performance testing 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 performance testing 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 *Principal's Representative*, 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 *Principal's Representative* in pricing the *variation* shall assess the proportional responsibility of the parties.

### 14.3 EXCEPTED RISKS

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

- (a) any negligent act or omission of the *Principal's Representative*, 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 such part of the design of *WUC*, including the *preliminary design* provided by the *Principal*, as is not warranted under clause 2.

## 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;
- (b) breach of the *Contractor's* obligation as 'principal contractor' under clause 11.4 and
- (c) 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 *Principal's Representative*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*) may have contributed to the injury, death, loss or damage.

This subclause shall not apply to:

- (a) the extent that the *Contractor's* liability is limited by another provision of the *Contract*;
- (b) exclude any other right of the *Principal* to be indemnified by the *Contractor*;
- (c) things for the care of which the *Contractor* is responsible under subclause 14.1; and
- (d) 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 claims referred to in paragraph (d) of subclause 15.1.

## 16A INSURANCE OF THE WORKS

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

### **Alternative 1: Contractor to insure**

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

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

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

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

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

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

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

### **Alternative 2: Principal to insure**

Not used.

## **16B PROFESSIONAL INDEMNITY INSURANCE**

Before commencing *WUC*, the *Contractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 23(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 23(b)*.

The *Contractor* shall ensure that every *consultant*, if within a category stated in *Item 23(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 23(c)* applicable to that category.

Each such *consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 23(d)*.

## 17 PUBLIC LIABILITY INSURANCE

The Alternative in *Item 24(a)* applies.

### **Alternative 1: Contractor to insure**

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

The policy shall:

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

of the parties, the *Principal's Representative*, *consultants* and *subcontractors* from time to time, whenever engaged in *WUC*;

- (a) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 16A) 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);
- (b) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (c) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 24(b)*; and
- (d) be with an insurer and otherwise in terms both approved in writing by the *Principal* (which approvals shall not be unreasonably withheld).

### **Alternative 2: Principal to insure**

Not used.

## 18 INSURANCE OF EMPLOYEES

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

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

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

## 18A FURTHER INSURANCES

Before commencing *WUC*, the *Contractor* shall effect and maintain for the duration of the *Contract* the further insurances referred to in *Item 24A*.

## 19 INSPECTION AND PROVISIONS OF INSURANCE POLICIES

### 19.1 PROOF OF INSURANCE

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

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

### 19.2 FAILURE TO PRODUCE PROOF OF INSURANCE

If after being so requested, a party liable to insure fails promptly to provide evidence of satisfactory compliance, then without prejudice to other rights or remedies, the other party may insure and the cost thereof shall be certified by the *Principal's Representative* 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 16A 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 *consultant* 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 *Principal's Representative*, a *consultant* or a *subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Principal's Representative*, the *consultant* 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 16A or 17 and shall keep the other party informed of subsequent developments concerning the claim. The *Contractor* shall ensure that *consultants* and *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 16A:

- (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 *Principal's Representative* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Principal* to the *Contractor*, the *Contractor* shall be entitled immediately to



receive from insurance moneys received, the amount of such moneys so paid 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).

## 19A LIMITATION OF LIABILITY

### 19A.1 LIABILITY CAP

Subject to clause 19A.3, the *Contractor's* liability to the *Principal* under any principle of law or for a breach by the *Contractor* of its obligations under the *Contract* is limited to:

- (a) the amount or percentage of the *contract sum, as varied*, specified in *Item 20A*;
- (b) plus any amount which:
  - (i) is payable to the *Contractor* under any policy of insurance maintained by the *Contractor*; or
  - (ii) would have been payable under any such policy but for a breach by the *Contractor* of the *Contract* or the insurance policy; or
  - (iii) any amount received by a *Contractor* as a result of an action by it against a third party; or
  - (iv) that would have been payable to the *Contractor* as a result of an action against a third party but for the negligence of, or breach of the contract by the *Contractor*.

### 19A.2 EXCLUSION OF CONSEQUENTIAL LOSS

Notwithstanding any other provision of this *Contract*, a party (the *infringing party*) will not be liable to the other in contract, tort or otherwise, for any *consequential loss* related to or connected with this *Contract*.

### 19A.3 EXCEPTIONS

The limitations of liability set out under clause 19A.1, does not apply where the liability has arisen as a result of or in connection with:

- (a) the *wilful misconduct* of the *infringing party*, its employees, agents or contractors;
- (b) the imposition of a fine or penalty as the result of an act or omission of the *infringing party*;
- (c) the indemnities in clauses 10, 15.1, 15.2.

## 20 PRINCIPAL'S REPRESENTATIVE

The *Principal's Representative* will carry out all functions and responsibilities, and issue all directions, as the agent of the *Principal* (and not as an independent certifier, assessor or valuer).

If pursuant to a provision of the *Contract* enabling the *Principal's Representative* to give directions, the *Principal's Representative* gives a direction, the *Contractor* shall comply with the direction.

For the purposes of the *Payment Act*, the *Principal's Representative* is authorised (but not exclusively) to receive payment claims and to issue payment schedules on behalf of the *Principal*.

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

### 20A PROJECT CONTROL GROUP (“PCG”)

#### 20A.1 COORDINATE PCG

During the execution by the *Contractor* of the *WUC*, the *Principal's Representative* shall co-ordinate or direct the *Contractor* to co-ordinate project control group meetings at the intervals or times directed by the *Principal's Representative* and in doing so the *Principal's Representative* or the *Contractor* (as the case may be) shall:

- (a) convene them;
- (b) notify attendees;
- (c) prepare agendas; and
- (d) prepare and distribute minutes.

#### 20A.2 PCG ATTENDEES

The PCG meetings shall (unless they have reasonable excuse) be attended by:

- (a) the *Principal's Representative* who shall chair the meeting;
- (b) the *Contractor's Representative*;
- (c) nominees of the *Principal*; and
- (d) nominees of the *Contractor* but only if a request is made in writing to the *Principal's Representative* and approved by the *Principal's Representative* prior to the meeting.

#### 20A.3 PCG AGENDA

The PCG shall be a forum for discussion of:

- (a) presentation by the *Contractor* of design solutions and design progress;
- (b) review of needs of the *Principal*;
- (c) the performance and progress by the *Contractor* of the *WUC*;
- (d) any issues arising out of the *Contract*;
- (e) identifying problems and outstanding issues and allocating responsibility and tasks to resolve those issues, including occupational health and safety matters; and

- (f) any other items required by the *Principal's Representative*.

#### 20A.4 MEETING DELEGATES

The *Contractor* shall ensure that meetings convened under this clause are attended by its representatives who have the knowledge and authority to respond to queries raised by the *Principal* and the *Principal's Representative* and to propose solutions to those queries.

#### 20A.5 REPORTS AND MINUTES

The *Contractor* shall deliver to the *Principal's Representative* and the *Principal* a report in the form required by the *Principal's Representative* and as reasonably required by the *Principal's Representative* at least once per month at the times directed by the *Principal's Representative*.

The *Principal's Representative* shall keep detailed and accurate minutes of meeting and distribute those minutes to the attendees of the meeting within 4 business days of the meeting.

#### 20A.6 WEEKLY REPORTS

The *Contractor* is to submit a weekly report to the *Principal's Representative*, at a time determined by the *Principal's Representative*.

The report shall include the following details:

- (a) summary of on & off *site* labour - by trade;
- (b) summary of *site* equipment;
- (c) progress on each major activity including total progress to date;
- (d) the planned activities including locations;
- (e) copies of incident reports, jobs hazard analysis reports, equipment inspections, and other reports necessary to comply with instructions given by the *Principal's Representative*;
- (f) the reports shall be consecutively numbered and shall be submitted to the *Principal's Representative* at the designated place and time.

#### 20A.7 MONTHLY REPORTS

From the commencement of work under the *Contract* through until *Practical Completion*, the *Contractor* shall submit to the *Principal's Representative* a monthly report containing at least the following:

- (a) updated project management program and detailed monthly program;
- (b) details of progress for the month and to date on each major activity of work under the *Contract*;
- (c) narrative report describing *WUC* completed and difficulties encountered, and a forecast for future months;
- (d) status of items purchased or to be purchased from *subcontractors*. This report shall list item number and description of equipment or material, requisition and/or purchase order number, date required at job site, date issued for quote, date issued for purchase, name of sub-contractor or supplier, promised and forecast delivery dates; and

- (e) the reports shall include incident reports, job hazard analysis reports, and equipment inspection.
- (f) Financial cost reports detailing costs incurred to date, estimated forecast costs to complete and final forecast GMP cost and

The *Contractor's* monthly report shall be submitted by the close of business on the 23rd of each calendar month.

The following information and tables shall be provided in the monthly reports:

- (a) program including progress information and in level specified by the *Principal's Representative*;
- (b) documentation / drawings list including engineering progress status;
- (c) procurement status including shipment information and delivery to site;
- (d) resource histograms;
- (e) list of approved and outstanding variations;
- (f) s-Curve on program and cash flow projection showing 'actual's' versus planned;
- (g) earned value progress stating Cost Performance Index (CPI) and Schedule Performance Index (SPI) information; and
- (h) *site* photographs.

## 20A.8 SITE MEETINGS

*Site* meetings between the *Principal's Representative* and the *Contractor*, including such members of their staff and *subcontractors* as may be required, shall be held weekly.

The *Contractor* shall record the minutes of all such meetings, and provide a copy of these minutes either typed, or neatly handwritten to the *Principal's Representative* within forty-eight (48) hours of the completion of the meeting.

## 21 PRINCIPAL'S REPRESENTATIVE'S DELEGATES

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

- (a) no aspect of any function shall at any one time be the subject of delegation to more than one such delegate;
- (b) delegation shall not prevent the *Principal's Representative* exercising any function;
- (c) the *Principal's Representative* forthwith gives the *Contractor* written notice of respectively:
  - (i) the appointment, including the delegates' 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 delegate, the *Principal's Representative* shall terminate the appointment.

The *Principal's Representative's* delegate will carry out the delegated functions or responsibilities, as agent of the *Principal* (and not as independent certifier, assessor or valuer).

## 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 *Principal's Representative* written notice of the representative's name and any subsequent changes.

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

## 23 CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

### 23.1 KEY PERSONNEL

The *Contractor* must:

- (a) employ those people described in the *Contractor's* in Annexure Part I in the roles described in that chart and ensure that those people maintain the roles described in that chart;
- (b) not replace any of those people without the *Principal's* prior written approval except if a person:
  - (i) dies;
  - (ii) becomes ill or incapacitated so as to be unable to perform their role; or
  - (iii) resigns from the *Contractor's* employment (other than to be employed by an associated entity of the *Contractor*),

in which case the *Contractor* must then replace that person with someone of at least equivalent ability, experience and expertise approved by the *Principal*, which approval will not be unreasonably withheld.

When a designated person is replaced in accordance with this provision, the *Contractor* must (unless the person being replaced has died) ensure that there is a proper 'handover' which will require the person and his replacement working together for at least 2 weeks.

In the event that a designated person is replaced not in accordance with this provision, the *Contractor* will be liable for, as a debt due to the *Principal* for each *Key Personnel* breach, the penalty payable, specified in *Item 24B*.

### 23.2 REMOVAL

The *Principal's Representative* may direct the *Contractor* to have removed, within a stated time, from the *site* or from any activity of *WUC*, any person employed on *WUC* who, in the *Principal's Representative's* opinion, has caused a safety issue, is incompetent, negligent or guilty of misconduct or who has otherwise been previously excluded from the *site* or the *Mine*.

## 24 SITE

### 24.1 ACCESS AND POSSESSION

Before the expiry of the time stated in *Item 25(a)*, the *Principal* shall give the *Contractor* access to the *site* sufficient to enable the *Contractor* to commence and carry out the *Contractor's design obligations*.

When the *Contractor* has complied with subclause 24.1A, the *Principal* shall before the expiry of the time in *Item 25(b)*, 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 subject to clause 24.1B give the *Contractor* possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUC*. Subject to subclause 39.7, delay by the *Principal* in giving possession shall not be a breach of the *Contract*.

Possession of 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 *Principal's Representative*.

Whilst on *site* the *Contractor* must comply with the obligations in Annexure Part P.

#### 24.1A CONDITIONS PRECEDENT TO POSSESSION

The *Contractor* will be entitled to have possession of sufficient of the *site* for commencement of the *WUC* under clause 24.1 when:

- (a) it has complied with clause 19.1;
- (b) it has complied with clause 11A.3;
- (c) all *Contractor Approvals* necessary for the particular *Works* to be undertaken at the part of the *site* for which possession is being given are in place; and
- (d) (where applicable) a *Notice to Proceed* for the relevant *separable portion* has been issued by the *Principal*.

### 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 *Contractor* shall permit persons engaged by the *Principal* to carry out *work* on the *site* other than *WUC* and shall cooperate with them. The *Principal* shall give to the *Contractor* the names and roles of the persons so engaged.

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

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



### 24.3 MINERALS, FOSSILS AND RELICS

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

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

### 24.4 SITE PART OF EXISTING OPERATION OF THE PRINCIPAL

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

- (a) the *Principal* will continue to conduct its business, including the operation of the *Mine*, 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 *Principal's Representative*;
- (c) clients, suppliers, contractors, employees and agents of the *Principal* will have access to the site to conduct business with the *Principal*;
- (d) the *Contractor* must:
  - (i) perform the *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* and the employees, agents, and invitees of the *Principal* and of tenants of the *Principal* from risks to safety caused by the performance of the *WUC*;
  - (iv) complete such safety or other training or induction as the *Principal's Representative* 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 *legislative requirements* applying to the *site* and the operation of the *Principal's* business;
  - (vii) erect appropriate signage for the benefit of employees, agents and invitees of the *Principal* 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 *Principal's Representative* 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* at the *site* and to refrain from performing any matter or thing which may affect the operations of the *Principal* without first obtaining the approval in writing of the *Principal's Representative*; and

- (x) consult and co-operate with the *Principal's Representative*, the *Principal* and any tenant of the *Principal* and attend meetings as required by the *Principal's Representative* in relation to the interface between the business operations of the *Principal* and the performance of the *WUC*.

The *Contractor* shall not have any claim or other entitlement as a consequence of the *Principal* conducting its business from the *site*. Any costs, losses, damages or expenses 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*.

## 24.5 WORK ON OR TO ADJOINING PROPERTIES

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

- (a) 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) 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) at its own cost, procure all consents from any *Government Authority* that may be necessary to execute any work over, on to or near an adjoining site or property.

## 24.6 SEPARATE CONTRACTORS

The *Principal* may arrange for or allow *separate 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 the *WUC* as a variation under clause 36; or
- (c) works required by the *Principal* in addition to the occupation or operation of *the Works*, including the construction of other work, or the fit out and the delivery, installation, connection and commissioning of any plant, fixtures or equipment.

The *Contractor* must co-ordinate the performance of the *WUC* with the performance of the work of *separate contractors*.

Where a conflict or dispute arises in relation to the sequencing or co-ordination of the work of *separate contractors* with the *WUC*, the *Principal's Representative* must direct in what order and at what time the *Contractor* may perform the *WUC*.

Except for circumstances outlined in clause 24.7, the *Contractor* shall have no claim or entitlement as a consequence of *separate contractors* being on the *site* or for any thing caused or contributed to by a *separate contractor*.

The *Contractor* will provide all *separate contractors* with such access to *the Works* as may be necessary for them to carry out their work.

The *Contractor* shall make available and co-ordinate with such *separate contractors*:

- (a) 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;
- (b) the protection of works completed by such *separate contractors*;
- (c) at meetings convened by the *Principal's Representative* for the purposes of co-ordination which the *Contractor* must attend.

The *Contractor* is not responsible for any damage to *the Works* to the extent that it is caused by any act or default of *separate contractors*.

If the *Contractor* damages the work of a *separate contractor* the *Principal* may retain the *separate contractor* or a third party to repair that work. The cost to the *Principal* of repairing the damage shall be a debt due and owing from the *Contractor* to the *Principal*.

## 24.7 CLAIMS FOR SEPARATE CONTRACTORS

The circumstances below trigger an entitlement to an adjustment to the *contract sum* or an EOT in relation to the performance of work by separate contractors or the presence of *separate contractors* on the *site*:

- (a) the *Principal's Representative* has given a direction under clause 24.6; and
- (b) the direction has the effect of causing the *Contractor* to change the order or time in which the work is to be performed from an order or time which was previously the subject of an approval by the *Principal's Representative* (whether in the *program* or, if there is one, a revised *program* or otherwise); and
- (c) the cause of the direction could not reasonably have been anticipated by the *Contractor* at the time of that approval had it made all relevant enquires;
- (d) the *Contractor* has used reasonable endeavours to avoid or minimise the effect of the direction and the circumstances which gave rise to the direction; and
- (e) the circumstances giving rise to the direction were beyond the control of the *Contractor* and did not arise as a consequence of a breach of the *Contract* by the *Contractor*.

## 25 LATENT CONDITIONS

The *Contractor* acknowledges and agrees that it has acquainted itself with the condition of the *site*, including the *Existing Works* and the *Principal's Project Requirements* and *Principal Supplied Information* prior to executing this *Contract*, and that the *Contractor* will have no claim or entitlement based on a lack of knowledge of any of the conditions mentioned in this clause except as specifically allowed for in this *Contract*.

## 26 SETTING OUT THE WORKS

### 26.1 SETTING OUT

The *Principal* shall ensure that the *Principal's Representative* 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*. For the avoidance of doubt, recovery marks have been established on *site* and are shown on the drawings forming part of the *Principal's project requirements* and *the Works* shall be set out from those marks. The *Contractor* shall, otherwise 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 *Principal's Representative* and unless the *Principal's Representative* within 3 days directs otherwise.

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

### 26.3 CARE OF SURVEY MARKS

- (a) The *Contractor* shall keep in their true positions all *survey marks* supplied by the *Principal's Representative*.
- (b) The *Contractor* shall reinstate any *survey mark* disturbed, after promptly notifying the *Principal's Representative* and unless the *Principal's Representative* within 3 days directs otherwise.
- (c) If the disturbance was caused by 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 *Principal's Representative* and added to the *contract sum*.

## 27 CLEANING UP

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

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

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

If:

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

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

## 28 MATERIALS, LABOUR AND CONSTRUCTION PLANT

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

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

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

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

### 28A PASSING OF TITLE AND RISK

- (a) Title to any goods, materials or equipment supplied or transferred to the *Principal* as part of *the Works* passes to the *Principal* on payment for the goods, materials or equipment by the *Principal* whether directly or by payment of a progress claim that includes *the Works* of which the goods, materials or equipment form a part.
- (b) Risk in goods, materials or equipment passes to the *Principal* only after *the date of performance testing completion* or the date of termination of this *Contract*, whichever is the earlier.
- (c) For the avoidance of doubt and notwithstanding any other provision of this *Contract*, where the goods, materials or equipment have not yet been used in the performance of *the Works* or delivered to the *site* and payment is being made progressively then title in that part or proportion of the goods or materials for which payment has been made will have passed to the *Principal*, whether the goods, materials or equipment are complete or not.

## 29 QUALITY

### 29.1 QUALITY OF MATERIAL AND WORK

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

## 29.2 QUALITY ASSURANCE

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

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Principal's Representative* has access to the quality system of the *Contractor*, *consultants* 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 *Principal's Representative* becomes aware of *work* done (including material provided) by the *Contractor* which does not comply with the *Contract*, the *Principal's Representative* shall as soon as practicable give the *Contractor* written details thereof. If the subject *work* has not been rectified, the *Principal's Representative* may direct the *Contractor* to do any one or more of the following (including times for commencement and completion):

- (a) remove the material from the *site*;
- (b) demolish the *work*;
- (c) redesign, 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 *Principal's Representative* that the *Principal* intends to have the subject *work* rectified by others,

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

## 29.4 ACCEPTANCE OF DEFECTIVE WORK

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

## 29.5 TIMING

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



## 30 EXAMINATION AND TESTING

### 30.1 TESTS

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

### 30.2 COVERING UP

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

### 30.3 WHO CONDUCTS

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

### 30.4 NOTICE

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

### 30.5 DELAY

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

### 30.6 COMPLETION AND RESULTS

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

Results of *tests* shall be promptly made available by each party to the other and to the *Principal's Representative*.

### 30.7 COSTS

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

The *Contractor* must ensure that there are sufficient spare parts to carry out all necessary testing and will not be entitled to any adjustment to the *contract sum* for the cost of those spare parts.

## 30A PERFORMANCE TESTING

### 30A.1 TO BE CARRIED OUT

The *Performance Testing* must be commenced by the *Contractor* at the times in *Item 7A*, or if no date is specified, as a condition precedent to *practical completion*.

The *Performance Testing* will reach *Performance Testing Completion* when:

- (a) all of the tests identified in the *Performance Testing* have been successfully performed; and
- (b) all of the results of those tests show that *the Works* are operating to the standard required by the *Contract*.

### 30A.2 OPERATING PLANT

The *Contractor* acknowledges that:

- (a) while the *Performance Testing* is being carried out, *the Works* will be operated normally as part of the *Principal's* business and the *Principal* and its employees, contractors and agents will be in full occupation of *the Works* and the *site*;
- (b) the provisions of clauses 24.4 and 31 apply during the *Performance Testing*; and
- (c) the *Contractor* will be liable to the *Principal* for any disruption caused to the *Principal* in carrying out the *Performance Testing* which is not identified in the description of the *Performance Testing*.

### 30A.3 COMPLETION OF PERFORMANCE TESTING

When the *Contractor* considers that *Performance Testing Completion* has been reached, it shall notify the *Principal's Representative* in writing enclosing a copy of all of the test results.

Within 14 days after receiving the request, the *Principal's Representative* shall give the *Contractor* and the *Principal* either a *certificate of Performance Testing Completion* evidencing the *date of Performance Testing Completion* or written reasons for not doing so.

If the *Principal's Representative* is of the opinion that *Performance Testing Completion* has been reached, the *Principal's Representative* may issue a *certificate of Performance Testing Completion* even though no request has been made.

The issue of a *certificate of Performance Testing Completion* will be a precondition to the issue of a *final certificate*.

## 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 *Principal's Representative* before commencement of *work on site*. They shall not be varied without the *Principal's Representative'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 *Principal's Representative* written notice of those circumstances as early as possible.

The *Contractor* acknowledges that:

- (a) the *Principal* conducts its business at the site and will be operational while the *WUC* is being performed;
- (b) those parts of the *WUC* nominated in *Item 25A* may only be performed while the *site* or parts of the *site* are in *shutdown*;
- (c) after practical completion, *the Works* will be in operation and may be in use 24 hours a day 7 days a week;
- (d) after practical completion and during other times nominated by the *Principal*, the *Contractor* will only be allowed to access *the Works* to perform *WUC* during hours nominated by the *Principal* which may be outside business hours, may be of limited duration and may be during a *shutdown* period nominated by the *Principal* (which may be at a time of the year most suited to the business of the *Principal*); and
- (e) the *Contractor* will have no claim or entitlement as a consequence of the *Contractor* being able to perform any part of the *WUC* subject to these constraints.

## 32 PROGRAMMING

### 32.1 DIRECTIONS AND REQUIREMENTS IN RELATION TO PROGRAM

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

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

The *Principal's Representative* may direct in what order and at what time the various stages or portions of *WUC* shall be carried out (including to bring forward a date for practical completion). 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 *Principal's Representative* written notice of the reasons which notice must be given within 7 days of the direction. The right of the *Principal's Representative* to give a direction under this clause includes a right to give an order to accelerate the *WUC*.

Subject to clause 32.3, if compliance with any such directions under this clause, causes the *Contractor* to incur more or less cost than otherwise would have been incurred had the *Contractor* not been given the direction, the difference shall be assessed by the *Principal's Representative* and added to or deducted from the *contract sum*.

### 32.2 PROVISION OF PROGRAM

Within 14 days of the execution of the *Formal Instrument of Agreement*, the *Contractor* must submit to the *Principal* for its approval a program, complying with the requirements in Annexure Part G, for the whole of the *WUC* which is consistent with this *Contract*.

The *Principal's Representative* may give the *Contractor* a direction to submit to the *Principal's Representative* for approval, a draft revised *program*. If the *Principal's Representative* gives its written approval to a draft revised *program*, that draft shall become the revised *program*.

Once the *Principal's Representative* has given its approval to the *program* or a revised *program*, the *program* or revised *program* may not be varied or altered in any way unless the *Principal's Representative* gives its approval to a change in writing.

The *Contractor* must not, without reasonable cause, depart from the *program* or, if there is a revised *program*, the revised *program* approved by the *Principal's Representative*.

### 32.3 ENTITLEMENT IN RELATION TO PROGRAM

The *Contractor* shall not have any claim or entitlement as a consequence of acceleration of the *WUC* or a change to the time the various stages or portions of the *WUC* are carried out unless:

- (a) either:
  - (i) the *Contractor* has received from the *Principal's Representative* a direction under clause 32.1 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 *Principal's Representative* in writing that the direction will result in the *Contractor* incurring more cost (together with an estimate of that cost); or
  - (ii) the *Principal's Representative* has accepted the *Contractor's Acceleration Proposal* in accordance with clause 34A.3(a); and
- (b) the *Contractor* has achieved the acceleration or change required by the direction or the *Contractor's Acceleration Proposal*; and
- (c) the need to accelerate the *WUC* or any part of it or to change the time in which the various stages or portions of *WUC* are carried out does not result from any negligent act, breach, omission or default by the *Contractor* (including breach of a requirement that the *Contractor* perform the *WUC* in accordance with the provisions of the *Contract*).

### 32.4 STATUSED PROGRAM

The *Contractor* shall provide with each progress claim a *statused program* showing the status of the performance of the *WUC* performed to the date of the progress claim.

The *Contractor* acknowledges that the *Principal's Representative* cannot process a monthly progress claim without establishing the *Contractor's* earned progress for the month of claim. The *Contractor* must produce an updated program, with a status data date corresponding to month end, for the *Principal's Representative* to review.

## 33 SUSPENSION

### 33.1 PRINCIPAL'S REPRESENTATIVE'S SUSPENSION

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

- (a) because of an act, default or omission of:
  - (i) the *Principal's Representative*, the *Principal* or its employees, consultants, agents or other contractors (not being employed by the *Contractor*); or

- (ii) the *Contractor*, a *consultant*, a *subcontractor* or the employees or agents of any of them;
- (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 *Principal's Representative's* prior written approval. The *Principal's Representative* may approve the suspension and may impose conditions of approval.

### 33.3 RECOMMENCEMENT

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

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

### 33.4 COST

The *Contractor* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 33.1 and subclause 33.2. If the *Contractor* made the protection, safety, court order or suspension of work necessary, the *Contractor* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 33.1. If the *Contractor* otherwise incurs more or less actual cost than otherwise would have been incurred, the actual cost difference shall be assessed by the *Principal's Representative* and added to or deducted from the *contract sum* and the *Contractor* will not be entitled to any margin for profit, overheads administration or otherwise beyond the actual costs incurred.

## 34 TIME AND PROGRESS

### 34.1 PROGRESS

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

### 34.2 NOTICE OF DELAY

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

### 34.3 CLAIM

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

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

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

The *Contractor* will not be entitled to an *EOT* for a particular delay unless it has strictly satisfied the requirements of clause 34.3 in relation to that delay and notification of the delay.

The *qualifying causes of delay* will give rise to an entitlement to an *EOT* only when:

- (a) the cause was beyond the reasonable control of the *Contractor* or an employee, subcontractor or agent of the *Contractor*; and
- (b) the *Contractor* or an employee, subcontractor or agent of the *Contractor* had not contributed to the cause.

#### 34.3A NOTICES OF POSSIBLE DELAY

The *Contractor* must give the *Principal* notice in writing within:

- (a) if the delay occurred during shutdown, within 7 days; and
- (b) otherwise within 14 days

of it becoming evident to the *Contractor* that it might be delayed in reaching *practical completion* or *Performance Testing Completion* for any cause.

#### 34.3B NOTICES OF CLAIM

Where the *Contractor* wishes to make a claim for an *EOT* for a delay which occurs in part or in full during a *shutdown*, then it must:

- (a) where the *Contractor* is delayed by one cause over a period of more than 7 days:
  - (i) give the *Principal's Representative* notices in writing every 7 days from the commencement of the delay until the delay ceases; and
  - (ii) give the *Principal's Representative* notice in writing within 3 days of the delay ceasing;
- (b) otherwise, give the *Principal's Representative* notice in writing within 10 days of the commencement of the delay.

Where the *Contractor* wishes to make a claim for an *EOT* where the delay occurs completely outside a *shutdown* then it must:



- (a) where the *Contractor* is delayed by one cause over a period of more than 13 days:
  - (i) give the *Principal's Representative* notices in writing every 14 days from the commencement of the delay until the delay ceases; and
  - (ii) give the *Principal's Representative* notice in writing within 7 days of the delay ceasing;
- (b) otherwise, give the *Principal's Representative* notice in writing within 21 days of the commencement of the delay.

### 34.3C DELAY IN GRANTING EOT

A delay by the *Principal* or the failure of the *Principal's Representative* to grant a reasonable *EOT* shall not cause the *date for practical completion* or the *date for Performance Testing Completion* to be set at large but nothing in this sub-clause shall prejudice any right of the *Contractor* to damages.

### 34.4 ASSESSMENT

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

In assessing each *EOT* the *Superintendent* shall:

- (a) disregard questions of whether
  - (i) *WUC* can nevertheless reach *practical completion* without an *EOT*; or
  - (ii) the *Contractor* can accelerate,
- (b) have regard to but shall have regard to what prevention and mitigation of the delay has not been effected by the *Contractor*.

### 34.5 EXTENSION OF TIME

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

Notwithstanding that the *Contractor* is not entitled to or has not claimed an *EOT*, the *Principal's Representative* may at any time and from time to time before issuing the *final certificate* direct an *EOT* but is not obliged to do so for the benefit of the *Contractor*.

### 34.6 PRACTICAL COMPLETION

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

If the *Principal's Representative* is of the opinion that *practical completion* has been reached, the *Principal's Representative* 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 *Principal's Representative* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 28* 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 the *Contractor* does not achieve *Performance Testing Completion* by the *date for Performance Testing Completion*, the *Principal's Representative* shall certify, as due and payable to the *Principal*, liquidated damages in *Item 28* for every day after the *date for Performance Testing Completion* to and including the earliest of the *date of Performance Testing* or termination of the *Contract* or the *Principal* taking *Performance Testing* out of the hands of the *Contractor*.

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

### 34.8 DELAY COSTS

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

## 34A ACCELERATION TO ACHIEVE PRACTICAL COMPLETION

### 34A.1 CONTRACTOR'S ACCELERATION PROPOSAL

The *Principal's Representative* may at any time give the *Contractor* a direction to provide the *Principal's Representative* with the following information in relation to proposed acceleration of the *WUC* ("Contractor's Acceleration Proposal"):

- (a) details of the additional labour and construction plant which the *Contractor* considers will be required to comply with the proposed acceleration;
- (b) the hours of work which will 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* will 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;
- (e) a draft revised *program* which will be implemented to achieve the proposed acceleration; and
- (f) an Occupational Health and Safety Risk Assessment detailing any increased Occupational Health and Safety risks and clear actions to address the risks arising from the revised program.

### 34A.2 PROVIDE CONTRACTOR'S ACCELERATION PROPOSAL

The Contractor must provide the Principal's Representative with the Contractor's Acceleration Proposal within 7 days of receipt of the direction given under clause 34A.1.

### 34A.3 POWER TO DIRECT

On receipt of the Contractor's Acceleration Proposal, the Principal's Representative may do any one of the following:

- (a) advise the *Contractor* in writing that the *Principal* accepts the *Contractor's Acceleration Proposal* in which case:
  - (i) the Contractor shall comply with the *Contractor's Acceleration Proposal*;
  - (ii) the date for practical completion shall be revised to the date contained in the *Contractor's Acceleration Proposal*; and
  - (iii) to the extent that the acceleration is necessary to overcome delays for which the Contractor is responsible (and for which there is no entitlement to an *EOT*) the Contractor will not be entitled to any addition to the *contract sum*;
  - (iv) where clause 32A.3(a)(iii) does not apply and subject to clause 32.3, the Contractor may claim the costs of the acceleration as a *variation* and the *contract sum* shall be adjusted by the amount of the *variation*;
  - (v) the draft revised *program* shall become the revised construction program; or
- (b) reject the *Contractor's Acceleration Proposal*; or
- (c) give the *Contractor* a direction under Clause 32.1 to accelerate the *WUC* in which case the provisions of Clause 32 shall apply to that direction.

## 34B FORCE MAJEURE

### 34B.1 NOTICE AND RELIEF

If an event of *Force Majeure* occurs, then:

- (a) as soon as reasonably practicable after that event of *Force Majeure* arises, the *Contractor* must notify the *Principal's Representative* of:
  - (i) the event of *Force Majeure*; and
  - (ii) the expected duration of the delay arising directly out of the event of *Force Majeure*;
- (b) the parties' obligations under the Contract which are prevented by the event of *Force Majeure* are suspended for the duration of the actual delay arising directly out of the event of *Force Majeure*.

### 34B.2 MITIGATION OF EVENT

The parties must use their reasonable endeavours to remove or relieve any event of *Force Majeure* and to minimise the delay caused by any event of *Force Majeure*.

### 34B.3 TERMINATION FOR FORCE MAJEURE

If an event of *Force Majeure* continues to affect the performance of the *WUC* for a continuous period of 90 days, either party may terminate this *Contract* by serving written notice on the other.

## 34B.4 CONSEQUENCES OF TERMINATION

If a party terminates this *Contract* under clause 34B.4:

- (a) the rights and obligations of the parties under this *Contract* (including, but not limited to, any licence) cease;
- (b) any accrued rights or remedies of a party are not affected; and
- (c) clause 40(b) shall apply.

## 35 DEFECTS LIABILITY

### 35.1 CONTRACTOR TO RECTIFY

The *defects liability period* stated in *Item 31* shall commence on the *date of Performance Testing 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.

The *Contractor* must carry out rectification of all defects to enable *Performance Testing Completion* to be reached.

As soon as possible after the *date of Performance Testing Completion*, the *Contractor* shall rectify all *defects* existing at the *date of Performance Testing Completion* that did not prevent the granting of *Performance Testing Completion*.

During the *defects liability period*, the *Principal's Representative* 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* therefore (not exceeding that in *Item 31*, 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 *Principal's Representative* as moneys due and payable to the *Principal*.

### 35.2 URGENT REPAIRS

Where the *Principal* considers that the rectification of a *defect* must be carried out urgently for safety reasons or because a *defect* will impede the operation of the *Mine*:

- (a) the *Principal* must notify the *Contractor* of the *defect* and the need to urgently repair it as soon as practicable (and, where possible, before the rectification work is carried out);
- (b) the *Principal* may rectify the *defect*;
- (c) the *Principal's Representative* must assess what portion of the cost incurred by the *Principal* in rectifying the *defect* should reasonably be borne by the *Contractor* and certify that amount as moneys due and payable by the *Contractor* to the *Principal*.

### 35.3 EXPIRY OF SUBCONTRACTOR WARRANTIES

If:

- (a) during the *defect liability period*, a *direction* is given under clause 35.1 to rectify a *defect*;
- (b) the *defect* is in *WUC* carried out by a subcontractor or in equipment or materials supplied by a supplier; and
- (c) the contractual obligation of that subcontractor or supplier to rectify the *defect* has expired, such that the *Contractor* has lost the right to require the subcontractor or supplier to rectify the *defect*,
- (d) then, the *Contractor* must rectify the defect at the *Contractor's* cost.

## 36 VARIATIONS

### 36.1 DIRECTING VARIATIONS

The *Contractor* shall not vary *WUC* except as directed in writing and subject to clause 36.1A not until the valuation of the variation has been determined under clause 36.4.

A written assignment under clause 9.9 will be a direction in writing for the purposes of this clause.

The *Principal's Representative*, before the *date of practical completion*, may direct the *Contractor* to vary *WUC* by any one or more of the following which is nevertheless of a character and extent contemplated by, and capable of being carried out under, the provisions of the *Contract* (including being within the warranties in subclause 2.2):

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

#### 36.1A URGENT VARIATIONS

If the *Principal's Representative* is of the opinion that the matter is one of such urgency that the *variation* should proceed before the *variation* has been valued, then the *Principal's Representative* may give oral or written notice to the *Contractor* to that effect, and the *Contractor* must immediately proceed with the *variation*, which will then be valued in accordance with clause 36.4. If an oral instruction is given, the *Principal's Representative* will confirm it in writing as soon as possible thereafter.

### 36.2 PROPOSED VARIATIONS

The *Principal's Representative* may give the *Contractor* written notice of a proposed *variation*. The parties intend that, except in relation to urgent *variations* (under clause 36.1A), the *Principal's Representative* will give such notice in relation to all *variations*.

The *Contractor* shall within 10 *business days* after receiving such notice, notify the *Principal's Representative* whether the proposed *variation* can be effected, together with, if it can be effected, the *Contractor's* estimate of the:

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

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

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

Within 5 *business days* of receiving the notice and any detailed quotation from the *Contractor*, the *Principal's Representative* must provide a notice to the *Contractor* confirming:

- (a) that the *Contractor* is not to proceed with the *variation*; or
- (b) that the *Contractor* is to proceed with the *variation* (and this notice must confirm it is a 'Variation Notice') and:
  - (i) the *Contractor's* estimate or detailed quotation is accepted as the agreed amount of the *variation*; or
  - (ii) the *Contractor's* estimate or detailed quotation is not accepted as the agreed amount and advising of the *Principal's Representative's* assessment of the *variation* under clause 36.4.

### 36.2A NOTICE OF VARIATIONS

If the *Contractor* considers that a direction by the *Principal's Representative* is a direction to carry out a *variation*, then the *Contractor* must, within 5 *business days* of receiving the direction notify the *Principal's Representative* of that interpretation.

The *Principal's Representative* must respond within 5 *business days* of receiving such a notice and:

- (a) confirm whether or not the direction is a *variation*;
- (b) if it is, give notice under clause 36.2 or withdraw the direction;
- (c) if it is not, confirm or withdraw the direction.

If the *Principal's Representative* responds that the direction is not a *variation* and the *Contractor* disagrees, the *Contractor* must submit an estimate pursuant to clause 36.2 and may then refer the issue to dispute resolution under the *Contract*.

### 36.3 VARIATIONS FOR CONVENIENCE OF CONTRACTOR

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



## 36.4 PRICING

The *Principal's Representative* shall, as soon as possible, price the actual cost (exclusive of any mark up for profit, administration, overheads or any other margin to the *Contractor*) to the *Contractor* of each *variation* using the following order of precedence:

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

The actual cost of the *variation* will be added or subtracted from the cost component of the *GMP*. For the avoidance of doubt, no *Agreed Margin* will be payable on any deduction from the *GMP* under this clause.

Notwithstanding the other terms of this clause, *variations* for the assignment of *long lead time contracts* under clause 9.9 will be priced as 2% of the contract sum of the *long lead time contract* assigned, without entitlement on the part of the *Contractor* to any *Agreed Margin* or any other margin or cost.

## 37 PAYMENT

### 37.1 PROGRESS CLAIMS

The *Contractor* shall claim payment progressively in accordance with the process in Annexure Part F.

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 *Principal's Representative* and shall include details of the value of *WUC* done and may include details of other moneys then due to the *Contractor* pursuant to provisions of the *Contract*.

Each progress claim must be accompanied by a subcontractor's statement regarding worker's compensation, payroll tax and remuneration (as set out in Annexure Part K or as may be amended from time to time) and any other statement or document necessary under a *legislative requirement*.

### 37.2 CERTIFICATES

The *Principal's Representative* shall, within 14 days after receiving such a progress claim, issue to the *Principal* and the *Contractor*:

- (e) a progress assessment evidencing the *Principal's Representative's* opinion of the moneys due from the *Principal* to the *Contractor* pursuant to the progress claim and reasons for any difference ('progress assessment') having regard to:
  - (i) the *contract sum* including any additions to or deductions from the *contract sum*;
  - (ii) the value or proportion of work completed by the *Contractor* during the period of the progress claim;

- (iii) deducting from (ii), the cost which in the opinion of the *Principal's Representative* would be required to rectify any defect or omission in the work completed during the period of the progress claim;
  - (iv) deducting from (ii), any amount which the *Principal* is entitled to withhold or deduct; and
- (f) a certificate evidencing the *Principal's Representative'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 32, the *Principal's Representative* may issue the progress assessment with details of the calculations and shall issue the certificate in paragraph (b), but is not obliged to do so for the benefit of the *Contractor*.

The *Principal* has provided the *Contractor* with a pro-forma progress payment claim determination in Annexure Part Q of this *Contract*. The *Contractor* is to note that this pro-forma requires an up to date and statused schedule of the works in order that the *Principal's Representative* can calculate an 'earned value' for the work completed by the *Contractor* in the month of claim.

### 37.2A VALUE OF PAYMENT

The amount of the progress payment to which the *Contractor* is entitled is the amount calculated by subtracting from the progress assessment the amount of the certificate described in (b) and any amount which, pursuant to the *Contract* or any *legislative requirement*, the *Principal* is entitled to withhold or deduct which has not been deducted in the progress assessment.

### 37.2B PAYMENT

The *Principal* must pay the *Contractor* the amount calculated under clause 37.2A within the last to occur of:

- (a) 14 days of the issue by the *Principal's Representative* of the progress assessment; and
- (b) 7 days after receipt by the *Principal* or the *Principal's Representative* of:
  - (i) any security required under clause 5, clause 37.2C or clause 37.3;
  - (ii) a tax invoice from the *Contractor* for the amount payable required under clause 46.3;
  - (iii) any *program*, revised *program* or statused *program* required under clause 32;
  - (iv) any evidence of any insurance taken out by the *Contractor* which is required under the *Contract*; and
  - (v) any evidence of payment of workers and subcontractors required under clause 38.

If the balance of the assessments issued under this clause show an amount owing by the *Contractor* to the *Principal*, the *Contractor* must pay the *Principal* that amount within 7 days of receipt by the *Contractor* of the assessments.

Neither a progress assessment 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 33* and the *Contractor*.

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

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

#### 37.3A DEDUCTION OF MONEYS

Any debt due from the *Contractor* to the *Principal* under this *Contract* may be deducted by the *Principal* from:

- (a) any monies which may become payable to the *Contractor* by the *Principal*; and
- (b) any security held by the *Principal*.

This clause does not affect the right of the *Principal* to recover the debt or any balance after exercising any rights under this clause by any other means available under this *Contract* or at law.

The *Principal* may withhold from any progress payment or retain from security which it is required under the *Contract* to release or return, 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).

#### 37.3B TAXES

The *Contractor* is solely responsible for any and all taxes (except to the extent dealt with in clause 37A), duties, levies, charges and deductions including, but not limited to sales tax, payroll tax, customs duty and fuel excise (including any penalties and additional payments thereon), paid or payable in the execution and performance of the *Contract* and they are deemed to be included in the *contract sum*.

If, pursuant to a concession agreement, the *Principal* is granted relief from import and export duties (including commercial handling charges), taxes or fees, and such relief is made available to the *Contractor*, to the extent the *Principal* is legally permitted to do so, the *Contractor* agrees:

- (a) to import/export and document goods/materials to enable maximum advantage to be taken of such relief from applicable duties, taxes and fees; and
- (b) not to sell, transfer or dispose of equipment or goods assigned to the provision of *the Works* without the prior written approval of the *Principal* and without payment of the applicable duties, taxes and fees due to any *Government Authority*.

Where equipment or goods have been imported under either (i) a concession agreement or other sponsorship by the *Principal* duty free or (ii) a temporary import bond or similar regime, and there is a legal requirement to export the unused equipment or goods at the termination of the *Contract*, the *Contractor* shall be responsible at its own expense for either:

- (a) exporting the equipment or goods to another country; or

- (b) where permitted by the applicable *legislative requirements*, paying duty in lieu of the export obligation.

### 37.4 FINAL PAYMENT CLAIM AND CERTIFICATE

Within 28 days after the expiry of the last *defects liability period* or the issue of a *certificate of completion Performance Testing Completion* under clause 30A.3, whichever is the latter, the *Contractor* shall give the *Principal's Representative* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

Within 42 days after the expiry of the last *defects liability period* or the issue of a *certificate of Performance Testing Completion* under clause 30A.3, whichever is the latter, the *Principal's Representative* 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*.

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

### 37.5 INTEREST

Interest in *Item 36* 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*.

## 37A GOODS AND SERVICES TAX

### 37A.1 DEFINITIONS USED IN THIS GST CLAUSE

The terms "GST", "GST law" and other terms used in this clause 37A have the meanings given to them by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that "GST law" also includes any other legislation enacted to validate, recapture or recoup tax collected as GST.

## 37A.2 CONSIDERATION DOES NOT INCLUDE GST

Unless otherwise stated, all consideration or other amount payable by the Recipient to the Supplier howsoever described in this Contract does not include GST.

## 37A.3 RECOVERY OF GST

If a Supply under this Contract is subject to GST, the Recipient must pay to the Supplier an additional amount equal to the amount of the Consideration multiplied by the prevailing GST rate.

## 37A.4 TIME AND PLACE OF PAYMENT

The additional amount under clause 37A.3 is payable at the same time as the Amount of the Consideration for the Supply is payable or to be provided. However, the additional amount need not be paid until the Supplier provides a Tax Invoice to the Recipient.

## 37A.5 VARIATIONS

- (a) If the amount of GST payable in accordance with clause 37A.3 is found to differ from the amount paid in relation to a Supply:
  - (i) If the amount of GST paid is more than is required under the GST law the Supplier shall refund the excess amount to the Recipient;
  - (ii) If the amount of GST paid is less than is required under the GST law, the Recipient shall pay the Supplier the difference.
- (b) For the purposes of calculating further variations under this clause 37A.6, any additional amount referred to in clause 37A.3 is taken to be amended by the amount of any earlier variation made under this clause 37A.6.

## 37A.6 REIMBURSEMENT

If either the Recipient or Supplier is entitled to be reimbursed or indemnified under this Contract, the amount to be reimbursed or indemnified by either party is to be the GST Exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either the Recipient or Supplier is entitled to an Input Tax Credit.

## 37B SECURITY OF PAYMENT

### 37B.1 PROGRESS ASSESSMENT

The *Principal's Representative*, shall ensure that the progress assessment and certificate:

- (a) identifies the payment claim to which the progress assessment and certificate relates; and
- (b) states that amount of the payment that the *Principal* proposes to make; and
- (c) if the amount referred to in the schedule is less than the amount claimed by the *Contractor*, the *Principal's* reasons why the scheduled amount is less than the amount claimed by the *Contractor*, and the *Principal's* full and detailed reasons for withholding the whole or part of the payment claimed by the *Contractor*.

### 37B.2 PRINCIPAL MAY CHOOSE TO DELIVER A PAYMENT SCHEDULE

If the *Contractor* delivers a claim for payment pursuant to the *Payments Act* then, unless the *Principal* delivers a payment schedule within the time required by the *Payments Act*, the progress

assessment and certificate issued by the Principal's Representative under clause 37.2 shall together comprise the payment schedule referred to in the *Payments Act*.

## 38 PAYMENT OF WORKERS, CONSULTANTS AND SUBCONTRACTORS

### 38.1 WORKERS, CONSULTANTS 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*;
- (b) *consultants*; and
- (c) *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, *consultants* and *subcontractors*.

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

### 38.2 WITHHOLDING PAYMENT

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

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

### 38.3 DIRECT PAYMENT

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

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

Such payment and a payment made to a worker, *consultant* 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 registered post, give the *Contractor* a written notice to show cause.

Substantial breaches include, but are not limited to:

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

## 39.3 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;
- (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*;
  - (ii) contract with such of the *consultants* and *subcontractors*; and
  - (iii) take possession of, and use, such of the *design documents*,

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

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

The *Principal's Representative* shall keep records of the cost of completing the *work* taken out.

### 39.6 ADJUSTMENT ON COMPLETION OF WORK TAKEN OUT

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

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

### 39.7 PRINCIPAL'S DEFAULT

If the *Principal* commits a substantial breach of the *Contract*, the *Contractor* may, by hand or by registered 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* access to the *site* if that failure continues for longer than the time stated in *Item 35(a)*;
  - (iv) rectify inadequate *Contractor's* possession of the *site* if that failure continues for longer than the time stated in *Item 35(b)*; or
  - (v) make a payment due and payable pursuant to the *Contract*; and
- (b) the *Principal's Representative* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

### 39.8 CONTRACTOR'S NOTICE TO SHOW CAUSE

A notice given under subclause 39.7 shall state:

- (a) that it is a notice under clause 39 of these General Conditions;
- (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 *Principal's Representative*, who shall certify them as moneys due and payable to the *Contractor*.

### 39.10 TERMINATION

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

If Alternative 2 of subclause 10.2 applies and the *Principal* has terminated the *Contract*, the *Principal* may also, without payment of compensation, take possession of the *design documents*.

### 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.

## 40 TERMINATION BY FRUSTRATION

If the *Contract* is frustrated:

- (a) the *Principal's Representative* shall issue a *progress certificate* for *WUC* carried out to the date of frustration, evidencing the amount which would have been payable had the *Contract* not been frustrated and had the *Contractor* been entitled to and made a progress claim 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*, *consultants*, *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.

## 40A TERMINATION FOR CONVENIENCE

Without prejudice to any of the *Principal's* other rights and powers under this *Contract*, the *Principal* may at any time and 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 the *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 two percent (2%) of the unpaid portion of the *contract sum* (inclusive of the *Agreed Margin*) 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 claim or entitlement as a consequence of the termination under this clause or in relation to carrying out the *WUC* to the date of termination.

## 41 NOTIFICATION OF CLAIMS

### 41.1 COMMUNICATION OF CLAIMS

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

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

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

## 41.2 LIABILITY FOR FAILURE TO COMMUNICATE

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

## 41.3 PRINCIPAL'S REPRESENTATIVE'S DECISION

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

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

## 42 DISPUTE RESOLUTION

### 42.1 NOTICE OF DISPUTE

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

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

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

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

### 42.2 CONFERENCE

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

If the *dispute* has not been resolved within 28 days of service of the notice of *dispute*, that *dispute* shall be and is hereby referred to clause 42.3.



### 42.3 CEO MEETING

If a dispute is not resolved under clause 42.2, then within a further 14 days, the Chief Executive Officer by each party (or their delegate with equivalent authority) must meet and use their best endeavours to resolve the *dispute*, each having full authority to do so.

### 42.4 RESOLUTION OF DISPUTE BY MEDIATOR

- (a) If the Dispute is not resolved under clause 42.3, either party may during the next 7 days after the meeting date under clause 42.3 give a mediation notice to the other party.
- (b) Within 5 days after the date the mediation notice is given the other party must provide:
  - (i) a further written statement of its position on the *dispute*; and
  - (ii) a list of 3 mediators acceptable to it if it does not accept any of the individuals suggested by the party giving the mediation notice.
- (c) If agreement is not reached on the selection of the mediator within 5 days after the date the statement is due under clause 42.4(b), either party may issue a written request to the Institute of Arbitrators and Mediators, Australia requesting the appointment of a mediator.

### 42.5 TERMINATION OF PROCESS

If no mediation notice is given under clause 42.4, or the *dispute* is not resolved within 20 *business days* after the appointment of the mediator under clause 42.4, any party that has complied with the provisions of this clause may by notice in writing sent to the other party, terminate the dispute resolution process provided for in this clause and may then begin litigation concerning the *dispute*.

### 42.6 COSTS

Each party must:

- (a) pay its own costs incurred in the dispute resolution processes under this clause;
- (b) pay the costs of any third party engaged in the dispute resolution processes under this clause in equal portions subject to, the terms of any 'agreement to mediate' under which a mediator is appointed.

### 42.7 CONTINUED PERFORMANCE REQUIRED

Each party must continue to perform its obligations under this *Contract* despite the existence of the *dispute* except to the extent that the matter that is the subject of the *dispute* and matters necessarily dependent on it cannot be proceeded with until the *dispute* has been resolved.

## 43 WAIVER OF CONDITIONS

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

## 44 ENERGY CONSUMPTION REPORTING

### 44.1 DEFINITIONS

For the purpose of this clause 'Energy Consumption Legislation' means any legislation, including regulatory schemes requiring the reporting of energy consumption or greenhouse gas emissions including the *National Greenhouse and Energy Reporting Act 2007*, the Commonwealth Government's proposed Carbon Pollution Reduction Scheme and Energy Efficiency Opportunities Schemes and any State equivalents.

### 44.2 REPORTING

The *Contractor* acknowledges that the *Principal* has obligations under Energy Consumption Legislation to provide data under the Contract and the *Contractor* will, at its own cost maintain records and record the energy consumption data expended by the *Contractor* under the Contract in a manner sufficient to comply with the Energy Consumption Legislation or, if required by the *Principal* in the form or forms provided by the *Principal* as may be amended from time to time.

### 44.3 FAILURE TO COMPLY WITH REPORTING OBLIGATIONS

If the *Contractor* fails to comply with its obligations under this clause, it shall provide access to all of its documents and any other information to enable the *Principal* or a person appointed on behalf of the *Principal* to audit the documents and information in order to obtain the information necessary to comply with Energy Consumption Legislation. The costs incurred by the *Principal* in doing so will be a debt due from the *Contractor* to the *Principal*.

## 45 NOTICES TO BE IN FORM AND IN TIME

### 45.1 NOTICES MUST BE GIVEN IN TIME

Notices referred to in this *Contract* must be given within the time provided for in the *Contract*. If the *Contractor* fails to give a notice in that time, the *Contractor* will be barred from making any claim and shall have no claim or entitlement in relation to the matters which were or should have been the subject of the notice.

### 45.2 NOTICE TO BE IN FORM

A notice must be given in writing and must include all of the details required under the *Contract* or where there is a form specified under the *Contract*, the form. For the purposes of clause 45.1, a notice will be deemed to have not been given in time if it does not contain all of the information required by the *Contract* or form.

### 45.3 NO WAIVER

The requirement to give a notice including all of the detail required under the *Contract* cannot be waived by the *Principal's Representative* and can only be waived by the *Principal* by a notice in writing.

#### 45.4 NOTICES REQUIRED

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 *Principal's Representative* and the *Principal* have an opportunity to assess the matters the subject of the notice in sufficient time:
  - (i) for the *Principal* and the *Principal's Representative* 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 *Principal's Representative* 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 will not be satisfactory for the *Principal*.

ANNEXURE PART A

Part A

ANNEXURE to the Australian Standard
General Conditions of Contract for
Design and Construct

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

Item

1 Principal (clause 1) .....

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

2 Principal's address

Tel:

2A Principal's representative HARRADYNAMICS Pty Ltd.....

3 Contractor (clause 1) TBA.....

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

4 Contractor's address TBA.....

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

4A Contractor's representative TBA.....

5 Principal Approvals (clause 1) To be advised .....

† 6 (a) Date for practical completion (clause 1) To be advised .....

OR

(b) Period of time for practical completion (clause 1) .....

7 Governing law (clause 1(h)) ..... If nothing stated, that of the jurisdiction where the site is located

7A date for commencement of Performance Testing

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

8	(a) Currency (clause 1(g))	..... If nothing stated, that of the jurisdiction where the <i>site</i> is located
	(b) Place for payments (clause 1(g))	To be advised ..... If nothing stated, the <i>Principal's</i> address
	(c) Place of business of bank (clause 1(d))	To be advised ..... If nothing stated, that of the jurisdiction where the <i>site</i> is located
8A	long lead time contracts (clause 1)	To be advised ..... ..... .....
9	The <i>Principal's</i> project requirements are described in the following documents (clause 1)	1 <i>Preliminary design</i> (if included in <i>Item</i> 10) 2 As set out in Annexure Part J..... 3 ..... 4 ..... 5 .....
10	<i>Preliminary design</i> (clause 1)	(a) A <i>preliminary design</i> is included in the <i>Principal's</i> project requirements. If neither deleted, a <i>preliminary design</i> is not included  (b) The <i>preliminary design</i> documents are: 1 ..... 2 ..... 3 ..... 4 ..... 5 .....
11	Quantities in <i>schedule of rates</i> , limits of accuracy (subclause 2.5)	Upper Limit ..... Lower Limit .....
12	<i>Provisional sum</i> , percentage for profit and attendance (clause 3)	.....%
†	13 <i>Contractor's security</i>	
	(a) Form (clause 5)	One unconditional bank guarantee for 5% of the <i>contract sum</i> .....
	(b) Amount or maximum percentage of <i>contract sum</i> (clause 5)	10% ..... If nothing stated, 5% of the <i>contract sum</i>
	(c) If retention moneys, percentage of each <i>progress certificate</i> (clause 5 and subclause 37.2)	N/A .....%, until the limit in <i>Item</i> 13(b) If nothing stated, 10%, until the limit in <i>Item</i> 13(b)

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

(d) Time for provision (except for retention moneys) (clause 5) within 14 days after *date of execution of the formal instrument of agreement*  
 If nothing stated, 28 days

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

13A Times for submission of *design documents* (clause 6A.2(a))  
 Refer technical specification scope of work

† 14 Not used

15	<i>Principal</i> -supplied documents (subclause 8.2)	Document	No. of copies
		1 <i>Principal's project requirements</i> .....	.....
		2 .....	.....
		3 .....	.....
		4 .....	.....
		5 .....	.....
			If nothing stated, 5 copies

16 Documents, numbers of copies, and the times or stages at which they are to be supplied by the *Contractor* (subclause 8.3)

	Document	No. of copies	Time/stage
1	.....	.....	.....
2	.....	.....	.....
3	.....	.....	.....
4	.....	.....	.....
5	.....	.....	.....

17 Time for *Principal's Representative's direction* about documents (subclause 8.3) .....days  
 If nothing stated, 14 days

18	Subcontracting (subclause 9.2)	<i>Work by consultants</i>	<i>Work by others</i>
		.....	.....
		.....	.....
		.....	.....
		.....	.....
		.....	.....



19	Novation (subclause 9.4)	<i>Subcontractor or selected subcontractor, as the case may be</i>	Particular part of the <i>preliminary design or selected subcontract work, as the case may be</i>
		.....	.....
		.....	.....
		.....	.....
20	<i>Intellectual property rights</i> granted to the <i>Principal</i> , the Alternative applying (subclause 10.2)	..... If nothing stated, Alternative 1 applies	.....
20A	Liability Cap (clause 19A.1)	\$50% of <i>contract sum</i> .....	.....
21	<i>Legislative requirements</i>		
	(a) Those excepted (subclause 11.1)	.....	.....
		.....	.....
	(b) Identified <i>WUC</i> (subclause 11.2(a)(iii))	.....	.....
		.....	.....
21A	<i>Principal supplied Materials</i>	.....	.....
		.....	.....
		.....	.....
22	Insurance of <i>the Works</i> (clause 16A)		
	(a) Alternative applying	.....	.....
		If nothing stated, Alternative 1 applies	
	If Alternative 1 applies		
	(b) Provision for demolition and removal of debris	.....	..... \$.....
		OR	
		.....% of the <i>contract sum</i>	
	(c) Provision for <i>consultants' fees</i> and <i>Principal's consultants' fees</i>	.....	..... \$.....
		OR	
		.....% of the <i>contract sum</i>	
	(d) Value of materials or things to be supplied by the <i>Principal</i>	.....	..... \$.....

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

OR

.....% of the total of (a) to (d) in clause 16A

23 Professional indemnity insurance  
(clause 16B and subclause 9.2(d))

(a) Levels of cover of Contractor's professional indemnity insurance shall be not less than .....  
..... \$ .....  
If nothing stated, \$5,000,000

(b) Period for which Contractor's professional indemnity insurance shall be maintained after issue of the final certificate .....  
If nothing stated, 6 years

(c) Categories of consultants and levels of cover of consultants' professional indemnity insurance	Category	Levels of cover
.....	.....	\$ .....
.....	.....	\$ .....
.....	.....	\$ .....
.....	.....	\$ .....
		If nothing stated, \$1 000 000

(d) Period for which each consultant's professional indemnity insurance shall be maintained after issue of the final certificate .....  
If nothing stated, 6 years

24 Public liability insurance  
(clause 17)

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

If Alternative 1 applies

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

24A Other insurances to be held by Contractor  
(clause 18A)

- (a) Transit insurance For full replacement value of items in transit.
- (b) Plant and machinery insurance For full replacement value of all plant and machinery used as part of the Works.
- (c) Motor vehicle insurance Property damage and compulsory third party insurance for all motor vehicles used with respect to the Works.

24B Key personnel penalty (subclause 23.1) \$ .....

- 25 (a) Time for giving access (subclause 24.1) within .....days of issue of a letter of intent for preliminary works  
If nothing stated, 14 days
- (b) Time for giving possession (subclause 24.1) within ..... days of *date* execution of the *Contract*  
If nothing stated, 14 days
- 25A WUC which must be performed during shutdown (clause 31)
- 26 The information, materials, documents or instructions and the times by, or periods within which they are to be given to the *Contractor* (clause 32)
 

Documents or instructions	Times/Periods
1 .....	.....
2 .....	.....
3 .....	.....
4 .....	.....
5 .....	.....
- 27 Qualifying cause of delay, cause of delay for which EOT's will not be granted. (clause 1)
 

Delays caused by an *inclement weather* event that is provisioned within the *Contractor's program* or schedule at the time of contract award. which will not be less than 10 *business days*. .....

.....

.....

.....
- † 28 Liquidated damages, rate (subclause 34.7)
 

.....

..... per day \$ ..... per day
- † 29 Bonus for early *practical completion* (subclause 34.8)
 

(a) Rate

.....

..... per day \$ ..... per day

(b) Limit

.....

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

OR

.....% of *contract sum*

If nothing stated, there is no waiver
- † 30 Other *compensable causes* (paragraph (b) of clause 1 and subclause 34.9)
 

None .....

Delay damages \$500 per day to a limit of 2% of the *contract sum*..

.....

.....
- 31 *Defects Liability period* (clause 35)
 

12 months from the day of practical completion of the last separable portion .....

If nothing stated, 12 months

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

- 32 Progress Claims (subclause 37.1)
  - (a) Times for progress claims ..... day of each month for *WUC* done to the ..... day of that month
  - OR
  - (b) Stages of *WUC* for progress claims .....  
 .....  
 .....  
 .....
- 33 Unfixed plant and materials for which payment claims may be made (subclause 37.3) .....
- 34 Interest rate on overdue payments (subclause 37.5) .....% per annum  
 If nothing stated, 18% per annum
- 35 (a) Time for *Principal* to rectify inadequate access (subclause 39.7(a)(iii)) .....days  
 If nothing stated, 14 days
- (b) Time for *Principal* to rectify inadequate possession (subclause 39.7(a)(iv)) .....days  
 If nothing stated, 14 days
- 36 Arbitration (subclause 42.3)
  - (a) Person to nominate an arbitrator .....  
 .....  
 .....  
 If no-one stated, the President of the Institute of Arbitrators & Mediators
  - (b) Rules for arbitration .....  
 .....  
 .....  
 If nothing stated:  
 (a) rules 5–18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations;  
 OR  
 (b) if one or more of the parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules shall apply and the appointing authority shall be the person provided in *Item 36(c)*
  - (c) Appointing Authority under UNCITRAL Arbitration Rules .....  
 If nothing stated, the President of the Institute of Arbitrators & Mediators

# Part A

## Separable Portions

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

---

<i>Separable portion</i> (clause 1)	No. ....
Description of <i>separable portion</i> (clause 1)	..... ..... .....
<i>Item</i>	
7 (a) <i>Date for practical completion</i> (clause 1)	.....
OR	
(b) <i>Period of time for practical completion</i> (clause 1)	.....
14 <i>Contractor's security</i>	
(a) <i>Form</i> (clause 5)	.....
(b) <i>Amount or maximum percentage value of this separable portion</i> (clause 5)	..... If nothing stated, 5% of value of this <i>separable portion</i>
(c) <i>If retention moneys, percentage of each progress certificate applicable to this separable portion</i> (clause 5 and subclause 37.2)	.....%, until the limit in <i>Item 14(b)</i> If nothing stated, 10%, until the limit in <i>Item 14(b)</i>
(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	within..... days after <i>date of acceptance of tender</i> If nothing stated, 28 days
(e) <i>Additional security for unfixed plant and materials</i> (subclauses 5.4 and 37.3)	..... ..... \$ .....
(f) <i>Contractor's security upon certificate of practical completion is reduced by</i> (subclause 5.4)	.....% of amount held If nothing stated, 50% of amount held

- 15 *Principal's security*
  - (a) Form .....  
(clause 5)
  - (b) Amount or maximum .....  
percentage of value of this .....  
*separable portion* .....  
(clause 5) If nothing stated, nil
  - (c) Time for provision .....  
(clause 5) within ..... days after *date of acceptance of tender*  
If nothing stated, 28 days
  - (d) *Principal's security upon certificate* ..... % of amount held  
*of practical completion* is reduced .....  
by .....  
(subclause 5.4) If nothing stated, 50% of amount held
  
- 29 Liquidated damages, rate .....  
(subcaluse 34.7) ..... per day \$ ..... per day
  
- 30 Bonus for early *practical completion* .....  
(subclause 34.8)
  - (a) Rate .....  
..... per day \$ ..... per day
  - (b) Limit .....  
..... \$ .....

OR

..... % of value of this *separable portion*  
If nothing stated, there is no waiver
  
- 31 Other *compensable causes* .....  
(paragraph (b) of clause 1 and .....  
subclause 34.9) .....  
.....  
.....



**ANNEXURE PART B**

**Part B**

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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

**Approved Form of Unconditional Undertaking**

(clause 1 – security)

At the request of .....  
 ACN ..... ABN ..... (the *Contractor*) and in consideration of .....  
 ACN ..... ABN ..... (the *Principal*) accepting this undertaking  
 in respect of the *Contract* for .....  
 ..... (the *Project*) .....  
 ACN ..... ABN ..... (the *Financial Institution*) unconditionally  
 undertakes to pay on demand any sum or sums which may from time to time be demanded by the *Principal* to a  
 maximum aggregate sum of .....  
 ..... (\$ ..... )

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

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

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Principal* the sum of ..... (\$ ..... ) less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the *Principal* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at ..... this ..... day of ..... 20.....

**ANNEXURE PART C**

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

# Part C

## Deed of Novation

(subclause 9.2(c))

This Deed made the ..... day of ..... 20 .....  
between ..... (the *Principal*)  
of ..... ACN ..... ABN .....  
and ..... (the *Contractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Subcontractor*)  
of ..... ACN ..... ABN .....  
and ..... (the *Incoming Contractor*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *Subcontractor* of the sum certified by the *Principal's Representative* as owing under the prior contract described in the Schedule hereto:
  - (a) the prior contract shall be discharged;
  - (b) the *Subcontractor* shall release the *Contractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
  - (c) the *Incoming Contractor* shall punctually perform the obligations of the *Contractor* under the prior contract as far as they are not performed. The *Incoming Contractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Contractor* had been named in the prior contract; and
  - (d) the *Subcontractor* shall punctually perform like obligations and be bound to the *Incoming Contractor* as if the provisions of the prior contract were incorporated herein.
- 2 The *Principal* and *Subcontractor* each warrant to the *Incoming Contractor* that:
  - (a) subcontract work carried out to the date hereof is in accordance with the provisions of the prior contract; and
  - (b) all claims and demands in connection with the prior contract have been made to the *Contractor*.
- 3 The *Principal* and *Subcontractor* each indemnifies the *Incoming Contractor* from all claims and demands of the *Contractor*, *Principal* and *Subcontractor* in connection with the prior contract.
- 4 A dispute between:
  - (a) the *Principal* and the *Subcontractor* in connection with the *Principal's Representative's* certification of the sum owing under the prior contract; or
  - (b) the *Incoming Contractor* and the *Subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 Subcontract Conditions for Design and Construct which for the purposes of this clause 4 are incorporated herein.
- 5 This Deed shall be governed by the laws of the jurisdiction stated in *Item 7* of the *Contract* between the *Principal* and *Contractor*.

**Schedule**

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

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *Principal*  
was affixed to this document in the presence of:

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

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Contractor*  
was affixed to this document in the presence of:

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

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Subcontractor*  
was affixed to this document in the presence of:

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

.....  
Director  
.....  
Name (please print)

THE COMMON SEAL of the *Incoming Contractor*  
was affixed to this document in the presence of:

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

.....  
Director  
.....  
Name (please print)

**ANNEXURE PART D****Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct****Part D**

**Note:** Usually the *continuing party* is the subcontractor, selected subcontractor or consultant, as the case may be.

**Deed of novation**

(subclause 9.4)

This Deed made this ..... day of ..... 20 .....  
between ..... (the *outgoing party*)  
of ..... ACN ..... ABN .....  
and ..... (the *incoming party*)  
of ..... ACN ..... ABN .....  
and ..... (the *continuing party*)  
of ..... ACN ..... ABN .....  
witness that:

- 1 Upon receipt by the *continuing party* of all moneys owing under the prior contract:
  - (a) the *incoming party* shall punctually perform the obligations of the *outgoing party* under the prior contract described in the Schedule hereto as far as they are not performed. The *incoming party* acknowledges itself bound by the provisions of the prior contract as if the *incoming party* had been named as the *outgoing party* in the prior contract;
  - (b) the *continuing party* punctually perform like obligations and be bound to the *incoming party* as if the provisions of the prior contract were incorporated herein; and
  - (c) the *outgoing party* and *continuing party* shall each release and forever discharge the other from the further performance of the prior contract and from all claims and demands in connection with the prior contract.
- 2 The *outgoing party* and *continuing party* each warrant to the *incoming party* that *preliminary design* or *selected subcontract work*, as the case may be, carried out to the date hereof, is in accordance with the provisions of the prior contract.
- 3 This Deed shall be governed by the governing law of the prior contract between the *outgoing party* and *continuing party*.

**Schedule**

.....

.....

.....

.....

In witness whereof the parties have executed this DEED OF NOVATION by affixing their seals.

THE COMMON SEAL of the *outgoing party* was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *incoming party* was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

THE COMMON SEAL of the *continuing party* was affixed to this document in the presence of:

.....

Secretary/Director

.....

Name (please print)

.....

Director

.....

Name (please print)

**ANNEXURE PART E**

# Part E

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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**Deletions, amendments and additions**

1 The following clauses have been deleted from AS 4902—2000

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

2 The following clauses have been amended and differ from the corresponding clauses in AS 4902—2000

.....

.....

.....

.....

.....

.....

.....

.....

.....

k3 The following clauses have been added to AS 4902—2000

.....

.....

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.....

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.....



## ANNEXURE PART F

## Part F

## Annexure to the Australian Standard General Conditions of Contract for Design and Construct

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### 1. Contract Sum

The *contract sum* will be calculated on a cost reimbursable basis up to a guaranteed maximum price ('GMP') of **[\$Insert]** (excluding GST) comprising:

- (a) a lump sum price of \$ **[Insert]** for the estimated costs (exclusive of margin for profit, administration and overheads) to carry out *the Works* as shown in the breakdown at **Schedule #** ('GMP Costs'); and
- (b) the *Contractor's* margin inclusive of the *Contractor's* profit administration and overheads, of **##%** of the *GMP costs* ('Agreed Margin').

The GMP will not be increased for any reason, except where specifically allowed under this Contract. For the avoidance of doubt, a variation under clause 36 of the general conditions, which results in increased or decreased costs will be added to or subtracted from the *GMP costs*, as appropriate. The *Agreed Margin* will be calculated on any adjusted *GMP Costs*.

### 2. Milestones

The *Agreed Margin* has been broken into payments applicable to deliverables ('Milestones') as shown in the margin column of Schedule 4 annexed hereto ('Milestone Payments').

The *Milestone Payments*, by agreement of the parties, may represent a payment that is higher or lower than the *Agreed Margin* which would be payable for the estimated value of that *Milestone*, however the total payable to the *Contractor* for *Milestone Payments* must not exceed the *Agreed Margin*.

### 3. Reimbursement Process

The *contract sum* is payable on a cost reimbursable basis as follows:

- (a) for each progress claim under clause 37.1 of the general conditions, the *Contractor* must as a precondition to an entitlement to payment, provide a breakdown and supporting documentation, to the satisfaction of the *Principal's Representative*, showing the actual cost incurred and being claimed by the *Contractor*.
- (b) for each progress claim, the *Contractor* will be entitled to be paid the actual costs as certified by the *Principal's Representative* under clause 37.2 of the general conditions;
- (c) the *Contractor* will not be entitled to be paid the *Milestone Payments*, until such time as the *Contractor* has reached a *Milestone*;
- (d) when a *Milestone* has been reached, the *Contractor* will, subject to not having exceeded the *GMP*, be paid the *Milestone Payment*, which had been certified by the *Principal's Representative* under clause 37.2 of the general conditions; and
- (e) the payment of a *Milestone Payment* will be included in the progress certificate next issued after claiming the *Milestone*.
- (f) *Milestone Payments* may be adjusted to ensure that the *Agreed Margin* is not exceeded.

### 4. GMP Overruns

Where combined actual costs and *Agreed Margin* to complete *the Works* are greater than the *GMP*, the *Contractor* must complete *the Works* and must bear any costs greater than the *GMP* and will have no entitlement to claim any margin (as an *Agreed Margin* or otherwise) on the costs greater than the *GMP*.

### 5. GMP Underruns

Where the combined actual costs and *Agreed Margin* to complete *the Works* are less than the *GMP* (for the purposes of this clause the *GMP* will be calculated less any contingency amounts included the *Contractor's GMP cost estimate*), then the *Principal* and *Contractor* will share in the saving on the basis of 70% to the *Principal* and 30% to the *Contractor*. The *Contractor* will have no entitlement to claim any margin (as an *Agreed Margin* or otherwise) on the cost savings. The cost savings (if any) will only be assessed and paid to the *Contractor* after *practical completion* of the last *separable portion*.

**6. Excluded Items**

The *Contractor* will be taken to have included in the GMP the costs of all applicable taxes, duties, customs, brokerage fees, handling fees, related charges and costs of *Contractor's Approvals* (excluding GST) and unless the *Contractor* is entitled under the *Contract* to include such costs are included as part of a *variation*, the *Contractor* will have no entitlement to claim for such costs which exceed the GMP.

**ANNEXURE PART G****Part G****Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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**PROGRAM**

The *Contractor's program* shall be provided to the *Principal's Representative* in both a "hard copy" and in an electronic format on disk.

The *Program* shall be computer based using Primavera Systems P6 and shall identify the planned sequence of activities during the design, drawing, procurement, fabrication and transportation and construction of *the Works* in sufficient detail to enable detailed control of all activities and monitoring of progress.

The program shall include, but need not be limited to, the following detail:

- (a) a logic network with the critical and sub-critical paths and all restraints identified;
- (b) the *contract sum* (GMP) applied to all activities in a manner that allows the *Principal* to apply Earned Value concepts to the regular statusing of the *Contractor's* schedule. The application of costs and fee (*Agreed Margin*) to activities must be in proportion to the value of those activities and works as determined by the *Principal*.
- (c) the latest date on which a direction to undertake the installation, or erection, or tie-in, or commissioning, or testing *the Works* can be given without affecting the *date for practical completion*;
- (d) activities associated with the supply of all vendor equipment, consumables, machinery, plant or equipment that forms part of *the Works* or is to be incorporated into *the Works*;
- (e) *Milestones* signifying key activities, or the completion of major parts of the works, such that the *Principal* can link the part payment of the *Contractor's Agreed Margin* to the achievement of such *Milestones*;
- (f) all tie-in activities that may impact upon ongoing operations or limit access to the existing CHPP facility for the purposes of operations;
- (g) all commissioning and testing activities that involve energizing any part of the works, applying water, magnetite, or other fluids to the works, or in the application of coal to any part of the works;
- (h) activities associated with the co-ordination of subcontractors, fabricators, and installers (eg. preparation of tender package, tender period, tender review and award, engineering, procurement, manufacture and assembly, erection, installation, commissioning and testing);
- (i) times within which information is to be provided by others to the Contractor or work is to be undertaken by others such as not to delay the Contractor proceeding with its work under the Contract;
- (j) dates for Key Events which shall include:
  - (i) key events and *Milestones*, and such other events or key dates as may be required by the *Principal's Representative*;
  - (ii) commissioning;
  - (iii) *Performance Testing*;
  - (iv) hand-over to the *Principal of the Works* or part of *the Works*;
  - (v) *Practical Completion*; and
  - (vi) other milestones that signify major achievements that can be measured and validated by the *Principal* in order to make part payment of any part of the fixed Fee that may be due to the *Contractor*.

- (k) activities shall be based on the work breakdown structure which represents a sound strategy to do the job and enables automatic roll up and roll down between summary and detailed levels.
- (l) The work breakdown structure shall be compatible with a cost breakdown structure to enable production of cost reports, cash flow projections, earned value reports, and progress “S” curves.

The *Contractor* shall submit with its first *program* details of its project calendar identifying day numbers for every day commencing from the date of execution of this *Contract* and any days when it is planned that no work be undertaken.

In addition to the above and as part of the *Contractor's* monthly report the *Contractor* shall provide to the *Principal's Representative*, in a form acceptable to the *Principal's Representative*, a summary program which allows planned and actual progress to be compared.

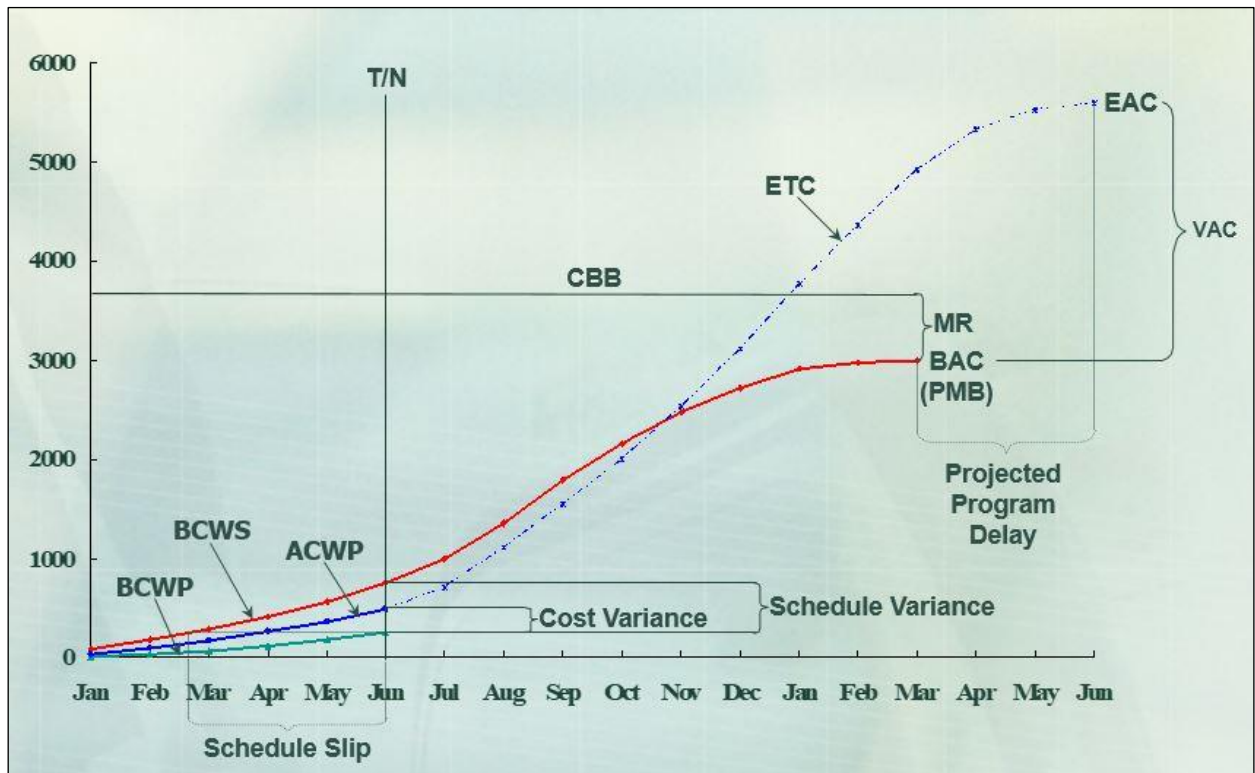
Further to these requirements, the *Contractor* is to provide a schedule that provides for an Earned Value analysis that includes reporting on the following metrics and measures:

**ACWP = Actual Cost of Work Performed**  
**BCWS = Budget Cost of Work Scheduled**  
**BCWP = Budget Cost of Work Performed (Earned Value)**  
**BAC = Budget At Completion**  
**EAC = Estimate At Completion**  
**CPI = Cost Performance Index**  
**SPI = Schedule Performance Index**

Other metrics and measures of progress and project status that the *Contractor* is to report against are defined in the table below:

Term	Symbol	Formula	Checklist Actions
<b>Percent Complete</b>	% Done	$\frac{BCWP}{BAC}$	Ratio of work accomplished in terms of the total amount of work to do.
<b>Cost Performance Index of Performance Factor</b>	CPI or PF	$\frac{BCWP}{ACWP}$	Ratio of work accomplished against money spent (an efficiency rating: work done for resources expended).
<b>To Complete Performance Index or Verification Factor</b>	TCPI or VF	$\frac{BAC - BCWP}{EAC - ACWP}$	Ratio of work remaining against money remaining (efficiency which must be achieved to complete the remaining work with the expected remaining money).
<b>Schedule Performance Index</b>	SPI	$\frac{BCWP}{BCWS}$	Ratio of work accomplished against what should have been done (Efficiency Rating: work done as compared to what should have been done).
<b>Schedule Correlation</b>	SC or S/C	$\frac{\bar{P}CUM}{SV}$	Ratio of Schedule Variance in terms of average amount of work accomplished (in weeks or months). It indicates a correlation to program true schedule condition.

Term	Symbol	Formula	Checklist Actions
Independent Estimate at Completion	IEAC	$1 \quad \frac{BAC}{PF}$ $2 \quad ACWP + \frac{BAC - BCWP}{.8CPI + .2SPI}$	Calculation of a projected Estimate At Completion to compare with the CAM's Estimate At Completion: 1 Ration of total work to be done against experienced cost efficiency. 2 Sunk costs added to a ratio of remaining work against weighted cost and schedule efficiencies.
Average Performance	$\bar{P}_{CUM}$	$\frac{BCWP_{CUM}}{\text{Duration (wks or mths) Since ACWP Began}}$	Average rate at which work has been accomplished since work began.
Average Expected Performance to Finish	$\bar{P}_{TO GO}$	$\frac{BCWP_{CUM}}{\text{Duration (wks or mths) From Time Now to Manager's Stated Completion Date}}$	Average rate at which work must be accomplished in the future to finish on the date the CAM has forecasted for completion of the work.



An example of how Earned Value concepts are applied to a costed and resourced schedule is provided above. The Contractor is to ensure it has the requisite skills and experiences to apply earned value concepts to its schedule and contract sum.

## ANNEXURE PART H

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

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# Part H

### NOTICES TO PROCEED

**[Insert relevant separable portions and the necessary preconditions for the issue of a Notice to Proceed]**



## ANNEXURE PART I

# Part I

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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### KEY PERSONNEL

***[Insert the names and a position description for key personnel]***

**ANNEXURE PART J**

# Part J

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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**PRINCIPALS PROJECT REQUIREMENTS**

**[Insert the Principals Project Requirements]**

**ANNEXURE PART K**

# Part K

**Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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**SUBCONTRACTOR'S STATEMENT**



**SUBCONTRACTOR'S STATEMENT  
REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND  
REMUNERATION (Note1 – see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

**SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.**

Subcontractor: ..... ABN: .....  
*(Business name)*

of .....  
*(Address of subcontractor)*

has entered into a contract with ..... ABN:.....  
*(Business name of principal contractor)* **(Note 2)**

Contract number/identifier ..... **(Note 3)**

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, **(Note 4)**

subject of the payment claim dated: ...../...../..... **(Note 5)**

I, ..... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a)** The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [ ] if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [ ] and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**
- (b)** All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../..... **(Note 7)**
- (c)** All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d)** Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e)** Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

**(f)** Signature ..... Full name.....

**(g)** Position/Title ..... Date ...../...../.....

**NOTE:** Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

### Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

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

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

### Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

#### Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

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

## ANNEXURE PART L

### Annexure to the Australian Standard General Conditions of Contract for Design and Construct

# Part L

#### PROJECT SITE SAFETY

Health and Safety Management on the Project will be in accordance with the procedures and requirements of the Project Construction Health and Safety Management Plan. This document and associated parts shall be included on the Project Sharepoint site and is deemed to be part of this document.

The *Contractor* is to make himself aware of all the requirements of the Project Construction Health and Safety Management Plan and to develop his own Safety Management Procedures and Plan for the Project.

The Contractor's Site Safety Management Procedures and Plan shall include, but not be limited to, the following:

- Safety policy
- Employee site/safety induction
- Tool box safety/training program
- Safety inspection reports
- Occupational rehabilitation program
- Accident reporting
- Hazard reporting
- Job safety analysis and safe work practices
- Work method statement
- First aid records
- Material safety data and hazardous substances
- Environment
- Emergency evacuation procedures
- Records
- Hot work procedures
- Lock out/isolation procedures
- Confined space procedures
- Smoking Policy
- Drug and Alcohol Policy
- Electrical equipment and leads tagging procedures
- Authority to Work Permit (ATW)
- Lifting Equipment Tagging and Registers
- Daily vehicle inspection reports

The *Contractor* is responsible for the initiation and operation of the site safety management system for his work and to ensure the safety management system is compatible with the *Principal's* and other contractors on site.

All *Contractor* personnel on *site* must conform with the *Principal's* safety clothing requirements. Helmets, safety boots, safety glasses and protective clothing must be worn at all times.

The Safety Management Plan must show evidence of due diligence in protecting the health and safety of employees in the workplace.

The *Contractor* (and its *subcontractors*) shall make provision in the contract sum for an eight (8) hour *Principal Contractor* Site Specific Induction for each and every person required to work on the project site. No work on the site shall be permitted unless this Induction is completed to the satisfaction of the *Principal's Representative*.



## ANNEXURE PART M

# Part M

### Annexure to the Australian Standard General Conditions of Contract for Design and Construct

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#### PRINCIPAL'S ENVIRONMENTAL REQUIREMENTS

The *Contractor* shall comply with all statutory environmental requirements and shall comply with the Project Environmental Management Plan.

A copy of the Project Environmental Plan is included in the Project Sharepoint site and deemed to be part of this document.

##### 6.1 General

The *Contractor* must prepare and implement an Environmental Management Plan to ensure that damage is not caused to the environment.

The Contractor must meet all statutory requirements and all operational requirements imposed by:

- (a) the Environmental Protection Authority (EPA), and
- (b) the Department of Natural Resources and Mines, and
- (c) Mid Western Regional Council, and
- (d) Other departments and regulators having jurisdiction over the WUC,

to ensure that the water quality, noise and dust do not exceed acceptable levels during the execution of *the Works* or by the equipment after it has been installed.

The *Contractor* must also meet the requirements of the *Principal's* Environmental Management Overview Strategy (EMOS) produced for these works and the current EPA Licence issued to the Principal for this site.

The Contractor must ensure that all workers are aware of the environmental requirements of the Contract.

##### 6.2 Contractors Environmental Management Plan

Within 6 weeks from award of Contract but in any event no later than 10 days prior to the commencement of *the Works* on the *site*, the *Contractor* must submit to the *Principal's Representative* an Environmental Management Plan (EMP). The Contractor's EMP shall be reviewed by the *Principal's Representative* for its suitability and shall be amended as requested by the *Principal's Representative*. The submission of this document shall constitute a hold point.

##### HOLD POINT

Process Held	Commencement of works on site.
Submission Details	Submission of EMP at least ten days before starting of works on site.
Release of Hold Point	The Principal's Representative will consider the submitted document and may request amendments prior to authorising the release of the Hold Point.

The *Contractor's* EMP shall include, but not be limited to, the following:

- details of the environmental controls to be implemented in accordance with the requirements of the contract;
- details of approvals and licences to meet statutory requirements;
- assignment of responsibility for implementing, maintaining, assessing and monitoring of environmental controls;
- procedures and work instructions for activities from implementation through to monitoring of environmental controls;
- emergency response procedures for containing environmental damage, and procedures for restoration activities;
- environmental inspection and test plans with checklists;
- details of actions to be completed to ensure environmental compliance is achieved;



- locations of environmental controls;
- timings/frequencies of activities for environmental controls from implementation through to monitoring;
- authorised personnel and procedures for changing the *Contractor's* EMP; and
- frequency of the EMP review.

**ANNEXURE PART N****Part N****Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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**QUALITY ASSURANCE REQUIREMENTS****1. Contractor's Quality System**

The *Contractor's* Quality System shall comply with the requirements of ISO 9001 for work with a design contract and ISO 9002 for manufacturing and construction work. Compliance with recognised local equivalents to these quality standards is acceptable.

The *Contractor* shall maintain effective control of the quality of the supplies, provide test facilities and perform all examinations and tests necessary to demonstrate conformance of the supplies to the requirements of the *Contract* and shall offer for acceptance only supplies that so conform.

The *Contractor* shall be responsible for the provision of Objective Evidence that the *Contractor's* controls and inspections are effective. For this purpose Objective Evidence means any statement of fact quantitative or qualitative, pertaining to the quality of supplies based on observations, measurements, or tests, which can be verified.

- a) The *Contractor* shall agree to such assessment being conducted and shall agree to the rights of the *Principal* to conduct audits to provide evidence of the continued use and effectiveness of the Quality System throughout the life of the *Contract*.
- b) The *Contractor* shall agree to rectify non-conformances found during audit by, or on behalf of, the *Principal*.

**1.1 Quality System Documentation**

The following documents shall be provided to permit audit and surveillance of the

*Contractor's* Quality System during execution of the *Contract*.

- Quality Plan
- Inspection and Test Plans
- Schedule of Quality Records.
- Quality Manual

The Quality Manual shall be submitted within two (2) weeks of the date of execution of the *Contract*.

**1.2 Quality Plan**

The Quality Plan shall be submitted within three (3) weeks of the date of execution of the *Contract*. The Quality Plan shall include details of the *Contractor's* proposals for the management and control of quality for the *Contract*. The Quality Plan shall be subject to the agreement of the *Principal's Representative*. Such agreement shall not relieve the *Contractor* of their obligations to meet all *Contract* requirements. Where any element of the Quality Plan is found to be ineffective, it shall be amended to conform to the *Principal's Representative's* requirements.

The Quality Plan shall include:

- (i) a policy statement identifying the quality system to be implemented for the *Contract*;
- (i) management responsibilities specific to the *Contract* including the responsibility and authority for quality;
- (iii) the organisation proposed for the *Contract*;
- (iv) an outline of procedures for reviewing, updating and controlling the Quality Plan and referenced documentation;
- (v) Quality System implementation plan;
- (vi) reference to technical/quality features peculiar to the *Contract*;
- (vii) method by which the *Contractor* intends to control quality and complete the *Contract Works*;
- (viii) the *Contractor's* method of control of sub-contract work;

- (ix) details of special processes and control procedures;
- (x) details of design verification activities to be performed, the methods to be employed to control design and the *design documents* shall be included;
- (xi) details of the quality records to be taken and maintained by the *Contractor*.

### 1.3 Inspection and Test Plans

Inspection and Test Plans shall be submitted to the *Principal's Representative* within three (3) weeks of the programmed date for commencement of the work to enable the *Principal's Representative* to assess their suitability for use under the *Contract* and to insert their own Hold Points and Witness Points.

Inspection and Test Plans shall include:

- (i) Identification of tests/inspections against contract requirements, specifications, drawings and other relevant details.
- (ii) Witness Points and Hold Points and whether these are specified by the *Contractor* or the *Principal's Representative*.
- (iii) Identify records to be maintained of particular tests, inspections and trials.
- (iv) Details of test equipment to be used for specified tests.
- (v) The Inspection and Test Plans will be reviewed and returned to the *Contractor* within two (2) weeks of submitting the Plans.

### 1.4 Quality Records

The *Contractor* shall establish and maintain a system of records, which shall provide objective evidence that the requirements of the *Contract* have been satisfied.

The *Contractor* shall submit to the *Principal's Representative* for approval a schedule of the specific records he intends to maintain for the *Contract*. The schedule of Quality Records shall be submitted with the Quality Manual.

The *Contractor* shall provide copies of records as nominated by the *Principal's Representative*. The *Contractor* shall retain the original records until the end of the *defects liability period*. At the end of this period the records shall be provided to the *Principal's Representative*.

### 1.5 Inspection and Test

When inspection and test Hold Points or Witness Points, require the presence of the *Principal's Representative* then the *Contractor* shall give a minimum of five (5) *business days'* notice for off-site work and twenty-four (24) hours' notice for *site* work.

Work may proceed past a Hold Point and Witness Point if the *Principal's Representative* elects not to attend at the mutually agreed time and place of inspection.

The *Contractor* shall obtain a written notification from the *Principal's Representative* of their intention not to be present at the inspection.

The *Principal's Representative* will provide this notification within the notice period specified for the *Contractor*.

**Note:** Proceeding past a Hold Point without the written approval of the *Principal's Representative* shall be considered to be a non-conformance.

### 1.6 Quality Audit

The *Contractor* shall give the *Principal's Representative* access to its premises/working area and to documentation in order to audit, survey and verify that the specified requirements are being met. The *Principal's Representative* shall give the *Contractor* two (2) *business days'* notice of its intention to carry out a quality audit of the *Contractor's* quality systems.

The *Principal's Representative* may also require that the *Contractor*:

- (i) corrects any non-conformance of its quality control system as compared to the requirements of the standard specified in Section 1.1 Quality System Documentation.
- (ii) provides documentation to the *Principal's Representative* in relation to the use of all non-conforming materials and supplies. The use of such materials and supplies to be subject to the approval of the *Principal's Representative*.
- (iii) keep and maintain proper and adequate inspection, test and related records and provide either access or copies of such records to the *Principal's Representative* throughout the *Contract*. Such records shall be presented to the *Principal's Representative* upon completion of *the Works*.

## 1.7 Hold Points and Witness Points

### 1.7.1 Hold Point

The *Principal's Representative* may conduct such surveillance, and/or product and design verification that it considers necessary to assure conformance of the *Contractor's* Quality Control System with the Quality Plan, including the review of any of the *Contractor's* documentary evidence of compliance with the technical requirements of the *Contract*.

A Hold Point is a position in the production and inspection cycle beyond which work shall not proceed without mandatory verification and acceptance by the *Principal's Representative*.

### 1.7.2 Witness Points

A Witness Point shall be a position in the production and inspection cycle where the *Principal's Representative* may exercise the option of attendance for the purpose of verification and acceptance.

## 2. General

The *Contractor* shall not depart from or vary the specified quality requirements without the prior approval of the *Principal's Representative*.

The proposed use or repair of product, which does not conform to specified requirements, shall be subject to prior approval by the *Principal's Representative*.

The *Contractor* shall inform the *Principal's Representative* of their intention to subcontract any element of *the Works*.

The conduct of quality assurance at the premises of the *Contractor* or of any *subcontractor* or the marking of any component, subassembly, assembly or inspection document by the *Principal's Representative* shall not be construed by the *Contractor* as an act of acceptance nor shall it relieve the *Contractor* of any obligation under the *Contract*.

Detail within the Quality System subject to comment by the *Principal's Representative* shall be resubmitted to the *Principal's Representative*, after revision, for review before proceeding with that portion of the *Contract* affected by the comment, unless otherwise instructed by the *Principal's Representative* in writing.

In the event that the *Principal's Representative* makes comment on the Quality System submitted for review and comment, the *Contractor* shall make adjustments, corrections, amendments or alterations as indicated by the comment. Such comment will be made by the *Principal's Representative* on the premise that the adjustment, correction, amendment or alteration is within the scope of the *Contract* and will not affect the *Contract* conditions, specifications, guarantees, price, equipment performance or the like, in any way.

Should the *Principal's Representative* offer any comments to the *Contractor* on the Quality System which the *Contractor* believes will extend the scope of *the Works* and result in additional cost or delay, then the *Contractor* shall notify the *Principal's Representative* within one (1) week of such occurrence and advise the additional cost within one (1) additional week. Prior to incorporating such comments in their Quality System, written approval shall be obtained from the *Principal's Representative*.

## 3. Quality Verification

The *Contractor* is responsible for ensuring that goods and/or services delivered as part of the *Contract* meet all the technical and quality requirements.

The *Contractor* shall provide the supplies as specified in the *Contract*, together with documented evidence that the supplies conform.

## 4. Subcontract Quality Requirements

The *Contractor* shall ensure that the Quality Assurance requirements placed on them by the *Principal* are transferred into any subcontracts.

- (a) Quality System requirements shall be applied on all Subcontracts to the point where the acceptability of supplies can be demonstrated solely by the conduct of inspection and/or examination of goods at receipt into the *Principal's* store.
- (b) The *Contractor's* Quality Plan shall include or reference the Quality Plans of *subcontractors*.

## ANNEXURE PART O

# Part O

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

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### EQUIPMENT WARRANTIES

[**Insert Equipment Warranties**]

**ANNEXURE PART P****Part P****Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct**

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**GENERAL SITE OBLIGATIONS****A. Project Drug and Alcohol Policy**

The Drug and Alcohol Policy for the Project (and associated references to the Drug and Alcohol Policy) shall be included on the Project Sharepoint site and is deemed to be part of this document. The Drug and Alcohol Policy forms part of the Project Construction Health and Safety Management Plan (CHSMP) and the Contractor is to include reference to the Drug and Alcohol Policy within its own Safety Management Plan for the project.

The Contractor shall be responsible for the management of the Drug and Alcohol Policy provision set out in this Schedule.

**B. Project Site Security**

- (1) The *Principal's Representative* shall maintain gate control. A *site security office* will monitor entry/exit to ensure only authorised personnel and deliveries have access to and from site. The security officer will conduct spot checks of packages, vehicles, tool boxes and any other containers or equipment entering or exiting the site. This right of inspection is a condition of the *Contract* and shall apply to *Contractor's* employees, *subcontractors* employees, and visitors. Refusal to accept this inspection will be considered a breach of *Contract*.
- (2) The *Principal's Representative* shall maintain regular site inspections over each 24 hour period.
- (3) Notices detailing with site opening /closing times, acceptable times for site deliveries, general safety notices, PPE requirements, traffic control, "No Cameras Etc" and emergency procedures shall be posted at the main gate control.
- (4) Provision shall be made by the *Contractor* for issue of identification passes complete with photographs.
- (5) Other provisions shall be specified by the *Principal's Representative* upon the award of *site security* to an appropriate qualified security contractor.
- (6) Vehicle passes will be issued for on-site personnel and visitors.

## ANNEXURE PART Q

# Part Q

Annexure to the Australian Standard  
General Conditions of Contract for  
Design and Construct

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### PRINCIPAL'S PROFORMA DOCUMENTS

**[attach proforma payment claim forms]**



**ANNEXURE PART R**

# Index

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General Conditions of Contract for  
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**AS4902-2000 INDEX**

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