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Australian Standard™

**Subcontract conditions for design and
construct**

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**STANDARDS
AUSTRALIA**

This Australian Standard was prepared by Committee OB-003, General Conditions of Contract. It was approved on behalf of the Council of Standards Australia on 7 September 1999. This Standard was published on 27 December 2000.

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Australian Chamber of Commerce and Industry
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Australian Standard™

Subcontract conditions for design and construct

Originated as AS 4303—1995.
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PREFACE

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

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

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

AS 4903—2000 *General conditions of subcontract 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 for the main contract results in the subcontract incorporating design functions, then if the project procurement method is:

- (a) **design and construct**—the Main Contractor would provide the Main Contractor's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Main Contractor would provide the Main Contractor's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 14 and 15;
- (c) **design, novate and construct**—the Main Contractor would provide the Main Contractor's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 14 and 15 and would complete Annexure Part A Item 25 stating which secondary subcontract (including consultant's agreement) or selected secondary subcontract is to be novated to the Subcontractor.

Subclauses 8.6, 29.2 and 34.7A, 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) This Standard is not recommended for use as part of the agreement between the Main Contractor and a consultant. AS 4904—2001 *Consultant's Agreement* has been developed for this purpose.
- 2) Users of this Australian Standard are warned that clause 15 (Damage to persons and property other than WUS) 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 WUS), 16B (Professional indemnity insurance) and 17 (Public liability insurance).

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

- 3) In relation to insurances, the parties should have regard to clause 16A regarding the availability during the tender period of a copy of the insurance policy in relation to WUS, and subclause regarding proof of evidence of insurances generally, before WUS commences under the Subcontract.
- 4) Main Contractors should ensure that their specific requirements are fully and completely incorporated in the Main Contractor's project requirements obtaining specialist advice if necessary. Where a Subcontractor provides a proposed design as part of its tender the parties should consider whether that design should form part of the Main Contractor's project requirements.
- 5) 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.
- 6) Subcontractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.
- 7) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.

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STANDARDS AUSTRALIA

Australian Standard

Subcontract conditions for design and construct

1 Interpretation and construction of Subcontract

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

- Item** means an *Item* in Annexure Part A;
- bill of quantities** means a document named therein as a bill of quantities issued to tenderers by or on behalf of the *Main Contractor*, stating estimated quantities of *work* to be carried out;
- certificate of practical completion** has the meaning in subclause 34.6;
- compensable cause** means:
- (a) any act, default or omission of the *Subcontract Superintendent*, the *Main Contractor* or its consultants, agents or other contractors (not being employed by the *Subcontractor*);
 - (b) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Subcontractor*); or
 - (c) those listed in *Item 35*;
- construction plant** means appliances and things used in the carrying out of *WUS* but not forming part of the *Subcontract Works*;
- date for practical completion** means:
- (a) where *Item 11(a)* provides a date for *practical completion*, the date;
 - (b) where *Item 11(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 *Subcontract Superintendent* or allowed in any arbitration or litigation, it means the date resulting therefrom;
- date of acceptance of tender** means the date which appears on the written notice of acceptance of the tender;
- 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;

deed of guarantee, undertaking and substitution	has the meaning in subclause 5.6;
defects	has the meaning in clause 35 and includes omissions;
defects liability period	has the meaning in clause 35;
design documents	means the drawings, specifications and other information, samples, models, patterns and the like required by the <i>Subcontract</i> and created (and including, where the context so requires, those to be created by the <i>Subcontractor</i>) for the construction of the <i>Subcontract Works</i> ;
direction	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;
dispute	has the meaning in clause 42;
EOT (from 'extension of time')	has the meaning in subclause 34.3;
excepted risk	has the meaning in subclause 14.3;
final certificate	has the meaning in subclause 37.4;
final payment	has the meaning in clause 37;
final payment claim	means the final payment claim referred to in subclause 37.4;
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: <ul style="list-style-type: none"> (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where <i>WUS</i> 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 <i>WUS</i>; and (c) fees and charges payable in connection with the foregoing;
main contract	means the agreement between the <i>Principal</i> and the <i>Main Contractor</i> ;
main contract arbitrator	has the meaning in subclause 42.4;
main contract dispute	has the meaning in clause 42;
main contract works	means the whole of the <i>work</i> to be carried out and completed in accordance with the <i>main contract</i> , including <i>variations</i> provided for by the <i>main contract</i> , which by the <i>main contract</i> is to be handed over to the <i>Principal</i> ;
Main Contractor	means the Main Contractor stated in <i>Item 1</i> ;

Main Contractor's project requirements means the *Main Contractor's* written requirements for the *Subcontract Works* described in the documents stated in *Item 14* which:

- (a) shall include the stated purpose for which the *Subcontract Works* are intended;
- (b) may include the *Main Contractor's* design, timing and cost objectives for the works; and
- (c) where stated in *Item 14*, shall include a preliminary design;

practical completion is that stage in the carrying out and completion of *WUS* when:

- (a) the *Subcontract Works* are complete except for minor defects:
 - (i) which do not prevent the *Subcontract Works* from being reasonably capable of being used for their stated purpose;
 - (ii) which the *Subcontract Superintendent* determines the *Subcontractor* has reasonable grounds for not promptly rectifying; and
 - (iii) the rectification of which will not prejudice the convenient use of the *Subcontract Works*;
- (b) those tests which are required by the *Subcontract* to be carried out and passed before the *Subcontract Works* reach practical completion have been carried out and passed; and
- (c) documents and other information required under the *Subcontract* which, in the *Subcontract Superintendent's* opinion, are essential for the use, operation and maintenance of the *Subcontract Works* have been supplied;

preliminary design means the documents stated in *Item 15*;

prescribed notice has the meaning in subclause 41.1;

Principal means the Principal to the *main contract* stated in *Item 7*;

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) any act, default or omission of the *Subcontract Superintendent*, the *Main Contractor* or its consultants, agents or other contractors (not being employed by the *Subcontractor*);
- (b) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Subcontractor*); or

(c) other than:

- (i) a breach or omission by the *Subcontractor*;
- (ii) industrial conditions or inclement weather occurring after the *date for practical completion*; and
- (iii) stated in *Item 32*;

schedule of rates means any schedule included in the *Subcontract* 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;

secondary subcontract means a subcontract between the *Subcontractor* and a *secondary subcontractor*;

secondary subcontractor in clauses 3 and 9 includes a *Subcontractor's consultant*;

security means:

- (a) cash;
- (b) retention moneys;
- (c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;
- (d) interest bearing deposit in a bank carrying on business at the place stated in *Item 13(c)*;
- (e) an approved unconditional undertaking (the form in Annexure Part B is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or
- (f) other form approved by the party having the benefit of the security;

selected secondary subcontract work has the meaning in subclause 9.3;

selected secondary subcontractor has the meaning in subclause 9.3;

separable portion means a portion of the *Subcontract Works* identified as such in the *Subcontract* or by the *Subcontract Superintendent* pursuant to clause 4;

site means the lands and other places to be made available and any other lands and places made available to the *Subcontractor* by the *Main Contractor* for the purpose of the *Subcontract*;

Subcontract has the meaning in clause 6;

subcontract sum means:

- (a) where the *Main Contractor* accepted a lump sum, the lump sum;
- (b) where the *Main Contractor* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the priced *bill of quantities* or *schedule of rates*; or
- (c) where the *Main Contractor* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),

including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Subcontract*;

Subcontract Superintendent means the person stated in *Item 5* as the Subcontract Superintendent or other person from time to time appointed in writing by the *Main Contractor* to be the Subcontract Superintendent and notified as such in writing to the *Subcontractor* by the *Main Contractor* and, so far as concerns the functions exercisable by a *Subcontract Superintendent's Representative*, includes a *Subcontract Superintendent's Representative*;

Subcontract Superintendent's Representative means an individual appointed in writing by the *Subcontract Superintendent* under clause 21;

Subcontractor means the person bound to carry out and complete *WUS*;

Subcontractor's consultant means any person engaged by the *Subcontractor* to perform consultancy services in connection with *WUS* and includes any *Main Contractor's* consultant whose prior contract is novated to the *Subcontractor* under subclause 9.4;

Subcontractor's design obligations means all tasks necessary to design and specify the *Subcontract Works* required by the *Subcontract*, including preparation of the *design documents* and, if the documents stated in *Item 14* as describing the *Main Contractor's project requirements* include a *preliminary design*, developing the *preliminary design*;

Subcontractor's program has the meaning in clause 32;

Superintendent means the person stated in *Item 9* as the Superintendent or other person from time to time appointed in writing by the *Principal* to be the Superintendent under the *main contract* and notified as such in writing to the *Subcontractor* by the *Main Contractor* and, so far as concerns the functions exercisable under the *main contract* by a Superintendent's Representative, includes a Superintendent's Representative;

survey mark in clause 26 means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring *WUS*;

temporary works means *work* used in carrying out and completing *WUS*, but not forming part of the *Subcontract Works*;

- test** has the meaning in subclause 30.1 and includes examine and measure;
- the Subcontract Works** means the whole of the *work* to be carried out and completed in accordance with the *Subcontract*, including *variations* provided for by the *Subcontract*, which by the *Subcontract* is to be handed over to the *Main Contractor*;
- variation** has the meaning in clause 36;
- work** includes the provision of materials;
- WUS (from 'work under the Subcontract')** means the *work* which the *Subcontractor* is or may be required to carry out and complete under the *Subcontract* and includes *variations*, remedial work, construction plant and temporary works,
- and like words have a corresponding meaning.

In the *Subcontract*:

- (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 *Subcontract* 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 *Subcontract*;
- (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 *Main Contractor*, the *Subcontract Superintendent* and the *Subcontractor* shall be in the English language;
- (f) measurements of physical quantities shall be in legal units of measurement of the jurisdiction in *Item 12*;
- (g) unless otherwise provided, prices are in the currency in *Item 13(a)* and payments shall be made in that currency at the place in *Item 13(b)*;
- (h) the law governing the *Subcontract*, its interpretation and construction, and any agreement to arbitrate, is the law of the jurisdiction in *Item 12*; and
- (i) if pursuant to Annexure Part E to these Subcontract Conditions, clauses or their parts in these Conditions are deleted, the *Subcontract* 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 Conditions.

2 Nature of Subcontract

2.1 Performance and payment

The *Subcontractor* shall carry out and complete *WUS* in accordance with the *Subcontract* and *directions* authorized by the *Subcontract*.

The *Main Contractor* shall pay the *Subcontractor*:

- (a) for *work* for which the *Main Contractor* accepted a lump sum, the lump sum; and
- (b) for *work* for which the *Main Contractor* accepted rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of *work* actually carried out under the *Subcontract* by the rate accepted by the *Main Contractor* for the section or item,

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

2.2 Subcontractor's warranties

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

- (a) the *Subcontractor*:
 - (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 *WUS*;
 - (ii) has examined any *preliminary design* included in the *Main Contractor's project requirements* and that such *preliminary design* is suitable, appropriate and adequate for the purpose stated in the *Main Contractor's project requirements*;
 - (iii) shall carry out and complete the *Subcontractor's design obligations* to accord with the *Main Contractor's project requirements* and, if subclause 9.4 applies, accept the novation and retain the *Main Contractor's consultants* for any *work* the subject of a prior contract with the *Main Contractor*; and
 - (iv) shall carry out and complete *WUS* in accordance with the *design documents* so that the *Subcontract Works*, when completed, shall:
 - (A) be fit for their stated purpose; and
 - (B) comply with all the requirements of the *Subcontract*; and
- (b) subject to clause 9, the *Subcontractor's consultants* identified in the *Subcontractor's tender* are suitably qualified and experienced.

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 *Main Contractor* and included in the *Main Contractor's project requirements*;
- (b) that the *Subcontractor* has entered into a novation of any prior contract between the *Main Contractor* and a *Main Contractor's consultant* under subclause 9.4 and thereafter has retained that consultant in connection with *WUS*;
- (c) any receipt or review of, or comment or *direction* on, the *design documents* by the *Subcontract Superintendent*; or
- (d) any *variation*.

2.4 Bill of quantities

The Alternative in *Item 16(a)* applies.

Alternative 1

A *bill of quantities* forms part of the *Subcontract* and shall be priced in accordance with subclause 2.5.

Alternative 2

A *bill of quantities* does not form part of the *Subcontract* and shall not be priced in accordance with subclause 2.5 unless so stated in *Item 16(b)*.

2.5 Priced bill of quantities

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

- (a) all items included in the *bill of quantities* shall be priced and extended by the *Subcontractor* and the prices as extended shall on addition equal the sum accepted by the *Main Contractor* for carrying out the whole of the work to which the *bill of quantities* relates;
- (b) the *Subcontractor* shall lodge the *bill of quantities* so priced and extended with the *Subcontract Superintendent* before the expiration of the time for lodgement stated in *Item 16(c)* or such further time as may be directed by the *Subcontract Superintendent* from time to time;
- (c) notwithstanding any other provision of the *Subcontract*, the *Subcontractor* shall not be entitled to payment until the *Subcontractor* has lodged the *bill of quantities* so priced and extended.

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

2.6 Quantities

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

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

2.7 Adjustment for actual quantities

Where, otherwise than by reason of a *direction* to vary *WUS*, the actual quantity of an item required to perform the *Subcontract* is greater or less than the quantity shown in a *bill of quantities* which forms part of the *Subcontract* or *schedule of rates*:

- (a) the *Main Contractor* accepted a lump sum for the item, the difference shall be a deemed *variation*;
- (b) the *Main Contractor* accepted a rate for the item, the rate shall apply to the greater or lesser quantities provided that where limits of accuracy for a quantity in a *schedule of rates* are stated in *Item 17*, the rate shall apply to the greater or lesser quantities within the limits, and quantities outside the limits shall be a deemed *variation*.

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

Notwithstanding the preceding provisions of this subclause in respect of a *bill of quantities*, a *variation* shall not be deemed for actual quantities of an item pursuant to paragraph(a), or for an omitted item or any adjustment made for actual quantities of an item pursuant to paragraph(b), if the difference, the value of the omitted item or the adjustment respectively is less than \$400.

3 Provisional sums

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

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

- (a) any damages payable by the *Subcontractor* to the *secondary 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 18* or elsewhere in the *Subcontract*, or, if not so stated, as assessed by the *Subcontract Superintendent*.

4 Separable portions

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

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

5 Security

5.1 Provision

Security shall be provided in accordance with *Item 19* or *20*. All delivered *security*, other than cash or retention moneys, shall be transferred in escrow.

5.2 Recourse

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

5.3 Change of security

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

5.4 Reduction and release

Upon the issue of the *certificate of practical completion* a party's entitlement to *security* (other than in *Item 19(e)*) shall be reduced by the percentage or amount in *Item 19(f)* or *20(d)* as applicable, and the reduction shall be released and returned within 14 days to the other party.

The *Main Contractor's* entitlement to *security* in *Item 19(e)* shall cease 14 days after incorporation into the *Subcontract Works* of the plant and materials for which that *security* was provided.

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

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

5.5 Trusts and interest

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

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

5.6 Deed of guarantee, undertaking and substitution

Where:

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

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

6 Evidence of Subcontract

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

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

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

7 Service of notices

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

- (a) if addressed or delivered to the relevant address in the *Subcontract* 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 Subcontract 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 *WUS*, that party shall give the *Subcontract Superintendent* written notice of it. The *Subcontract Superintendent*, thereupon, and upon otherwise becoming aware, shall direct the *Subcontractor* as to the interpretation and construction to be followed.

The *Subcontractor* 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 *Main Contractor's project requirements* necessitates the *direction*.

If compliance with any other *direction* under this subclause causes the *Subcontractor* 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 *Subcontract Superintendent* and added to or deducted from the *subcontract sum*.

8.2 Main Contractor-supplied documents

The *Main Contractor* shall supply to the *Subcontractor* the documents and number of copies thereof, both stated in *Item 21*.

They shall:

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

8.3 Subcontractor-supplied documents

The *Subcontractor* shall supply to the *Subcontract Superintendent* the documents and number of copies at the times or stages stated in *Item 22*.

Other documents and information required by the *Subcontract*, unless elsewhere stated in the *Subcontract*, 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 *Subcontract Superintendent*.

If the *Subcontractor* submits a document to the *Subcontract Superintendent*, then except where the *Subcontract* otherwise provides:

- (a) the *Subcontract Superintendent* shall not be required to check that document for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Subcontract*;
- (b) notwithstanding subclause 2.1, any *Subcontract Superintendent's* acknowledgment or approval shall not prejudice the *Subcontractor's* obligations; and
- (c) if the *Subcontract* requires the *Subcontractor* to obtain the *Subcontract Superintendent's direction* about that document, the *Subcontract Superintendent* shall

give, within the time stated in *Item 23*, the appropriate *direction*, including reasons if the document is not suitable.

A direction by the *Subcontract Superintendent* to vary anything in the *design documents* shall be a *variation* to *WUS* only to the extent that the *design documents*, before such *variation*, complied, or would have complied, with the *Main Contractor's project requirements*.

Except as otherwise provided in the *Subcontract*, copies of documents supplied by the *Subcontractor* shall be the *Main Contractor's* property but shall not be used nor copied otherwise than for the use, repair, maintenance or alteration of the *Subcontract Works*.

8.4 Availability

The *Subcontractor* shall keep available to the *Subcontract Superintendent* and the *Main Contractor*:

- (a) on *site*, one complete set of documents affecting *WUS* and supplied by a party or the *Subcontract Superintendent*; and
- (b) at the place of manufacture or assembly of any significant part of *WUS* 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 other than the *Principal*, the *Superintendent* and their identified consultants, any confidential matter even after *final certificate* or earlier termination of the *Subcontract*. If so required by the *Subcontractor*, the *Main Contractor* shall ensure that the *Subcontract Superintendent*, the *Principal* and the *Superintendent* also enter into such an agreement.

* 8.6 Media

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

9 Assignment and secondary subcontracting

9.1 Assignment

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

9.2 Secondary subcontracting generally

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

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

* See Preface

- (a) subcontract or allow a *secondary subcontractor* to subcontract any *work* described in *Item 24*; or
- (b) allow a *secondary subcontractor* to assign a *secondary subcontract* or any payment or any other right, benefit or interest thereunder.

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

Within 21 days of the *Subcontractor*'s request for approval, the *Subcontract Superintendent* shall give the *Subcontractor* written notice of approval or of the reasons why approval is not given.

Approval may be conditional upon the *secondary subcontract* including:

- (a) provision that the *secondary subcontractor* shall not assign nor subcontract without the *Subcontractor*'s written consent;
- (b) provisions which may be reasonably necessary to enable the *Subcontractor* to fulfil the *Subcontractor*'s obligations to the *Main Contractor*;
- (c) provision that if the *Subcontract* is terminated and upon the *secondary subcontractor* being paid the sum certified by the *Subcontract Superintendent* as owing to the *secondary subcontractor*, the *Subcontractor* and the *secondary subcontractor* shall, after the *Main Contractor* 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 *Subcontractor* hereby irrevocably appoints the *Superintendent* under the *main contract* to be the *Subcontractor*'s attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the *Subcontractor* accordingly; and

- (d) where the *secondary subcontractor* is a *Subcontractor's consultant*, provision that the *secondary subcontractor* shall effect and maintain professional indemnity insurance on the same terms as are required under *Items 28(c)* and *28(d)*.

9.3 Selected secondary subcontract work

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

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

9.4 Novation

This subclause applies only where the *Main Contractor*'s *project requirements* include a *preliminary design* or the *Subcontract* includes *selected secondary subcontract work*.

When directed by the *Main Contractor*, the *Subcontractor*, without being entitled to compensation, shall promptly execute a deed of novation in the form of Annexure Part D, such deed being between the *Main Contractor*, the *Subcontractor* and the *secondary subcontractor* or *selected secondary subcontractor* stated in *Item 25* for the particular part of the *preliminary design* or *selected secondary subcontract work*.

9.5 Subcontractor's responsibility

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

Approval to subcontract shall not relieve the *Subcontractor* from any liability or obligation under the *Subcontract*.

10 Intellectual property rights

10.1 Warranties and indemnities

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

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

Each party shall indemnify the other against such respective infringements.

10.2 Intellectual property rights granted to Main Contractor and Principal

The Alternative in *Item 26* applies.

Alternative 1

The *Subcontractor* grants to the *Main Contractor* and to the *Principal* irrevocable licences to use the *design documents* for *WUS*. Such licences shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the *Subcontract Works* and the copying of the documents for such purposes.

Alternative 2

Copyright and property in the *design documents* (and, as between the *Main Contractor* and the *Subcontractor*, any part of the *preliminary design* produced under a prior contract between the *Main Contractor* and a *Main Contractor's consultant* novated under subclause 9.4) hereby vest in the *Main Contractor*, and the *Main Contractor* grants to the *Subcontractor* an irrevocable licence to use the *design documents* for *WUS*. Such vesting shall not extend to components of the design which have been developed by the *Subcontractor* for general use in the *Subcontractor's work* and have not been specially developed for incorporation in the *design documents*.

The *Subcontractor* shall do everything necessary to perfect such vesting.

The *Subcontractor* shall ensure that the *design documents* are used, copied and supplied only for the purpose of *WUS*.

11 Legislative requirements

11.1 Compliance

The *Subcontractor* shall satisfy all *legislative requirements* except those in *Item 27(a)* and (b) or directed by the *Subcontract Superintendent* to be satisfied by or on behalf of the *Main Contractor*.

The *Subcontractor*, upon finding that a *legislative requirement* is at variance with the *Subcontract* or the *Main Contractor's project requirements*, shall promptly give the *Subcontract Superintendent* written notice thereof.

11.2 Changes

If a *legislative requirement*:

- (a) necessitates a change:
 - (i) to the *Main Contractor's project requirements*;
 - (ii) to the *Subcontract Works*;
 - (iii) to so much of *WUS* as is identified in *Item 27(c)*;
 - (iv) being the provision of services by a municipal, public or other statutory authority in connection with *WUS*; 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 subcontractor; and
- (c) causes the *Subcontractor* to incur more or less cost than otherwise would have been incurred,

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

12 Protection of people and property

Insofar as compliance with the *Subcontract permits*, the *Subcontractor* 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 *Subcontractor* damages property, the *Subcontractor* shall promptly rectify the damage and pay any compensation which the law requires the *Subcontractor* to pay.

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

13 Urgent protection

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

If time permits, the *Subcontract Superintendent* shall give the *Subcontractor* 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 WUS

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

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

Without limiting the generality of paragraph (a), the *Subcontractor* 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 *Subcontractor* by the *Main Contractor* or brought onto the *site* by *secondary subcontractors* for carrying out *WUS*.

14.2 Reinstatement

If loss or damage, other than that caused by an *excepted risk*, occurs to *WUS* during the period of the *Subcontractor's* care, the *Subcontractor* 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 *Subcontractor* shall to the extent directed by the *Subcontract Superintendent*, rectify the loss or damage and such rectification shall be a deemed *variation*. If loss or damage is caused by a combination of *excepted risks* and other risks, the *Subcontract Superintendent* in pricing the *variation* shall assess the proportional responsibility of the parties.

14.3 Excepted risks

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

- (a) any negligent act or omission of the *Superintendent*, the *Principal*, the *Subcontract Superintendent*, the *Main Contractor* or the consultants, agents, employees or other contractors (not being employed by the *Subcontractor*) of the *Principal* or the *Main Contractor*;
- (b) any risk specifically excepted elsewhere in the *Subcontract*;
- (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 *Subcontractor* or its *secondary subcontractors* or either's employees or agents;
- (e) use or occupation of any part of *WUS* by the *Principal*, the *Main Contractor* or the consultants, agents or other contractors (not being employed by the *Subcontractor*) of either of them; and
- (f) defects in the design of *WUS*, including the *preliminary design* provided by the *Main Contractor*, as is not warranted under clause 2.

15 Damage to persons and property other than WUS

15.1 Indemnity by Subcontractor

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

The *Subcontractor* shall indemnify the *Main Contractor* against:

- (a) loss of or damage to the *Principal's* or the *Main Contractor's* property including existing property in or upon which *WUS* is being carried out; and
- (b) claims in respect of personal injury or death or loss of, or damage to, any other property,

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

This subclause shall not apply to:

- (a) the extent that the *Subcontractor's* liability is limited by another provision of the *Subcontract*;
- (b) exclude any other right of the *Principal* or the *Main Contractor* to be indemnified by the *Subcontractor*;
- (c) things for the care of which the *Subcontractor* is responsible under subclause 14.1;
- (d) damage which is the unavoidable result of the construction of the *Subcontract Works* in accordance with the *Subcontract*; and
- (e) claims in respect of the *Main Contractor's* right to have *WUS* carried out.

15.2 Indemnity by Main Contractor

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

16A Insurance of the Subcontract Works

Before the *date of acceptance of tender*, the *Main Contractor* shall ensure that there is in force a policy of insurance in relation to loss or damage to *WUS* in the terms of the policy or proposed policy included in the documents on which the *Subcontractor* tendered or, if not so included, a copy of which was provided to the *Subcontractor* following receipt by the *Main Contractor* of a written request by the *Subcontractor* for a copy of the policy. The policy or proposed policy shall nominate or state the name of the insurer. The *Main Contractor* shall ensure that the policy is maintained while ever the *Subcontractor* has an interest in *WUS* and that all premiums are paid thereon.

16B Professional indemnity insurance

Before commencing *WUS*, the *Subcontractor* shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 28(a)*.

The insurance shall be maintained until the *final certificate* is issued and thereafter for the period stated in *Item 28(b)*.

The *Subcontractor* shall ensure that every *Subcontractor's consultant*, if within a category stated in *Item 28(c)*, shall effect and maintain professional indemnity insurance with levels of cover not less than stated in *Item 28(c)* applicable to that category.

Each such *Subcontractor's consultant's* professional indemnity insurance shall be maintained until the *final certificate* is issued and thereafter for the period as stated in *Item 28(d)*.

17 Public liability insurance

The Alternative in *Item 29(a)* applies.

Alternative 1: Main Contractor to insure

Before the *date of acceptance of tender*, the *Main Contractor* shall ensure that there is in force in relation to *WUS*, a *public liability policy* in the terms of the policy or proposed policy included in the documents on which the *Subcontractor* tendered or, if not so included, a copy of which was provided to the *Subcontractor* following receipt by the *Main Contractor* of a written request from the *Subcontractor* for a copy of the policy. The policy or proposed policy shall nominate or state the name of the insurer. The *Main Contractor* shall ensure that the policy is maintained while ever the *Subcontractor* has an interest in *WUS* and that all premiums are paid thereon.

Alternative 2: Subcontractor to insure

Before commencing *WUS*, the *Subcontractor* shall effect and maintain for the duration of the *Subcontract*, a *public liability policy*.

The policy shall:

- (a) be in the joint names of the *Principal*, the *Main Contractor* and the *Subcontractor*;
- (b) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties;
 of the parties, the *Principal*, *Superintendent*, *Subcontract Superintendent*, *Subcontractor's consultants* and *secondary subcontractors* from time to time, whenever engaged in *WUS*;
- (c) 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);
- (d) be endorsed to cover the use of any *construction plant* not covered under a comprehensive or third party motor vehicle insurance policy;
- (e) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in *Item 29(b)*; and
- (f) be with an insurer and otherwise in terms both approved in writing by the *Main Contractor* (which approvals shall not be unreasonably withheld).

18 Insurance of employees

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

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

The *Subcontractor* shall ensure that all *Subcontractor's consultants* and *secondary subcontractors* have similarly insured their employees.

19 Inspection and provisions of insurance policies

19.1 Proof of insurance

Before the *Subcontractor* commences *WUS* 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 *Subcontract*.

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 *Subcontract Superintendent* as moneys due and payable from the party in default to the other party. Where the defaulting party is the *Subcontractor*, the *Main Contractor* may refuse payment until such evidence is produced by the *Subcontractor*.

19.3 Notices from or to insurer

The *Subcontractor* insuring under Alternative 2 of clause 17 shall ensure that the insurance policy contains provisions acceptable to the *Main Contractor* which:

- (a) requires the insurer to inform both parties, whenever the insurer gives a party or a *Subcontractor's consultant* or a *secondary subcontractor* a notice in connection with the policy;
- (b) provides that a notice of claim given to the insurer by either party, the *Subcontract Superintendent*, a *Subcontractor's consultant* or a *secondary subcontractor* shall be accepted by the insurer as a notice of claim given by both parties, the *Subcontract Superintendent*, the *Subcontractor's consultant* and the *secondary subcontractor*; and
- (c) requires the insurer, whenever the *Subcontractor* 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 affecting or arising out of *WUS* 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 *Subcontractor* shall ensure that *Subcontractor's consultants* and *secondary 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 *Main Contractor* to the *Subcontractor*, if the *Subcontractor* 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 *Subcontractor* reinstates the loss or damage, the *Subcontract Superintendent* shall certify against the joint account for the cost of reinstatement; and
- (b) to the extent that reinstatement has not been the subject of a payment or allowance by the *Main Contractor* to the *Subcontractor*, the *Subcontractor* 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 *Subcontractor*.

19.6 Cross liability

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

20 Subcontract Superintendent

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

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

21 Subcontract Superintendent's Representative

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

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

The *Subcontractor* shall forthwith notify the *Subcontract Superintendent* if the *Subcontractor* receives a purported *direction* from other than the *Subcontract Superintendent*, the *Main Contractor* or those authorised by either of them.

22 Subcontractor's representative

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

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

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

23 Subcontractor's employees and secondary subcontractors

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

24 Site

24.1 Access and non-exclusive possession

Before the expiry of the time stated in *Item 30(a)*, the *Main Contractor* shall give the *Subcontractor* access to the *site* sufficient to enable the *Subcontractor* to commence and carry out the *Subcontractor's design obligations*.

Provided the *Subcontractor* has complied with subclause 19.1, the *Main Contractor* shall before the expiry of the time in *Item 30(b)*, give the *Subcontractor* non-exclusive possession of sufficient of the *site* for commencement of *WUS* on *site*. If the *Main Contractor* has not given the *Subcontractor* non-exclusive possession of the *site* to enable the *Subcontractor* to carry out all of *WUS*, the *Main Contractor* shall give the *Subcontractor* non-exclusive possession of such further portions of the *site* as may, from time to time, be necessary for carrying out *WUS*. Subject to subclause 39.7, delay by the *Main Contractor* in giving possession shall not be a breach of the *Subcontract*.

Non-exclusive possession of the *site* shall confer on the *Subcontractor* a right to only such use and control as is necessary to enable the *Subcontractor* to carry out *WUS* and shall exclude camping, residential purposes and any purpose not connected with *WUS*, unless approved by the *Subcontract Superintendent*.

24.2 Access for Main Contractor and others

The *Main Contractor* and the *Main Contractor's* employees, consultants and agents may at any reasonable time have access to any part of the *site* for any purpose. The *Subcontractor* shall permit persons engaged by the *Main Contractor* to carry out work on the *site* other than *WUS* and shall cooperate with them.

The *Subcontractor* shall at all reasonable times give the *Subcontract Superintendent* and the *Superintendent* access to *WUS*.

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

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 *Main Contractor*. Immediately upon the discovery of these things the *Subcontractor* shall:

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

All costs so incurred by the *Subcontractor* shall be assessed by the *Subcontract Superintendent* and added to the *subcontract sum*.

25 Latent conditions

25.1 Scope

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

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

25.2 Notification

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

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

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

25.3 Deemed variation

The effect of the *latent condition* shall be a deemed *variation*, priced having no regard to additional cost incurred more than 21 days before the date on which the *Subcontractor* gave the notice required by the first paragraph of subclause 25.2 but so as to include the *Subcontractor's* other costs for each compliance with subclause 25.2.

26 Setting out the Subcontract Works

26.1 Setting out

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

26.2 Errors in setting out

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

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

26.3 Care of survey marks

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

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

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

27 Cleaning up

The *Subcontractor* shall keep the *site* and *WUS* clean and tidy and regularly remove rubbish and surplus material.

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

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

If:

- (a) the *Subcontractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 3 days after the *Subcontractor* receives written notice from the *Subcontract Superintendent* that the *Main Contractor* intends to have the subject *work* carried out by others,

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

28 Materials, labour and construction plant

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

In respect of any materials, machinery or equipment to be supplied by the *Subcontractor* in connection with the *Subcontract*, the *Subcontract Superintendent* may direct the *Subcontractor* 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 *Subcontract Superintendent*, the *Main Contractor* and persons authorised by the *Main Contractor*.

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

29 Quality

29.1 Quality of material and work

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

* 29.2 Quality assurance

If the *Subcontract* elsewhere requires further quality assurance, the *Subcontractor* shall:

- (a) plan, establish and maintain a conforming quality system; and
- (b) ensure that the *Superintendent* and the *Subcontract Superintendent* have access to the quality system of the *Subcontractor* and *secondary 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 *Subcontract* and to document such compliance. Such system shall not discharge the *Subcontractor's* other obligations under the *Subcontract*.

29.3 Defective work

If the *Subcontract Superintendent* becomes aware of work done (including material provided) by the *Subcontractor* which does not comply with the *Subcontract*, the *Subcontract Superintendent* shall as soon as practicable give the *Subcontractor* written details thereof. If the subject work has not been rectified, the *Subcontract Superintendent* may direct the *Subcontractor* 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 *Subcontractor* fails to comply with such a *direction*; and
- (b) that failure has not been made good within 5 days after the *Subcontractor* receives written notice from the *Subcontract Superintendent* that the *Main Contractor* intends to have the subject work rectified by others,

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

29.4 Acceptance of defective work

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

* See Preface

29.5 Timing

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

30 Examination and testing

30.1 Tests

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

30.2 Covering up

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

30.3 Who conducts

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

30.4 Notice

The *Subcontract Superintendent* or the *Subcontractor* (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 *Subcontractor* or the *Subcontract Superintendent* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

30.6 Completion and results

On completion of the *tests*, the *Subcontractor* shall make good *WUS* so that it fully complies with the *Subcontract*.

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

30.7 Costs

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

31 Working hours

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

Subcontractor shall give the *Subcontract Superintendent* written notice of those circumstances as early as possible.

32 Programming

The *Subcontract Superintendent* shall give to the *Subcontractor* the information, materials, documents and instructions by the times or within the periods both stated in *Item 31*.

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

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

The *Subcontractor* shall co-operate with the *Main Contractor's* other subcontractors and with others engaged by the *Main Contractor* or the *Principal* and subject to the *Main Contractor* being responsible for the overall co-ordination of *WUS* into the work under the main contract, the *Main Contractor* and the *Subcontractor* shall co-ordinate *WUS* with the work under the main contract.

The *Subcontract Superintendent* may direct in what order and at what time the various stages or portions of *WUS* shall be carried out. If the *Subcontractor* can reasonably comply with the direction, the *Subcontractor* shall do so. If the *Subcontractor* cannot reasonably comply, the *Subcontractor* shall give the *Subcontract Superintendent* written notice of the reasons.

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

The *Subcontract Superintendent* may direct the *Subcontractor* to give the *Subcontract Superintendent* a *Subcontractor's program* within the time and in the form directed.

The *Subcontractor* shall not, without reasonable cause, depart from a *Subcontractor's program*.

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

33 Suspension

33.1 Subcontract Superintendent's suspension

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

- (a) because of an act, default or omission of:
 - (i) the *Subcontract Superintendent*, the *Main Contractor* or its employees, consultants, agents or other contractors (not being employed by the *Subcontractor*); or
 - (ii) the *Subcontractor*, a *Subcontractor's consultant*, a *secondary subcontractor* or the employees or agents of any of them;

- (b) for the protection or safety of any person or property;
- (c) to comply with a court order;
- (d) because of a *main contract dispute*; or
- (e) because suspension of work under the *main contract*, in the *Subcontract Superintendent's* opinion, prevents *WUS*.

33.2 Subcontractor's suspension

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

33.3 Recommencement

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

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

33.4 Cost

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

34 Time and progress

34.1 Progress

The *Subcontractor* shall ensure that *WUS* 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 *WUS* shall promptly give the *Subcontract Superintendent* and the other party written notice of that cause and the estimated delay.

34.3 Claim

The *Subcontractor* shall be entitled to such extension of time for carrying out *WUS* (including reaching *practical completion*) as the *Subcontract Superintendent* assesses ('*EOT*'), if:

- (a) the *Subcontractor* is or will be delayed in reaching *practical completion* by a *qualifying cause of delay*; and
- (b) the *Subcontractor* gives the *Subcontract Superintendent*, within 21 days of when the *Subcontractor* 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 *WUS* (including extent).

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

34.4 Assessment

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

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

- (a) *WUS* can nevertheless reach *practical completion* without an *EOT*; or
- (b) the *Subcontractor* can accelerate,

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

34.5 Extension of time

Within 35 days after receiving the *Subcontractor's* claim for an *EOT*, the *Subcontract Superintendent* shall give to the *Subcontractor* and the *Main Contractor* a written *direction* evidencing the *EOT* so assessed. If the *Subcontract Superintendent* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

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

34.6 Practical completion

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

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

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

34.7 Liquidated damages

If *WUS* does not reach *practical completion* by the date for *practical completion*, the *Subcontract Superintendent* shall certify, as due and payable to the *Main Contractor*, liquidated damages in Item 33(a) for every day after the date for *practical completion* to and including the earliest of the date of *practical completion* or termination of the *Subcontract* or the *Main Contractor* taking *WUS* out of the hands of the *Subcontractor*.

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

34.7A Indemnity

* If:

- (a) the *main contract works* do not reach practical completion by their date for practical completion; and
- (b) the reason therefor is caused by the *Subcontractor's* delay in completing *WUS*, the *Subcontractor* shall indemnify the *Main Contractor* against:
- (c) liquidated damages under the *main contract* stated in *Item 33(b)* certified by the *Superintendent*; and
- (d) damages, other than liquidated damages, which have become due and payable by the *Main Contractor* to the *Principal*.

If the *Subcontractor's* delay is not the sole cause of the *Main Contractor's* liability for damages, the *Subcontractor* shall indemnify the *Main Contractor* only in proportion to the *Subcontractor's* delay, which shall be certified by the *Subcontract Superintendent* as moneys due to the *Main Contractor* by the *Subcontractor*.

If after the *Subcontractor* has paid or the *Main Contractor* has set off liquidated damages, the *Superintendent* directs an *EOT* for the cause of the *Subcontractor's* delay, the *Main Contractor* shall forthwith repay to the *Subcontractor* such of those liquidated damages as represent the days the subject of the *EOT*.

The *Subcontractor's* indebtedness under this subclause is not included in the liquidated damages applicable to subclause 34.7.

34.8 Bonus for early practical completion

If the *date of practical completion* is earlier than the *date for practical completion* the *Subcontract Superintendent* shall certify as due and payable to the *Subcontractor* the bonus in *Item 34(a)* for every day after the *date of practical completion* to and including the *date for practical completion*.

The *Subcontractor* hereby waives that part of a bonus exceeding the *Item 34(b)* amount.

34.9 Delay damages

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

35 Defects liability

The *defects liability period* stated in *Item 36* shall commence on the *date of practical completion* at 4:00 pm.

If the date of expiry of the *defects liability period* is the same as the date of expiry of the defects liability period under the *main contract*, the *Subcontract Superintendent* shall, within 14 days of becoming aware of the date of expiry of the defects liability period under the *main contract*, inform the *Subcontractor* in writing of that date.

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

* See Preface

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

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

- (a) shall identify the *defect* and the date for completion of its rectification; and
- (b) may state a date for commencement of the rectification and whether there shall be a separate *defects liability period* therefor (not exceeding 12 months, 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 *Main Contractor* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Main Contractor* may have. The cost thereby incurred shall be certified by the *Subcontract Superintendent* as moneys due and payable to the *Main Contractor*.

36 Variations

36.1 Directing variations

The *Subcontractor* shall not vary *WUS* except as directed in writing.

The *Subcontract Superintendent*, before the *date of practical completion*, may direct the *Subcontractor* to vary *WUS* 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 *Subcontract* (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 *Main Contractor*.

36.2 Proposed variations

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

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

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

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

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

36.3 Variations for convenience of Subcontractor

If the *Subcontractor* requests the *Subcontract Superintendent* to direct a *variation* for the convenience of the *Subcontractor*, the *Subcontract Superintendent* may do so. The *direction*

shall be written and may be conditional. Unless the *direction* provides otherwise, the *Subcontractor* shall be entitled to neither extra time nor extra money.

36.4 Pricing

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

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

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

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

37 Payment

37.1 Progress claims

The *Subcontractor* shall claim payment progressively in accordance with *Item 37*.

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 *Subcontract Superintendent* and shall include details of the value of *WUS* done and may include details of other moneys then due to the *Subcontractor* pursuant to provisions of the *Subcontract*.

37.2 Certificates

The *Subcontract Superintendent* shall, within 21 days after receiving such a progress claim, issue to the *Main Contractor* and the *Subcontractor*:

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

If the *Subcontractor* does not make a progress claim in accordance with *Item 37*, the *Subcontract Superintendent* may issue the *progress certificate* with details of the calculations and shall issue the certificate in paragraph (b).

If the *Subcontract Superintendent* does not issue the *progress certificate* within 21 days of receiving a progress claim in accordance with subclause 37.1, that progress claim shall be deemed to be the relevant *progress certificate*.

The *Main Contractor* shall within 7 days after receiving both such certificates, or within 28 days after the *Subcontract Superintendent* receives the progress claim, pay to the *Subcontractor* the balance of the *progress certificate* after deducting retention moneys and setting off such of the certificate in paragraph (b) as the *Main Contractor* elects to set off. If that setting off produces a negative balance, the *Subcontractor* shall pay that balance to the *Main Contractor* within 7 days of receiving written notice thereof.

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

37.3 Unfixed plant and materials

The *Main Contractor* shall not be liable to pay for unfixed plant and materials unless they are listed in *Item 38* and the *Subcontractor*:

- (a) provides the additional *security* in *Item 19(e)*; and
- (b) satisfies the *Subcontract Superintendent* that the subject plant and materials have been paid for, properly stored and protected, and labelled the property of the *Main Contractor*.

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

37.4 Final payment claim and certificate

Within 21 days after the expiry of the last *defects liability period*, the *Subcontractor* shall give the *Subcontract Superintendent* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Subcontract*.

Within 49 days after the expiry of the last *defects liability period*, the *Subcontract Superintendent* shall issue to both the *Subcontractor* and the *Main Contractor* a *final certificate* evidencing the moneys finally due and payable between the *Subcontractor* and the *Main Contractor* on any account whatsoever in connection with the subject matter of the *Subcontract*.

Those moneys certified as due and payable shall be paid by the *Main Contractor* or the *Subcontractor*, 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 *Subcontract* except for:

- (a) fraud or dishonesty relating to *WUS* or any part thereof or to any matter dealt with in the *final certificate*;
- (b) any *defect* or omission in the *Subcontract 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 39* shall be due and payable after the date of default in payment.

37.6 Other moneys due

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

38 Payment of workers, Subcontractor's consultants and secondary subcontractors

38.1 Workers, Subcontractor's consultants and secondary subcontractors

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

- (a) workers of the *Subcontractor* and of the *secondary subcontractors*;
- (b) *Subcontractor's consultants*; and
- (c) *secondary subcontractors*,

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

If the *Subcontractor* is unable to give such documentary evidence, the *Subcontractor* shall give other documentary evidence of the moneys so due and payable to workers, *Subcontractor's consultants* and *secondary subcontractors*.

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

38.2 Withholding payment

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

The *Main Contractor* shall not withhold payment of such moneys in excess of the moneys evidenced pursuant to subclause 38.1 as due and payable to workers, *Subcontractor's consultants* and *secondary subcontractors*.

38.3 Direct payment

Before *final payment*, the *Main Contractor*, 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, *Subcontractor's consultant* or a *secondary subcontractor* where:

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

Such payment and a payment made to a worker, *Subcontractor's consultant* or *secondary subcontractor* in compliance with a *legislative requirement* shall be deemed to be part-satisfaction of the *Main Contractor'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 *Subcontract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

39.2 Subcontractor's default

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

Substantial breaches include, but are not limited to:

- (a) failing to:
 - (i) perform properly the *Subcontractor's design obligations*;
 - (ii) provide *security*;
 - (iii) provide evidence of insurance;
 - (iv) comply with a *direction* of the *Subcontract Superintendent* pursuant to subclause 29.3; or
 - (v) use the materials or standards of *work* required by the *Subcontract*;
- (b) wrongful suspension of *work*;
- (c) substantial departure from a *Subcontractor's program* without reasonable cause or the *Subcontract Superintendent's* approval;
- (d) where there is no *Subcontractor's 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 Main Contractor's notice to show cause

A notice under subclause 39.2 shall state:

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

39.4 Main Contractor's rights

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

- (a) take out of the *Subcontractor'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 *Subcontract*.

39.5 Take out

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

- (a) use materials, equipment and other things intended for *WUS*; and
- (b) without payment of compensation to the *Subcontractor*:
 - (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 *Subcontractor*;
 - (ii) contract with such of the *Subcontractor's consultants* and *secondary subcontractors*; and
 - (iii) take possession of, and use, such of the *design documents*,

as are reasonably required by the *Main Contractor* to facilitate completion of *WUS* taken out.

If the *Main Contractor* takes possession of *construction plant*, *design documents* or other things, the *Main Contractor* 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 *Subcontract Superintendent* 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 *Subcontractor's* hands has been completed, the *Subcontract Superintendent* shall assess the cost thereby incurred and shall certify as moneys due and payable accordingly the difference between that cost (showing the calculations therefor) and the amount which would otherwise have been paid to the *Subcontractor* if the *work* had been completed by the *Subcontractor*.

If the *Subcontractor* is indebted to the *Main Contractor*, the *Main Contractor* may retain *construction plant* or other things taken under subclause 39.5 until the debt is satisfied. If after reasonable notice, the *Subcontractor* fails to pay the debt, the *Main Contractor* 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 *Subcontractor*.

39.7 Main Contractor's default

If the *Main Contractor* commits a substantial breach of the *Subcontract*, the *Subcontractor* may, by hand or by registered post, give the *Main Contractor* 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 *Subcontractor's* access to the *site* if that failure continues for longer than the time stated in *Item 40(a)*;
 - (iv) rectify inadequate *Subcontractor's* non-exclusive possession of the *site* if that failure continues for longer than the time stated in *Item 40(b)*; or
 - (v) make a payment due and payable pursuant to the *Subcontract*; and
- (b) the *Subcontract Superintendent* not giving a *certificate of practical completion* or reasons as referred to in subclause 34.6.

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

39.9 Subcontractor's rights

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

The *Subcontractor* shall remove the suspension if the *Main Contractor* remedies the breach.

The *Subcontractor* may, by written notice to the *Main Contractor*, terminate the *Subcontract* if, within 28 days of the date of suspension under this subclause the *Main Contractor* 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 *Subcontractor*.

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

39.10 Termination

If the *Subcontract* 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 *Subcontract* had the defaulting party repudiated the *Subcontract* and the other party elected to treat the *Subcontract* as at an end and recover damages.

If Alternative 2 of subclause 10.2 applies and the *Main Contractor* has terminated the *Subcontract*, the *Main Contractor* 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 *Subcontract*;
- (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 *Subcontract*; 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 *Main Contractor*, the *Main Contractor* may, without giving a notice to show cause, exercise the right under subclause 39.4(a); or
- (B) the *Subcontractor*, the *Subcontractor* 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 *Subcontract* is frustrated:

- (a) the *Subcontract Superintendent* shall issue a *progress certificate* for *WUS* carried out to the date of frustration, evidencing the amount which would have been payable had the *Subcontract* not been frustrated and had the *Subcontractor* been entitled to and made a progress claim on the date of frustration;
- (b) the *Main Contractor* shall pay the *Subcontractor*:
 - (i) the amount due to the *Subcontractor* evidenced by all unpaid certificates;
 - (ii) the cost of materials and equipment reasonably ordered by the *Subcontractor* for *WUS* and which the *Subcontractor* is liable to accept, but only if they will become the *Main Contractor'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 *Subcontractor* and its employees engaged in *WUS* at the date of frustration; and
 - (C) by the *Subcontractor* in expectation of completing *WUS* and not included in any other payment; and
- (c) each party shall promptly release and return all *security* provided by the other.

41 Notification of claims

41.1 Communication of claims

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

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

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

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 *Subcontract* shall, inter alia, entitle the other party to damages for breach of the *Subcontract* but shall neither bar nor invalidate the claim.

41.3 Subcontract Superintendent's decision

If within 21 days of giving the *prescribed notice* the party giving it does not notify the other party and the *Subcontract Superintendent* of particulars of the claim, the *prescribed notice* shall be deemed to be the claim.

Within 63 days of receipt of the *prescribed notice* the *Subcontract Superintendent* shall assess the claim and notify the parties in writing of the decision. Unless a party within a further 21 days of such notification gives a notice of *dispute* under subclause 42.1 which includes such decision, the *Subcontract Superintendent* shall certify the amount of that assessment to be moneys then due and payable.

42 Dispute resolution

42.1 Notice of dispute

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

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

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

Notwithstanding the existence of a *dispute*, the parties shall, subject to clauses 39 and 40 and subclause 42.6, continue to perform the *Subcontract*.

42.2 Conference

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

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

42.3 Arbitration

Subject to subclause 42.4, if within a further 14 days the parties have not agreed upon an arbitrator, the arbitrator shall be nominated by the person in *Item 41(a)*. The arbitration shall be conducted in accordance with the rules in *Item 41(b)*.

42.4 Main contract arbitrator

If a notice is given under subclause 42.1, the subject matter of which touches or concerns any *main contract dispute*, then the arbitrator to be nominated pursuant to subclause 42.3 shall be the *main contract arbitrator* unless:

- (a) no *main contract arbitrator* is nominated within 42 days of giving the notice under subclause 42.1; or
- (b) the *main contract arbitrator* is unable or unwilling so to act,

in which case the arbitrator shall be nominated under subclause 42.3.

If the *main contract arbitrator* is nominated under this subclause, the *Subcontractor* irrevocably consents to any order pursuant to Section 26(a) of the Commercial Arbitration Act or like provisions under the law governing the *main contract*.

42.5 Main contract dispute affecting the Subcontract

When the *Main Contractor* becomes aware of a *main contract dispute* which touches or concerns *work*, material or the performance of *WUS*, the *Main Contractor* shall give the *Subcontractor*:

- (a) a notice setting out adequate details of the *main contract dispute*; and
- (b) a copy of the *main contract* provisions relating to notification of claims and resolution of disputes.

If the *Main Contractor* has complied with this subclause, the *Main Contractor* may give written notice to the *Subcontractor* requiring any *dispute* which affects the *main contract dispute* to be resolved as part of the *main contract dispute*.

42.6 Summary relief

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

43 Waiver of conditions

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

44 Services and facilities

44.1 Provision of services and facilities

The *Main Contractor* and the *Subcontractor* shall provide, in good order and working condition, the services and facilities stated in *Item 42* as being provided by that party.

Except as provided in this clause or elsewhere in the *Subcontract*, the *Subcontractor* shall provide all other services and facilities necessary for the execution and completion of *WUS*.

The *Subcontractor* shall use services or facilities provided by the *Main Contractor* only for the carrying out of *WUS*.

44.2 Compliance

All services and facilities provided by the *Main Contractor* and the *Subcontractor* shall comply with all *legislative requirements* applicable from time to time to *WUS*.

44.3 Additional services or facilities

If pursuant to a request of the *Subcontractor*, the *Main Contractor* agrees to provide services or facilities additional to those provided by the *Main Contractor* in *Item 42*, the *Subcontractor* shall pay a reasonable charge (which shall not be less than the cost to the *Main Contractor*) for the provision of such additional services or facilities. The rates of hire and the conditions relating to their provision shall be agreed in writing prior to the provision of such additional services or facilities.

Internal Use Only

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

Part A

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

Item

1 *Main Contractor*
(clause 1)

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

2 *Main Contractor's address*

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

3 *Subcontractor*
(clause 1)

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

4 *Subcontractor's address*

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

5 *Subcontract Superintendent*
(clause 1)

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

6 *Subcontract Superintendent's*
address

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

7 *Principal*
(clause 1)

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

8 *Principal's address*

.....

Phone Fax

9 *Superintendent*

(clause 1)

ACN ABN

10 *Superintendent's address*

.....

Phone Fax

† 11 (a) *Date for practical completion*

(clause 1)

OR

(b) *Period of time for practical completion*

(clause 1)

12 *Governing law*

(clause 1(h)) If nothing stated, that of the jurisdiction where the *site* is located

13 (a) *Currency*

(clause 1(g)) If nothing stated, that of the jurisdiction where the *site* is located

(b) *Place for payments*

(clause 1(g)) If nothing stated, the *Main Contractor's* address

(c) *Place of business of bank*

(clause 1(d)) If nothing stated, the place nearest to where the *site* is located

14 The *Main Contractor's* project requirements are described in the following documents (clause 1)

1 *Preliminary design* (if included in *Item 15*)

2

3

4

5

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

15 *Preliminary design*
(clause 1)

(a) *A preliminary design*

* is included

* is not included

in the *Main Contractor's project requirements*.

If neither deleted, a *preliminary design* is not included

(b) The *preliminary design* documents are:

- 1
- 2
- 3
- 4
- 5

16 *Bill of quantities*
(subclause 2.4)

(a) Alternative applying
(subclause 2.4)

.....
If nothing stated, Alternative 1 applies

(b) If Alternative 2 applies, is the
bill of quantities to be priced?
(subclause 2.4)

*No / *Yes

If neither deleted, the *bill of quantities* shall be priced

(c) Lodgement time
(subclause 2.5(b))

..... days after the *date of acceptance of tender*

If nothing stated, 21 days

17 Quantities in *schedule of rates*,
limits of accuracy
(subclause 2.7(b))

Upper Limit

Lower Limit

18 *Provisional sum*,
percentage for profit and attendance
(clause 3)

..... %

* Delete one

† 19 Subcontractor's security

- (a) Form
(clause 5)
- (b) Amount or maximum percentage of *subcontract sum*
If nothing stated, 5% of the *subcontract sum*
(clause 5)
- (c) If retention moneys, percentage of each *progress certificate* %, until the limit in *Item 19(b)*
(clause 5 and subclause 37.2) If nothing stated, 10%, until the limit in *Item 19(b)*
- (d) Time for provision (except for retention moneys) within days after the *date of acceptance of tender*
(clause 5) If nothing stated, 28 days
- (e) Additional *security* for unfixed plant and materials
(subclauses 5.4 and 37.3) \$
- (f) *Subcontractor's security* upon % of amount held
certificate of practical completion is reduced by If nothing stated, 50% of amount held
(subclause 5.4)

† 20 Main Contractor's security

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

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

21	Main Contractor-supplied documents (subclause 8.2)	Document	No. of copies
		1 Main contractor's project requirements	.....
		2 .....	.....
		3 .....	.....
		4 .....	.....
		5 .....	.....
		If nothing stated, 3 copies	

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

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

- 23 Time for *Subcontract Superintendent's direction* about documents (subclause 8.3) days
If nothing stated, 21 days

- 24 Secondary subcontracting (subclause 9.2)

Work by
Subcontractor's consultants

Work by others

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

- [illegible]

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

- (a) Levels of cover of *Subcontractor's* professional indemnity insurance shall be not less than

.....
\$
If nothing stated, \$5 000 000

- (b) Period for which *Subcontractor's* professional indemnity insurance shall be maintained after issue of the *final certificate*

.....
If nothing stated, 6 years

- (c) Categories of *Subcontractor's consultants* and levels of cover of *Subcontractor's consultants'* professional indemnity insurance

Category

Levels of cover

.....	\$
.....	\$
.....	\$
.....	\$
	If nothing stated, \$1 000 000

- (d) Period for which each *Subcontractor's consultant's* professional indemnity insurance shall be maintained after issue of the *final certificate*

.....
If nothing stated, 6 years

29 Public liability insurance
(clause 17)

- (a) Alternative applying

.....
If nothing stated, Alternative 1 applies

If Alternative 2 applies

- (b) Amount per occurrence shall be not less than

.....
\$
If nothing stated, \$10 000 000

30 (a) Time for giving access
(subclause 24.1)

within days of *date of acceptance of tender*
If nothing stated, 14 days

- (b) Time for giving non-exclusive possession
(subclause 24.1)

within days of *date of acceptance of tender*
If nothing stated, 14 days

		Documents or instructions	Times/Periods
31	The information, materials, documents or instructions and the times by, or periods within which they are to be given to the <i>Subcontractor</i> (clause 32)	1 .....	.....
		2 .....	.....
		3 .....	.....
		4 .....	.....
		5 .....	.....
32	<i>Qualifying causes of delay</i> , causes of delay for which <i>EOTs</i> will not be granted (paragraph (c)(iii) of clause 1 and subclauses 34.3)	.....	.....
	
	
	
† 33	(a) <i>Subcontract</i> liquidated damages, rate (subclause 34.7)	.....	..... per day of per day
	‡ (b) <i>Main contract</i> liquidated damages, rate (subclause 34.7A)	.....	..... per day \$ per day
† 34	Bonus for early <i>practical completion</i> (subclause 34.8)		
	(a) Rate	.....	..... per day \$ per day
	(b) Limit	.....	\$ .....
	OR	..... % of <i>subcontract sum</i>	
		If nothing stated, there is no waiver	

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

‡ Delete if optional subclause 34.7A is deleted

- † 35 Other *compensable causes*
(paragraph (c) of clause 1 and
subclause 34.9)
- 36 *Defects liability period*
(clause 35)
.....
If nothing stated, the period ending on the date of expiry of the last
defects liability period under the *main contract*
- 37 Progress claims
(subclause 37.1)
(a) Times for progress claims day of each month for *WUS*
done to the day of that month
OR
(b) States of *WUS* for progress
claims
- 38 Unfixed plant and materials
for which payment claims may
be made
(subclause 37.3)
- 39 Interest rate on overdue payments % per annum
(subclauses 37.5)
If nothing stated, 18% per annum
- 40 (a) Time for *Main Contractor* to days
rectify inadequate access
(subclause 39.7(a)(iii))
If nothing stated, 14 days
(b) Time for *Main Contractor* to days
rectify inadequate non-exclusive
possession
(subclause 39.7(a)(iv))
If nothing stated, 14 days

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

41 Arbitration
(subclause 42.3)

(a) Person to nominate an arbitrator

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

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

(b) Rule 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 no 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 41(c)*

(c) Appointing Authority under
UNCITRAL Arbitration Rules

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

42 Services and facilities
(clause 44)

(a) Electricity

(i) Installation of 240 volts: Supply shall be provided by the *Main Contractor* at the following points

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

Installation of 240 volts: Supply shall be provided by the *Subcontractor* at the following points

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

- (ii) Installation of 415 volts: Supply shall be provided by the *Main Contractor* at the following points

.....

Installation of 415 volts: Supply shall be provided by the *Subcontractor* at the following points

.....

- (iii) Cost of Electricity provided to the *Subcontractor* shall be borne by the
- * *Main Contractor*
 * *Subcontractor*

- (iv) Cost of connection to the power supply shall be borne by the
- * *Main Contractor*
 * *Subcontractor*

NOTE: The *Subcontractor* shall provide leads for the *Subcontractor's* own use.

- (b) Adequate artificial lighting shall be provided by the
- * *Main Contractor*
 * *Subcontractor*

(c) Scaffolding

- (i) Initial supply and erection and final removal of scaffolding at the following locations

.....

shall be provided by and at the cost of the

* *Main Contractor*
 * *Subcontractor*

- (ii) Adjustment and moving of scaffolding or planks or both shall be carried out by and at the cost of the

* *Main Contractor*
 * *Subcontractor*

- (iii) Cost of the provision or hire of scaffolding or planks shall be borne by the

* *Main Contractor*
 * *Subcontractor*

* Delete one

(d) Cranage and hoisting

- (i) Cranage facilities (including provision of qualified operators) shall be borne by the

* *Main Contractor*
* *Subcontractor*

- (ii) Description of cranage facilities if provided by *Main Contractor*

.....

.....

.....

.....

- (iii) Description of cranage facilities if provided by *Subcontractor*

.....

.....

.....

.....

- (iv) Hoisting facilities shall be provided by the

* *Main Contractor*
* *Subcontractor*

- (v) Description of hoisting facilities if provided by *Main Contractor*

.....

.....

.....

.....

- (vi) Description of hoisting facilities if provided by *Subcontractor*

.....

.....

.....

.....

- (vii) Labour to handle materials to be lifted by crane shall be provided by the

* *Main Contractor*
* *Subcontractor*

- (viii) Labour to handle materials to be lifted by hoist shall be provided by the

* *Main Contractor*
* *Subcontractor*

- (ix) If materials are to be lifted by crane provided by the *Main Contractor*, lifting shall be between the following times of each day

from *am / *pm

to * am / *pm

* Delete one

- (x) If materials are to be hoisted by the *Main Contractor*,
hoisting shall be between the following times of each day from *am / *pm
to *am / *pm

- (xi) Charge for craneage facilities provided by the *Main Contractor* shall be at the following rate \$ per hour

- (xii) Charge for hoisting facilities provided by the *Main Contractor* shall be at the following rate \$ per hour

(e) Other plant or equipment

- (i) Other items of plant or equipment to be provided or made available by the *Main Contractor* for the use of the *Subcontractor* shall be as follows

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

- (ii) The date of provision or availability of such other items of plant or equipment shall be

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

- (iii) A qualified operator for such plant or equipment shall be provided by the * *Main Contractor*
* *Subcontractor*

- (iv) Such other items of plant or equipment shall be returned by the *Subcontractor*
on the following date or dates

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

NOTE: The cost of cleaning or repair (other than due to fair wear and tear) of other items of plant or equipment provided by the *Main Contractor* and used by the *Subcontractor* shall be charged to the *Subcontractor*.

(f) Telephones and fax

If a telephone service of facsimile machine, or both, are provided by the *Main Contractor* for the *Subcontractor's* use, the *Subcontractor* shall pay for outward calls or transmissions.

* Delete one

(g) General

- (i) Space for the erection of the *Subcontractor's* sheds and storage facilities shall be provided by the *Main Contractor*.
- (ii) Toilet accommodation and washing facilities shall be provided by the *Main Contractor*.
- (iii) Adequate water and boiling water for drinking purposes shall be provided by the *Main Contractor*.
- (iv) Adequate water and hot water for cleaning purposes shall be provided by the *Main Contractor* at the following locations:

.....

.....

.....

.....

- (v) Other services and facilities (specify)

..... by the *Main Contractor / *Subcontractor

..... by the *Main Contractor / *Subcontractor

..... by the *Main Contractor / *Subcontractor

..... by the *Main Contractor / *Subcontractor

* Delete one

Part A

Separable Portions

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

Separable portion (clause 1)	No.
Description of <i>separable portion</i> (clause 1)	..... ..... .....
<i>Item</i>	
11 (a) <i>Date for practical completion</i> (clause 1)	.....
OR	
(b) <i>Period of time for practical completion</i> (clause 1)	.....
19 <i>Subcontractor'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 19(b)</i> If nothing stated, 10%, until the limit in <i>Item 19(b)</i>
(d) <i>Time for provision (except for retention moneys)</i> (clause 5)	within days after the <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

20 *Main Contractor's security*

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

- 33 (a) *Subcontract* liquidated damages, rate
(subclause 34.7) per day \$ per day
- ‡ (b) *Main contract* liquidated damages, rate
(subclause 34.7A) per day \$ per day

34 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

- 35 Other *compensable causes*
(paragraph (c) of clause 1 and
subclause 34.9)
.....
.....

‡ Delete if optional subclause 34.7A is deleted

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

Part B

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

Approved form of unconditional undertaking

(clause 1 – security)

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

ACN..... ABN (the *Main Contractor*) accepting this undertaking in respect of the *Subcontract* 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 *Main Contractor* to a maximum aggregate sum of
..... (\$)

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

Should the *Financial Institution* be notified in writing, purporting to be signed by
..... for and on behalf of the *Main Contractor* that the *Main Contractor* 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 *Main Contractor* forthwith without reference to the *Subcontractor* and notwithstanding any notice given by the *Subcontractor* not to pay same.

Provided always that the *Financial Institution* may at any time without being required so to do pay to the *Main Contractor* 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 *Main Contractor* and thereupon the liability of the *Financial Institution* hereunder shall immediately cease.

Dated at this day of 20.....

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

Part C

Deed of novation

(subclause 9.2(c))

This Deed made the day of 20
between (the *Main Subcontractor*)
of ACN ABN
and (the *Subcontractor*)
of ACN ABN
and (the *secondary subcontractor*)
of ACN ABN
and (the *Incoming Subcontractor*)
of ACN ABN
witness that:

- 1 Upon receipt by the *secondary subcontractor* of the sum certified by the *Subcontract Superintendent* as owing under the prior contract described in the Schedule hereto:
 - (a) the prior contract shall be discharged;
 - (b) the *secondary subcontractor* shall release the *Subcontractor* from the further performance of the prior contract and from all claims and demands in connection with the prior contract;
 - (c) the *Incoming Subcontractor* shall punctually perform the obligations of the *Subcontractor* under the prior contract as far as they are not performed. The *Incoming Subcontractor* acknowledges itself bound by the provisions of the prior contract as if the *Incoming Subcontractor* had been named in the prior contract; and
 - (d) the *secondary subcontractor* shall punctually perform like obligations and be bound to the *Incoming Subcontractor* as if the provisions of the prior subcontract were incorporated herein.
- 2 The *Main Subcontractor* and *secondary subcontractor* each warrant to the *Incoming Subcontractor* 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 *Subcontractor*.
- 3 The *Main Subcontractor* and *secondary subcontractor* each indemnifies the *Incoming Subcontractor* from all claims and demands of the *Subcontractor*, *Main Contractor* and *secondary subcontractor* in connection with the prior contract.
- 4 A dispute between:
 - (a) the *Main Contractor* and the *secondary subcontractor* in connection with the *Subcontract Superintendent's* certification of the sum owing under the prior contract; or
 - (b) the *Incoming Subcontractor* and the *secondary subcontractor* in connection with clause 1(c) or 1(d), shall be resolved pursuant to the provisions of AS 4903—2000 General conditions of subcontract 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 12* of the *Subcontract* between the *Main Contractor* and *Subcontractor*.

Schedule

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

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

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

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

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

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

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

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

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

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

Part D

In the Deed where applicable

- *outgoing party* is the main contractor;
- *incoming party* is the subcontractor;
- *continuing party* is the secondary subcontractor, selected secondary subcontractor or subcontractor's consultant, as the case may be.

Deed of novation

(subclause 9.4)

This Deed made the 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 prescribed 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

.....
Director

.....
Name (please print)

.....
Name (please print)

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

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

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

.....
Secretary/Director

.....
Director

.....
Name (please print)

.....
Name (please print)

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3 The following clauses have been added to AS 4903—2000

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Financial institution

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AMENDMENT CONTROL SHEET**AS 4903—2000****Amendment No. 1 (2005)**

SUMMARY: This Amendment applies to Clause 41 (a) and (c) of Annexure Part A.

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