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RELATED DOCUMENTS

In this Standard reference is made to the following:

NEW ZEALAND LEGISLATION

Arbitration Act 1996
Building Act 1991
Cadastral Survey Act 2002
Construction Contracts Act 2002
Construction Contracts Regulations 2003
Goods and Services Tax Act 1985

OTHER PUBLICATIONS

Consumer price index, Statistics New Zealand
Labour cost index, Statistics New Zealand

FOREWORD

This revision of NZS 3910, Conditions of Contract for Building and Civil Engineering Construction, includes important changes that make it compatible with the Construction Contracts Act 2002. These changes ensure continuation of the dual role of the Engineer, both as expert adviser to, and representative of the Principal and also to impartially make decisions including valuing work and issuing certificates independently of either contracting party. The terminology of the Act has been followed resulting in the adoption of the terms 'payment claim' and 'payment schedule.' Changes have been made to Section 13, Disputes, that take account of the adjudication procedures set up in the Act.

The trigger for the development of the 2003 edition was the need for the insurance provisions to more closely reflect the realities of the insurance market in New Zealand. As well as changes to Schedules 7 and 8, new Schedules 9, 10 and 11 relating to insurance have also been added. These are now styled as 'information' forms rather than certificates and this, together with other wording changes, answers insurance industry concerns that the previous certificates could have the potential to alter the terms of insurance policies. Section 8, Insurance, has been re-ordered to group insurance provided by the Contractor and insurance provided by the Principal more logically and contains new optional provisions for Contractor's professional indemnity insurance.

The main aim has been to produce a straightforward flexible document which includes all essential commercial provisions and which may be used for all types of engineering and building work with a variety of administrative arrangements. Under the usual arrangements for this type of contract, the Contractor constructs the works in accordance with the Engineer's design. However, this form may also be suitable for contracts which include, or wholly comprise, works for which the Contractor has design responsibility. A new Appendix D, which can be invoked in the Special Conditions in appropriate instances, makes provision for the Contractor to obtain project information memoranda, building consents and code compliance certificates that are required under the Building Act.

NZS 3910:2003 builds on the experience gained in the use of its predecessors, NZS 3910:1998, NZMP 3911:1992, NZMP 3912:1992, NZMP 3914:1994 and NZS 3910:1987. These all derive from NZS 623P:1984 which in turn was preceded by NZS 623:1964.

Continuing the precedent established when the 1998 edition was published, NZS 3910:2003 will be made available only in a complete form and not in electronic format that is able to be edited or changed. A major advantage of using standard conditions of contract is that its provisions are well known and understood. It does not need to be searched for project specific changes buried within, every time a tender is priced or construction is being managed. Project specific conditions including amendments to the General Conditions of Contract should be clearly visible and be in the Special Conditions of Contract.

REVIEW OF STANDARDS

Suggestions for improvement of this Standard will be welcomed. They should be sent to the Chief Executive, Standards New Zealand, Private Bag 2439, Wellington.

NOTES

NEW ZEALAND STANDARD CONDITIONS OF CONTRACT FOR BUILDING AND CIVIL ENGINEERING CONSTRUCTION

GENERAL CONDITIONS OF CONTRACT

SECTION 1 – Interpretation

1.1 Application

1.1.1 This Section shall apply to the Contract Documents except where inconsistent with the context.

1.2 Definitions

ADJUDICATION means adjudication under the Construction Contracts Act 2002.

ADJUDICATOR'S DETERMINATION means an adjudicator's determination under the Construction Contracts Act 2002.

BASE VALUE has the meaning assigned to it in 9.3.

CONTRACT AGREEMENT means the written agreement for the fulfilment of the contract signed by the Principal and the Contractor.

CONTRACT DOCUMENTS means the Contract Agreement and the documents referred to in and forming part of the Contract Agreement or the documents which constitute the contract under 2.7.1.

CONTRACT PRICE means the sum named in the Contract Documents as payable for the completion of the Contract Works subject to such adjustments as are provided for in the Contract Documents.

CONTRACT WORKS means the works including Temporary Works to be executed in accordance with the contract.

CONTRACTOR means the Person whose tender has been accepted by the Principal or the Person who has been so named in the Contract Documents, and includes the executors, administrators, and successors of the Contractor.

COST includes expense or loss and overhead cost whether on or off the Site.

DATE OF ACCEPTANCE OF TENDER means the date on which the successful tenderer is notified in writing that its tender is accepted.

DAYS when used to express a period of time means Working Days.

DAYWORK means work to which 9.4 applies.

DEFECTS LIABILITY CERTIFICATE means a certificate issued under 11.3.



DRAWINGS means the Drawings included in the Contract Documents together with any additions to, or modification of such Drawings approved and notified to the Contractor and such other Drawings as may from time to time be supplied by the Engineer to the Contractor for the purpose of the contract. Drawings also include those that have been prepared by, or on behalf of the Contractor, and which have fulfilled any requirement in the Contract Documents for preparation and review of such Drawings prior to their issue for construction.

DUE DATE FOR COMPLETION has the meaning assigned to it in 10.2.1.

ENGINEER means the professional engineer, architect, surveyor or other one natural person named or identified in the Special Conditions or such other one natural person as may be subsequently appointed by the Principal under 6.1 to act as Engineer to the contract. The Engineer shall not be a body corporate or a firm.

FINAL PAYMENT SCHEDULE has the meaning assigned to it in 12.5.

GENERAL CONDITIONS means these Conditions of Contract for Building and Civil Engineering Construction.

GST INVOICE means a tax invoice for the purposes of the Goods and Services Tax Act 1985.

MATERIALS means any raw or manufactured material, goods or things (other than Plant) required for use in the Contract Works.

MONTH means a calendar Month.

NET COST means the actual or assessed expense or direct cost to the Contractor of the Variation, plus return on investment in Plant, after deduction of trade discounts and exclusive of the Contractor's On-Site Overheads, Off-Site Overheads and Profit.



NOMINATED SUBCONTRACTOR means a Person other than the Contractor which is nominated by the Principal or the Engineer under 4.2.

OFF-SITE OVERHEADS AND PROFIT means the following expense or loss not incurred on the Site which are required for the general overall running of the Contractor's business, and which are not required for the carrying out of the Contract Works or for off-Site manufacturing or fabrication work by the Contractor:



- (a) General administrative, financial and overhead expenses incurred in the Contractor's head office or other established offices;
- (b) Executive direction and supervision by principal officers of the Contractor not assigned in the ordinary way to the contract;
- (c) Profit, other than return on investment on Plant which would normally be recovered in hire rates for Plant.

ON-SITE OVERHEADS means the following expense or loss incurred by the Contractor for the general overall running of the Contract Works (excluding those normally covered by Subcontractors or suppliers) and which are not readily identified with one particular work item:



- (a) Remuneration and expenses for management, administration, routine field engineering and surveying, procurement and supervisory staff, assigned in the

ordinary way to the contract whether on a full time or part time basis, excluding working foremen and leading hands. These shall include all fringe benefits and fringe benefit tax for the staff concerned, their transportation, housing, off-Site and on-Site accommodation, protective clothing, and surveying and office equipment;

- (b) Premiums for insurance of the Contract Works and public liability insurance;
- (c) Bond;
- (d) The normal provision, operation and maintenance of the Site and Temporary Works facilities. Such facilities shall comprise office and shelter buildings, office communications, on-Site water supply, drainage, roads, fencing, electrical supply and ablution facilities required for the Contract Works as originally specified.

PAYMENT SCHEDULE means any Payment Schedule issued under the contract including a Progress Payment Schedule or Final Payment Schedule.

PERIOD OF DEFECTS LIABILITY shall have the meaning assigned to it in 11.1.

PERSON includes a natural person and a partnership, body of Persons, firm, company or organization whether corporate or not.

PLANT means all appliances, temporary buildings and equipment of whatsoever nature required for carrying out the Contract Works but not intended to be incorporated in the Contract Works.

PRACTICAL COMPLETION has the meaning assigned to it in 10.4.

PRIME COST SUM has the meaning assigned to it in 12.10.

PRINCIPAL means the Person named as such in the Special Conditions and includes its executors, administrators and successors.

PROGRESS PAYMENT SCHEDULE has the meaning assigned to it in 12.2.

PROVISIONAL SUM has the meaning assigned to it in 12.9.

SCHEDULE OF PRICES means any schedule included in the Contract Documents which shows prices payable for sections or items of the Contract Works and may also include quantities, rates, Provisional Sums, Prime Cost Sums and contingency sums.

SEPARABLE PORTION means any part of the Contract Works specified in the Special Conditions or agreed between the parties as required to be completed and handed over to the Principal separately from the remaining Contract Works.

SITE means the land and other places on or over or under which the Contract Works are to be carried out together with any other places made available to the Contractor by the Principal conditionally or unconditionally for the purposes of the contract.

SPECIAL CONDITIONS means the First Schedule (Parts A and B) and such other documents as are included in the Contract Documents in a section which is described as Special Conditions and which add to, or delete from, or modify these General Conditions. ➤

SPECIFICATIONS means documents included in the Contract Documents containing descriptions of Materials and workmanship and other requirements for carrying out the Contract Works, together with any additions to, or modifications of, such documents approved in writing by the Engineer and notified to the Contractor, and other additions or modifications supplied by the Engineer to the Contractor for the purpose of the contract. Specifications also include documents containing descriptions of Materials and workmanship and other details of the Contract Works, which have been prepared by, or on behalf of the Contractor and which have fulfilled any requirement in the Contract Documents for preparation and review of such documents prior to their issue for construction.

SUBCONTRACTOR means any Person who contracts with the Contractor to design, carry out or supply part of the Contract Works on behalf of the Contractor and includes a Nominated Subcontractor.

TEMPORARY WORKS means works of any kind, not being part of the Contract Works to be taken over by the Principal, but which are required for the execution of the Contract Works.

TENDER DOCUMENTS means the documents which are issued to prospective tenderers.

VARIATION means a Variation to the Contract Works pursuant to 9.1 and any other matter which is stated to be a Variation or to be treated as if it was a Variation by the Contract Documents.

WEEK means a period of seven consecutive calendar days.

WORKING DAY means a calendar day other than any Saturday, Sunday, public holiday or any day falling within the period from 24 December to 5 January both inclusive irrespective of the days on which work is actually carried out.

1.3 General

1.3.1 Where the context so requires, words importing the singular shall include the plural and vice versa, and words importing the masculine, feminine and neuter shall include all three.


1.3.2 Cross references to other clauses or clause sub-divisions within these General Conditions quote the number only.

1.3.3 The headings to clauses are for convenience only and shall not affect their interpretation.

1.3.4 A reference to any Act or Regulation shall include all subsequent Acts or Regulations in amendment of, or substitution for, the same.

1.3.5 Except where inconsistent with the context, “approved,” “directed,” “instructed” and “required” mean respectively approved, directed, instructed and required by the Engineer and the corresponding nouns shall be similarly construed.

1.3.6 For the purposes of the following sections of the General Conditions where the context so requires, “constructed” includes “carried out” and “construction” includes “carrying out”.

1.3.7 The sign “” appears in the margin alongside clauses that have a corresponding clause in the guidelines.

1.3.8 Words and phrases that are defined in 1.2 are printed with capital initial letters.

1.4 Law, currency and language

1.4.1 The contract shall be governed by New Zealand law.

1.4.2 All prices and payments made under the contract shall be in New Zealand currency and payable in New Zealand. All prices and rates are stated exclusive of goods and services tax, which is to be added and paid where appropriate.

1.4.3 All communications between the Principal, the Contractor and the Engineer shall be in the English language.

1.5 Computation of time

1.5.1 Where any period of time from a given day, act or event is prescribed or allowed for any purpose, the period shall, unless a contrary intention appears, be determined as exclusive of that day or the day of that act or event.

1.6 Duties of Engineer

1.6.1 The duties which the parties to the Contract Agreement intend should be carried out by the Engineer are set out in this document, and the consequences of any failure by the Engineer to carry out those duties are referred to in 6.2.4.

SECTION 2 – The Contract

2.1 Type of contract

2.1.1 The contract shall be a lump sum contract, or a measure and value contract, or a Cost reimbursement contract as stated in the Special Conditions, and shall be governed by 2.2, 2.3 or 2.4 respectively.

2.2 Lump sum contract

2.2.1 In a lump sum contract the Contractor shall carry out the work described in the Contract Documents and fulfil its obligations thereunder. The Principal shall pay the Contract Price to the Contractor.

2.2.2 Any Schedule of Prices included in the Contract Documents shall be used as a basis for computing Payment Schedules and for valuing Variations and for no other purpose. The Principal does not warrant that any quantities included in any Schedule of Prices are complete or accurate.

2.2.3 If the total of the prices in the schedule differs from the lump sum tendered then the scheduled prices shall be adjusted by the Engineer after consultation with the Contractor to agree with the tendered lump sum. The amended prices shall then become the Schedule of Prices referred to in 2.2.2.

2.2.4 If any discrepancy is disclosed in the Schedule of Prices the Engineer or the Contractor shall so notify the other. The Engineer shall issue a written direction to resolve the discrepancy. For the purposes of this clause 2.2, discrepancy shall mean:

- (a) Any inconsistency between the Drawings or Specifications on the one hand and the Schedule of Prices on the other either as to measurement or description not being an inconsistency for which the Contractor is responsible;
- (b) Any omission or inaccuracy in the compilation, preparation or copying of the quantities included in the Contract Documents not being an omission or inaccuracy for which the Contractor is responsible.

2.2.5 If a significant discrepancy has occurred it shall be treated as if it was a Variation.

2.2.6 Where any item is described in the Schedule of Prices as “measurable” or “provisional” 2.3.3 shall apply and any difference between the scheduled quantity and the quantity actually constructed under the contract shall be treated as if it was a Variation.

2.3 Measure and value contract

2.3.1 In a measure and value contract the Contractor shall carry out the work described in the Contract Documents and fulfil its obligations thereunder. The Principal shall pay the Contractor for the measured quantity, as determined by the Engineer, of each item of work carried out at the rate set out in the Schedule of Prices and in the case of Variations in accordance with Section 9. The sum shall be adjusted by any additions or deductions under the contract.

2.3.2 The Contractor shall be deemed to have checked the accuracy of the descriptions of the various items in the Schedule of Prices and to have allowed in its price to cover the whole range of work included within those items. Where an item

of work has clearly been omitted by error from the Schedule of Prices, as where other items of a similar kind have been included, the work omitted shall be treated as if it was a Variation.

2.3.3 The Engineer shall give notice to the Contractor of his or her intention to measure any part or parts of the Contract Works. The Contractor shall be entitled to attend in person or be represented by an agent and to assist in such measurement. Should the Contractor not attend or neglect or omit to send an agent then the measurement made by, or on behalf of, or approved by the Engineer, unless shown to be incorrect, shall be accepted as the correct measurement.

2.3.4 Any quantities given in the Schedule of Prices are provided for the purpose of evaluating tenders and may be taken as a reasonable assessment of the quantities involved in the Contract Works. Where the actual quantity of any single item differs from that given in the Schedule of Prices to such an extent as to make the scheduled price for that or any other item unreasonable then the change in quantity shall be treated as if it was a Variation.

2.3.5 If the tendered schedule contains any errors in extension of unit rates or in summation such as to vary the tendered sum then the unit rates shall be adjusted by the Engineer after consultation with the Contractor to agree with the tendered sum. The adjusted rates shall then become the contract rates for payment in accordance with 2.3.1.

2.4 Cost reimbursement contract

2.4.1 In a Cost reimbursement contract the Contractor shall carry out the work described in the Contract Documents and fulfil its obligations thereunder. The Principal shall reimburse the Contractor for Costs together with an allowance for profit in accordance with the method set out in the Special Conditions.

2.5 Road or term maintenance contracts

2.5.1 Where the contract is stated in the Special Conditions to be a construction contract in public roads or a term maintenance contract (including a road maintenance contract), the provisions of Appendix B or of Appendix C respectively shall apply.

2.6 Local authority contracts

2.6.1 Where the contract is stated in the Special Conditions to be a local authority contract, the provisions of this clause 2.6 shall apply unless otherwise excluded.

2.6.2 The Principal has certain regulatory functions in its capacity as a local authority outside the Contract Documents. The Principal shall be deemed not to be acting in the capacity of Principal under this contract when exercising these functions in good faith.

2.6.3 Where provided in the Special Conditions, clauses B1 and B2 of Appendix B shall apply to this contract.

2.6.4 Where required by the Special Conditions the Contractor shall submit to the Engineer for approval prior to commencement of work on Site:

- (a) A safety plan for the Site; and/or
- (b) A traffic management plan.

The Principal's particular requirements for the safety plan and/or traffic management plan are as stated in the Contract Documents.

2.7 Evidence of contract

2.7.1 Unless and until the Contract Agreement is executed by the parties, the tender or other offer and its acceptance between the Contractor and Principal shall, together with the other documents intended to form part of the contract, constitute the contract between them.

2.7.2 Unless the Special Conditions require otherwise the Contract Agreement shall be executed by the Principal and the Contractor as follows:

- (a) Within 10 Working Days from the Date of Acceptance of Tender, the Principal shall have the Contract Agreement prepared in triplicate, attaching to each copy correct copies of all the Contract Documents, and shall have all copies delivered to the Contractor;
- (b) If the Contractor considers that the documents delivered to it do not correctly describe the contract for which its tender was accepted, it shall within 10 Working Days after delivery advise the Principal in writing of the matters in which the documents are considered to be defective. The documents shall then be amended as may be found necessary;
- (c) Within 10 Working Days of receipt of the documents or amended documents, the Contractor shall execute the Contract Agreement in triplicate and shall deliver all three copies to the Principal;
- (d) Within 10 Working Days of receipt of the documents from the Contractor, the Principal shall execute the Contract Agreement in triplicate;
- (e) One of the executed copies of these documents shall thereupon be returned to the Contractor and one delivered to the Engineer.

2.7.3 Failure by either party to execute the Contract Agreement within the time provided shall be a default under Section 14.

2.8 Documents prepared by the Engineer or Principal

2.8.1 The Engineer shall on request by the Contractor supply without charge sets or partial sets of copies of the Contract Documents and other Drawings and Specifications which have been prepared by, or on behalf of the Principal as may reasonably be required. All such documents shall remain the property of the Principal and shall not be copied or used for any purpose other than the contract.

2.8.2 The Contractor shall maintain on Site at least one copy of the Drawings and Specifications and the Schedule of Prices marked to show where superseded or modified together with at least one copy of all amended Drawings, supplementary Drawings, information or directions as may be issued by the Engineer from time to time during the contract.

2.8.3 The General Conditions shall not be varied or modified by the Drawings or the Specifications or the Schedule of Prices unless the change is described in, or clearly identified by reference in the Special Conditions, or by an express provision in any correspondence which has been identified as a Contract Document. The Contract Documents shall in all other respects be taken as mutually explanatory. Ambiguities or omissions shall not invalidate the contract.

2.8.4 Where the Contract Documents or any of the other Drawings or Specifications which have been prepared by, or on behalf of the Principal are considered to be ambiguous or unclear, the Contractor may request and the Engineer shall issue explanations or supplementary instructions. If compliance with the explanations or instructions causes delay in the completion of the Contract Works or additional Cost to the Contractor which in either case the Contractor could not reasonably have foreseen, the explanation or instruction shall be treated as if it was a Variation.

2.8.5 The Engineer may clarify or further define the Contract Works by issuing to the Contractor instructions, documents and Drawings in addition to those included in the Contract Documents. The Contractor shall be bound by such additional instructions, documents and Drawings.

2.8.6 If the Contractor reasonably requires further instructions, documents and Drawings from the Engineer at any time it shall give notice in writing of this requirement to the Engineer. The Engineer shall supply the further instructions, documents and Drawings to the Contractor within a reasonable time after the receipt of notice from the Contractor.

2.8.7 If the Contractor suffers delays in completion of the Contract Works or incurs additional Cost by reason of the late issue by the Engineer or Principal of any instructions, documents or Drawings, that late issue shall be treated as if it was a Variation. If the Contractor suffers delay in completion of the Contract Works or incurs additional Cost by reason of the issuing to the Contractor of instructions, documents, Drawings or Specifications under 2.8.5, which results in delay or additional Cost the Contractor could not reasonably have foreseen when tendering, such issuing shall be treated as if it was a Variation.

2.9 Documents prepared by the Contractor

2.9.1 Where required by the Contract Documents, or where applicable to design for which the Contractor is responsible, the Contractor shall issue Drawings and Specifications. Prior to their issue for construction these Drawings and Specifications shall have fulfilled any requirement in the Contract Documents for the preparation and review of such documents. The Contractor shall be bound by such additional Drawings and Specifications.

2.9.2 The Contractor shall on request by the Engineer supply without charge sets or partial sets of copies of Drawings and Specifications which have been prepared by, or on behalf of the Contractor as may reasonably be required. All such documents shall remain the property of the Contractor and shall not be copied or used for any purpose other than the contract.

2.9.3 The Contractor shall maintain on Site at least one copy of Drawings and Specifications as may be issued by the Contractor, marked to show where superseded or modified.

2.9.4 Where the Engineer considers the Drawings or Specifications issued by the Contractor are ambiguous or unclear, or do not comply with the Contract Documents, the Engineer may request and the Contractor shall issue explanations or supplementary Drawings or Specifications. Ambiguities and discrepancies in Drawings or Specifications prepared by, or on behalf of the Contractor shall be resolved by the Contractor and shall not be treated as a Variation. Any resolution of an ambiguity or discrepancy by the Contractor shall not alter any requirements of the Contract Documents, or of a Variation ordered by the Engineer, except with the agreement of the Engineer.

SECTION 3 – Performance Bonds

3.1 Contractor's bond

3.1.1 This clause 3.1 shall apply where a Contractor's bond is required by the Special Conditions.

3.1.2 The Contractor shall within two Months of the Date of Acceptance of Tender provide the Principal with security in the form of a bond, to ensure performance of the Contractor's obligations under the Contract Agreement. The bond shall be for the amount stated in the Special Conditions. It shall be in the form set out in the Third Schedule and shall be executed by the Contractor and by the surety named in the tender or approved by the Principal.

3.1.3 No payment otherwise due under the Contract Documents shall become payable until the Contractor and its surety have executed and delivered the bond to the Principal.

3.1.4 If the Contractor's bond is not executed and delivered to the Principal within the required time then the Principal shall be entitled to treat such failure as a default by the Contractor under 14.2.

3.1.5 Within the time stated in 3.1.6 the Principal shall deliver to the Contractor and to the Contractor's surety a notice in writing either stating that the Contractor and the surety are released from the bond or giving particulars of the respects in which the Principal contends that the Contractor has failed to perform the Contractor's obligations under the contract or has otherwise failed to satisfy the conditions of the bond.

3.1.6 The notice required by 3.1.5 shall be delivered within five Working Days after receipt of the Engineer's certificate of Practical Completion in respect of the whole of the Contract Works.

3.1.7 Where the Principal contends that the Contractor has failed to perform its obligations under the contract or has otherwise failed to satisfy the conditions of the bond the Engineer shall make an estimate of the Cost of any remedial or other work outstanding and of any other liability on the part of the Contractor under the Contract Agreement. The Engineer shall notify the Principal and Contractor of the estimate.

3.1.8 The Contractor may provide the Principal with a new bond in the form set out in the Third Schedule, for the amount of the estimate to ensure performance of the Contractor's obligations under the Contract Agreement. The new bond shall be executed by the Contractor and by the surety to the original bond or by another surety approved by the Principal. Upon receipt of such new bond the Principal shall deliver to the Contractor and to the Contractor's surety a notice in writing stating that the Contractor and the surety are released from the original bond.

3.1.9 The Cost of obtaining the bond and of any new bond shall be borne by the Contractor.

3.2 Principal's bond

3.2.1 This clause 3.2 shall apply where a Principal's bond is required by the Special Conditions.

3.2.2 The Principal shall at the time of acceptance of the tender or other offer provide the Contractor with security in the form of a bond to secure compliance by the Principal with its obligations under the contract. The bond shall be for the amount stated in the Special Conditions. It shall be in the form set out in the Fourth Schedule and shall be executed by the Principal and by the surety named in the Special Conditions or approved by the Contractor.

3.2.3 If the Principal's bond is not executed and delivered to the Contractor within the required time the Engineer shall on request by the Contractor in writing suspend the Contract Works under 6.7. In the event that the Principal's bond is not executed and delivered to the Contractor within 20 Working Days after suspension of the Contract Works the Contractor shall be entitled to treat such failure as a default by the Principal under 14.3.

3.2.4 Within five Working Days after receipt of payment in accordance with the Final Payment Schedule under 12.5 or after payment in accordance with the arbitrator's award in the case of a dispute on the Final Payment Schedule the Contractor shall deliver to the Principal and to the Principal's surety a notice in writing either stating that the Principal and the surety are released from the bond or giving particulars of the respects in which the Contractor contends that the Principal has failed to perform the Principal's obligations under the contract or has otherwise failed to satisfy the conditions of the bond.

3.2.5 Where the Contractor contends that the Principal has failed to perform its obligations under the Contract Agreement, or has otherwise failed to satisfy the conditions of the bond the Contractor shall at the same time notify to the Principal the sum which it claims to be due and owing by the Principal under the contract, or otherwise payable as damages for breach of contract.

3.2.6 The Principal may provide the Contractor with a new bond for the amount of the sum so notified by the Contractor in the form set out in the Fourth Schedule. The new bond shall be executed by the Principal and by the surety to the original bond or by another surety approved by the Contractor. Upon receipt of such new bond the Contractor shall deliver to the Principal and to the Principal's surety a notice in writing stating that the Principal and the surety are released from the original bond.

3.2.7 The Cost of obtaining the bond and any new bond shall be borne by the Principal.

SECTION 4 – Subcontracts

Sec. 4

4.1 General

4.1.1 The Contractor shall not enter into a single subcontract for the whole or substantially the whole of the Contract Works without the written consent of the Principal.

4.1.2 The Contractor may subcontract parts of the Contract Works to Subcontractors named in the Contractor's tender. The Contractor shall not otherwise subcontract any part of the Contract Works without the prior written consent of the Engineer whose consent shall not be unreasonably withheld.

4.1.3 The subcontracting of any of the Contract Works shall not relieve the Contractor from any liability or obligation under the contract.

4.2 Nominated Subcontractors

4.2.1 The Principal or the Engineer may nominate a Subcontractor to carry out work included within the contract or to supply Materials or services required under the contract. Except where the work or supply is covered by a Provisional Sum or a Prime Cost Sum which is included in the Contract Price, the nomination shall be made in the Tender Documents. The Contractor shall employ the Nominated Subcontractor to carry out the nominated work or supply.

4.2.2 The Contractor shall not be required to employ a Nominated Subcontractor which is not named in the Tender Documents if the Contractor has made reasonable objection to the Engineer within 10 Working Days of nomination against acceptance of the Nominated Subcontractor as a Subcontractor. In such event the Engineer shall make a fresh nomination unless it is agreed between the Engineer and the Contractor that the work shall be carried out by the Contractor or by some other Person under a separate contract with the Principal.

4.2.3 The Contractor shall not be required to employ a Nominated Subcontractor which declines to enter into an appropriate subcontract with the Contractor. An appropriate subcontract shall be one which imposes on the Nominated Subcontractor the obligations imposed on the Contractor towards the Principal in respect of the subcontract works, and which includes reasonable provisions for:

- (a) Indemnifying the Contractor for the liabilities in respect of subcontracted works for which the Contractor has contracted to indemnify the Principal;
- (b) Indemnifying the Contractor for claims in respect of negligence or default by the Nominated Subcontractor, its servants and agents;
- (c) Sequence of operations and completion times;
- (d) Indemnifying the Contractor for liquidated or other damages or loss arising out of delays in the completion of the Contract Works attributable directly or indirectly to the Nominated Subcontractor; and
- (e) The submission of all disputes to arbitration.

4.2.4 If a Nominated Subcontractor:

- (a) Fails without reasonable grounds to enter into a subcontract with the Contractor within 10 Working Days of a written request to do so; or
- (b) Repudiates its subcontract or makes default such that the Contractor is entitled to treat the subcontract as at an end; or
- (c) Refuses to complete the work by reason of breach on the part of the Contractor;

the Contractor shall notify the Engineer in writing.

4.2.5 Where notice is given to the Engineer under 4.2.4 and the matter is not resolved within a reasonable time the Principal or the Engineer shall make a fresh nomination. Alternatively the Engineer and the Contractor may agree to the work being carried out by the Contractor or by another Subcontractor or by some other contractor under a separate contract with the Principal.

4.2.6 Where paragraph (a) or (b) of 4.2.4 applies and the Contractor consequently suffers delay in the completion of the Contract Works, or incurs additional Cost, the event giving rise to such delay or Cost shall be treated as if it was a Variation. The Contractor shall, on the written request of the Principal, pursue a claim against the defaulting Subcontractor at the expense and for the benefit of the Principal.

4.2.7 Where by reason of breach on the part of the Contractor a Nominated Subcontractor is entitled to treat the subcontract as at an end and elects to do so, any consequent Cost, loss and delay incurred by the Contractor shall be borne by it and it shall indemnify the Principal against any consequent Cost, loss and delay incurred by the Principal.

SECTION 5 – General Obligations

5.1 General responsibilities

5.1.1 In carrying out the Contract Works the Contractor shall complete, hand over to the Principal and remedy defects in the Contract Works and provide all services, labour, Materials, Plant, Temporary Works, transport and everything whether of a temporary or permanent nature required so far as the necessity for the same is specified in, or is to be inferred from the Contract Documents.

5.1.2 The Contractor shall comply with all proper instructions issued by the Engineer in relation to the contract.

5.1.3 Where the Contract Documents provide that the Contractor has a responsibility for design, the design work shall include necessary investigation, design calculation, drawing, specification of Materials and workmanship, testing and monitoring of the design on or off the Site, unless otherwise provided in the Contract Documents. The Contractor shall undertake the design of the Temporary Works except to the extent that the Contract Documents provide such design or provide that it is to be undertaken by, or on behalf of the Principal.

5.1.4 Where the Contractor undertakes the design of any part of the Contract Works the Contractor shall be responsible for carrying out such design with reasonable skill, care and diligence. No comment, review or approval by the Engineer or Principal shall relieve the Contractor of any responsibility for that part of the Contract Works.

5.1.5 The Contractor shall be responsible for the adequacy, stability and safety of all its Site operations and methods of construction, provided that the Contractor shall not be responsible for the design or specification of the Contract Works except as provided under 5.1.3 and 5.1.4.

5.1.6 The Principal warrants that it has made available to the Contractor before the submission of the Contractor's tender all information of which it is aware, which has been obtained by or on behalf of the Principal or the Engineer for the purposes of the contract, on the nature of the physical conditions relevant to the Contract Works. The Principal makes no warranty as to the sufficiency or accuracy of such information. The Contractor shall be responsible for the interpretation of all such information for the purposes of the Contract Works.

5.2 Contractor's representative

5.2.1 The Contractor shall provide all necessary supervision during the contract. It shall have on the Site at all working times a competent representative who shall be one person only not being a body corporate or firm and whose name shall be notified to the Engineer in writing and who shall be authorized to receive on behalf of the Contractor any instructions from the Engineer or the Engineer's representative. All work shall be carried out under the supervision of the Contractor's representative.

5.2.2 The Engineer may at any time by notice in writing to the Contractor object on reasonable grounds to the continuance of any person as Contractor's representative. The notice shall state the grounds upon which the objection is based. The Contractor shall appoint another competent person in place of the person about whom the objection has been made.

5.3 Control of employees

5.3.1 The Engineer may object to and direct the Contractor to remove from the Contract Works any employee of the Contractor or of a Subcontractor in or about the execution of the Contract Works who by reason of serious misconduct, incompetence or negligence in the proper performance of his or her duties is a danger to safety or welfare. An employee required to be removed shall not again be employed upon the Contract Works without the permission of the Engineer.

5.4 Possession of the Site

5.4.1 The Principal shall give the Contractor possession of the Site 10 Working Days after the Date of Acceptance of Tender, or on such other date as is provided in the Special Conditions, subject to prior compliance with the Contractor's and Principal's obligations under 8.5.4 and 8.8.5.

5.4.2 Should the Principal not give possession of the Site or any portion of the Site, in accordance with the Special Conditions, for any reason other than default of the Contractor in carrying out its obligations under the contract, the Engineer shall suspend the commencement of work on the Site or on that portion of the Site by notice in writing under 6.7.

5.4.3 The Principal shall obtain authority for the Contractor to have the reasonable right of entry upon and do any act upon any adjoining property as may be necessary for the carrying out of the Contract Works. Such access may be limited by the Special Conditions. Any Costs involved in obtaining such right shall be borne by the Principal. The Contractor shall procure for itself, at its own Cost, the use of or appropriate rights in respect of any other property which it may choose to use for carrying out the Contract Works.

5.4.4 The Contractor shall respect the rights of the adjoining property owners and occupiers and shall advise such Persons when access to property is required for the purposes of carrying out the Contract Works, or where property access may be restricted during the course of the Contract Works, and shall ensure any inconvenience to occupiers is kept to a minimum as far as is reasonably practicable.

5.4.5 The Contract Works shall be carried out so as not to interfere unreasonably with the convenience of the public, or with the condition of or access to, or use of, public or private property, highways, roads, bridges or footpaths or public places.

5.4.6 The Contractor shall make good as soon as practicable damage to any adjoining property arising out of the carrying out of the Contract Works. Such making good shall be carried out at the expense of the Contractor unless the damage arises from any of the matters referred to in 7.1.2 in which event the making good (to the extent its necessity arises from any of the matters referred to in 7.1.2) shall be treated as if it was a Variation.

5.5 Separate contractors

5.5.1 Where provided for in the Contract Documents the Principal may arrange for work on the Site not included in the contract to be carried out by parties other than the Contractor including the Principal's employees and concurrently with the carrying out of the Contract Works. Such employees and other parties are referred to as "separate contractors". The Contractor shall co-operate with the separate contractors and afford reasonable opportunities for the execution of their work. The Principal shall ensure that in carrying out any such work any separate contractor shall in all respects comply with all reasonable requests from the Contractor.

5.5.2 The Contractor shall afford all reasonable facilities for separate contractors in accordance with the instructions of the Engineer provided that the requirement of such facilities has been described in the Special Conditions. If the Contractor suffers delay in the completion of the Contract Works or incurs additional Cost arising from the activity of separate contractors which is not otherwise provided for in the Contract Documents, then the effect of that activity shall be treated as if it was a Variation.

5.6 Care of the works and Site

5.6.1 The Contractor shall be responsible for the care of the Contract Works or any Separable Portion and all Plant from the time it obtains possession of the Site until the relevant time of Practical Completion. If the Principal takes occupancy under 10.7.2 of any portion of the Contract Works, the Contractor's responsibility for care of that portion shall cease on the date and at the time of such occupancy.

5.6.2 The Contractor shall be responsible for the care of all Materials which are in its care or possession awaiting incorporation in the Contract Works.

5.6.3 The Contractor shall be responsible for loss or damage to the Contract Works occurring after Practical Completion arising out of the execution of the Contractor's outstanding obligations under the contract.

5.6.4 The Contractor shall be responsible for loss or damage to the Site arising out of the execution of the Contractor's obligations under the contract.

5.6.5 Except where loss or damage has the effect of terminating the contract by frustration, should any loss or damage occur to the Contract Works or Materials or the Site while the Contractor is responsible under 5.6.1, 5.6.2, 5.6.3 or 5.6.4 the Contractor shall repair the loss or damage to the extent needed for completion and hand over of the Contract Works and for meeting the Contractor's obligations under Section 11. Such repair of damage shall be carried out without additional payment by the Principal unless provided for under 7.1.3 or 9.5, or caused by an excepted risk defined in 5.6.6. To the extent the necessity arises from an excepted risk it shall be treated as if it was a Variation.

5.6.6 The excepted risks are:

- (a) Riot (in so far as it is uninsurable), civil commotion or disorder (unless solely restricted to employees of the Contractor or its Subcontractors and arising from the Contractor's conduct of the Contract Works), war, terrorism, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection of military or usurped power;
- (b) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any nuclear explosive, nuclear assembly or nuclear component thereof;
- (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) The use, occupation or taking over of any portion of the Contract Works including but not limited to any portion in respect of which a certificate of Practical Completion has been issued;
- (e) Any fault, defect, error or omission in the design of the Contract Works for which the Contractor is not responsible under the contract;

- (f) Any such operation of the forces of nature as an experienced contractor could not foresee or reasonably make provision for, or insure against;
- (g) Any risks specifically excepted in the Special Conditions;
- (h) Any act or omission of the Principal or of the Engineer or his or her assistants or of any other Person for whose acts or omissions the Principal is as between itself and the Contractor responsible.

5.7 Protection of Persons and property

5.7.1 So far as the Site and the Contract Works are under the Contractor's control, the Contractor shall take all reasonable steps to keep them in an orderly state and in such a condition as to avoid danger to Persons and property.

5.7.2 The Contractor shall take all practicable steps to:

- (a) Provide and maintain a safe working environment;
- (b) Identify any significant hazards;
- (c) Ensure that any employee or Subcontractor involved in carrying out the Contract Works is not unnecessarily exposed to hazards which are under the Contractor's control;
- (d) Have proper procedures for dealing with emergencies that may arise.

5.7.3 The Contractor shall:

- (a) Maintain a register of accidents and serious harm;
- (b) Investigate accidents and identify their cause;
- (c) Ensure that all Persons under the Contractor's control are appropriately supervised.

5.7.4 The Contractor shall give to the Principal through the Engineer a copy of any report which the Contractor is required to make to a public authority on any accident which is associated with the carrying out of the Contract Works and results in serious harm to any Person.

5.7.5 The Principal shall notify the Contractor through the Engineer of any safety hazards associated with the Contract Works or the Site, or special safety measures required, of which the Principal or the Engineer are aware, and with which an experienced contractor may not reasonably be expected to be familiar.

5.7.6 The Contractor shall provide all watching and provide, erect, maintain and when no longer required remove all barricades, fencing, temporary roadways and footpaths, signs and lighting necessary for the effective protection of property, for traffic and for the safety of others.

5.7.7 The Contractor shall take all reasonable steps to avoid nuisance and prevent damage to property.

5.8 Setting out

5.8.1 The Contractor shall be responsible for the setting out of the Contract Works in accordance with the Contract Documents and the information and instructions issued by the Engineer.

5.8.2 The Engineer shall supply to the Contractor, on or before giving possession of the Site, the information necessary to enable the Contractor to set out the Contract Works. Such information shall include the levels and positions of sufficient survey marks on or adjacent to the Site. The Contractor shall refer to the Engineer for instructions, any cases which come to the notice of the Contractor where dimensions or levels are inconsistent or where any portion of the Contract Works appears to encroach beyond the Site boundaries.

5.8.3 The Contractor shall preserve and maintain in their true position all survey marks other than marks which are required to be covered or removed by the Contract Works. The Contractor shall arrange replacement at the Contractor's own Cost of any survey mark that is disturbed or obliterated.

5.8.4 Should the Engineer or his or her representative wish to check the setting out of the work, the Contractor shall provide unimpeded access. The checking by the Engineer of any line, level or position set out by the Contractor shall not relieve the Contractor of responsibility for its correctness.

5.8.5 If at any time prior to the issue of a certificate of Practical Completion any error shall appear in the position, levels or dimensions of any part of the Contract Works set out by the Contractor, the Contractor unless otherwise directed by the Engineer shall rectify the error. The Cost of rectification shall be borne by the Contractor except, and to the extent, that any error arises out of incorrect information supplied by the Principal or by the Engineer, and which was not known by the Contractor to be incorrect, in which case it shall be treated as a Variation.

5.9 Materials, labour and Plant

5.9.1 The Contractor shall, except where otherwise specified in the Contract Documents, supply at its own Cost everything necessary for the completion of the Contract Works and the performance of its obligations under the contract including minor items not expressly mentioned in the Contract Documents and of a type not normally detailed but necessary for completion and performance of the Contract Works.

5.9.2 All Materials and workmanship shall conform with the provisions of the Contract Documents. Unless otherwise specified in the Contract Documents, all Materials used other than in Temporary Works shall be new. All work shall be carried out in a tradesman-like manner.

5.9.3 Where payment is made by the Principal in the form of advances or of sums for Plant or for Materials not yet incorporated in the Contract Works, the ownership of the Plant or Materials shall on payment being made vest in the Principal. The Principal shall permit the Contractor the exclusive use of the Plant and Materials for the purpose of the contract. No Plant or Materials vested in the Principal shall be removed from the Site without the prior consent of the Principal, which shall not be unreasonably withheld. The ownership of any items of Plant or Materials no longer required for the Contract Works shall re-vest in the Contractor on repayment of any advances made by the Principal.

5.10 Programme

5.10.1 Where required by the Contract Documents the Contractor shall prepare a programme and submit it to the Engineer within the nominated time. The programme shall show the proposed order of work and the dates for commencement and completion of the various stages of the Contract Works.

5.10.2 The preparation and issue of further Drawings, Specifications and instructions by the Engineer and the supply of Materials, services and work to be supplied by the Principal shall be phased to comply with the Contractor's programme or as otherwise reasonably requested by the Contractor.

5.10.3 If it becomes evident to the Contractor that completion of the Contract Works is likely to be delayed, it shall notify the Engineer as soon as practicable.

5.10.4 From time to time, the Engineer may require the Contractor to amend its programme to take account of the actual progress of the Contract Works so as to achieve completion either by the Due Date for Completion or as soon as practicable thereafter. The Engineer may further require the Contractor to indicate the means by which the programmed progress will be achieved.



5.10.5 Work requiring inspection by the Engineer other than emergency work shall be carried out on Working Days and within normal working hours unless the Contractor has given reasonable prior notice to the Engineer.

5.11 Compliance with laws

5.11.1 In carrying out the Contract Works the Principal and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Contract Works.

For the purposes of this clause 5.11 "licences" means "licences, consents, approvals and compliance certificates".

5.11.2 Where it is stated in the Special Conditions that the Contractor is to be responsible for, and on behalf of the Principal, for obtaining project information memoranda, building consents and code compliance certificates under the Building Act 1991 for carrying out parts of the Contract Works which are subject to design by the Contractor, the provisions of Appendix D shall apply to the provision and obtaining of such licences instead of the following clauses of 5.11.

5.11.3 The Principal shall at the Principal's expense obtain all licences, which may be required for the construction of the Contract Works and for the use of the Contract Works when constructed except as otherwise provided for in 5.11.4.

5.11.4 The Contractor shall at the Contractor's expense give all notices and obtain all other licences in respect of Temporary Works except to the extent that they are designed for, or on behalf of the Principal, and temporary amenities and temporary services required for the construction of the Contract Works.

5.11.5 The Principal shall arrange for the Contractor to be supplied with copies of any necessary documents and other information in order to comply with this clause 5.11.

5.11.6 If licences, obtained by the Contractor are issued subject to conditions affecting the design or Specifications provided in the Contract Documents or in a Variation, those conditions shall be notified to the Engineer by the Contractor. The

Engineer and the Contractor shall consult, and the Engineer shall instruct the Contractor to either:

- (a) Carry out the Contract Works in accordance with such conditions; or
- (b) Modify the Contractor's methods of otherwise carrying out the Contract Works and obtain different or modified licences;
 - (i) Issued with conditions affecting design or Specifications that are acceptable to the Engineer; or
 - (ii) Issued with no conditions affecting design or Specifications.

If licences, obtained by the Principal or by the Contractor are subject to conditions affecting the carrying out of the Contract Works, those conditions shall be notified to the other party and to the Engineer. If the compliance with these conditions causes delay in the completion of the Contract Works or additional Cost to the Contractor which in either case the Contractor could not reasonably have foreseen when tendering the compliance will be treated as if it was a Variation.

5.11.7 From time to time at the request of the Engineer and in any case before making application for any certificate of Practical Completion, the Contractor shall deliver to the Principal all documents necessary to prove the issue of licences and notices, for which the Contractor is responsible under this clause 5.11.

5.12 Patents and royalties

5.12.1 The Principal shall indemnify the Contractor against any action, claim, costs or other Cost arising from any infringement of patents, registered designs, trademarks, copyright or other protected right in respect of any design, method or article supplied or specified by the Principal or by the Engineer. The indemnity shall not apply where the Contractor is aware of infringement and does not notify the Engineer.

5.12.2 The Contractor shall indemnify the Principal against any action, claim, costs or other Cost arising from any infringement of patents, registered designs, trademarks, copyright or other protected right in respect of any design, method or article not supplied to the Contractor by the Principal or the Engineer. The indemnity shall not apply where the Principal or the Engineer is aware of the infringement and does not notify the Contractor.

5.13 Underground and above ground utilities

5.13.1 The Principal shall arrange for the searching of records to determine the existence and position of pipes, cables and other utilities on or about the Site, and the position of such utilities shall be indicated in the Contract Documents as accurately as the information available permits.

For the purposes of this clause 5.13, the term "utilities" shall include any cadastral survey mark, as defined in the Cadastral Survey Act 2002, and which at any time have been set in or on the ground for the purposes of survey.

5.13.2 The Contractor shall be responsible for physically locating the position of all such utilities and shall arrange with the controlling authorities for any necessary exploratory work, location, protection, isolation, offsetting, reinstatement or alterations required. The Contractor shall record any alterations which it makes to such utilities.

5.13.3 The Contractor shall be responsible for protecting all utilities whether indicated or not and for arranging for their reinstatement or the repair of any damage resulting from its operations.

5.13.4 Where a utility is not indicated or is not substantially in the position indicated in the Contract Documents any extra work in physically locating its position or altering or protecting or offsetting or reinstating it shall be a Variation.

5.14 Treasure

5.14.1 All fossils, coins, articles of value or antiquity and other remains of geological or archaeological interest discovered on the Site shall as between the Principal and the Contractor remain the property of the Principal unless provided otherwise in the Contract Documents. The Contractor shall report to the Engineer the presence of any objects of this kind of which it has knowledge.

5.14.2 The Contractor shall protect such objects undisturbed pending the Engineer's directions. The Contractor shall keep such objects safe and dispose of them as directed by the Engineer. If this causes delay in the completion of the Contract Works or additional Cost to the Contractor which is not otherwise provided for in the Contract Documents then the protection and directions shall be treated as if they were a Variation.

5.15 Clearance of Site

5.15.1 Upon completion the Contractor shall remove all surplus Plant, Materials, temporary buildings and Temporary Works and leave the whole Site and the Contract Works in a clean and tidy condition for use and occupation by the Principal.

5.16 Late supply by Principal

5.16.1 Where any Materials, services or work are required to be provided by the Principal, the late supply of such Materials, services or work shall be treated as if it was a Variation.

5.17 Quality management

5.17.1 Where the Special Conditions so provide, the Contractor shall institute quality management systems and the following shall apply:

- (a) Details of the Contractor's quality management system shall be submitted to the Engineer for approval as required by the Contract Documents;
- (b) Within 10 Working Days of receipt of such details, the Engineer shall notify the Contractor in writing whether or not he or she approves of the quality management system being proposed for carrying out the Contract Works. Such approval shall not be unreasonably withheld;
- (c) The Contractor shall not proceed with any part of the Contract Works unless the Engineer has notified the Contractor in writing of his or her approval of the quality management system which relates to that part of the Contract Works;
- (d) Where the Engineer does not give approval, the notice shall include the Engineer's reasons for not giving approval.

5.17.2 Compliance with a quality management system approved by the Engineer shall not relieve the Contractor from any of its duties, obligations or liabilities under the contract.

5.18 As-built drawings, operation and maintenance manuals

5.18.1 Where required by the Special Conditions, the Contractor shall prepare:

- (a) As-built drawings. The as-built drawings shall make clear cross reference to the Drawings and Specifications and all subsequent documentation, instructions and consents given by the Engineer to the Contractor from which the as-built drawings were derived; and
- (b) Operation and maintenance manuals.

5.18.2 As-built drawings and operation and maintenance manuals shall be prepared to a standard and in a form, either:

- (a) As set out in the Contract Documents; or
- (b) In sufficient detail to enable the Principal to operate, maintain, adjust, and reassemble the Contract Works (except for the Temporary Works).

5.18.3 As-built drawings and operation and maintenance manuals shall be submitted to the Engineer as follows:

- (a) Prior to Practical Completion the Contractor shall submit to the Engineer the draft as-built drawings and operation and maintenance manuals. This documentation may be prepared in draft form but shall be sufficient for the Principal to operate, maintain, adjust, and reassemble the Contract Works (except for the Temporary Works). The Contractor shall give advice and assistance to the Principal and Engineer until the as-built drawings and operation and maintenance manuals have received the Engineer's consent.
- (b) Prior to the end of the Period of Defects Liability the Contractor shall submit to the Engineer for his or her consent the as-built drawings and operation and maintenance manuals prepared in final form sufficient for the Principal to operate, maintain, adjust, and reassemble the Contract Works (except for the Temporary Works). The Engineer's consent shall not be unreasonably withheld.
- (c) The Engineer shall notify the Contractor whether or not he or she consents to such as-built drawings and operation and maintenance manuals. Where the Engineer does not consent, the notice shall include the Engineer's reasons for not giving consent.
- (d) Once the Contractor has prepared the final as-built drawings and operation and maintenance manuals which receive the consent of the Engineer, the Contractor shall supply the Engineer with three sets of the documentation.

SECTION 6 – Engineer's Powers and Responsibilities

6.1 Appointment of Engineer

6.1.1 The Principal shall ensure that at all times there is an Engineer, and that the Engineer fulfils all aspects of the role and functions reasonably and in good faith.

6.1.2 The name and professional qualification of the Engineer shall be set out in the Special Conditions.

6.1.3 Should the Engineer be no longer authorized by the Principal or no longer available to be the Engineer, the Principal shall forthwith:

- (a) Appoint a suitably qualified person to act as Engineer in the interim;
- (b) Notify the Contractor of the person it then proposes to appoint as Engineer;
- (c) After considering any representations made on behalf of the Contractor, notify the Contractor of the appointment of the new Engineer.

Every appointment under this clause 6.1 shall be of one person only not being a body corporate or firm.

6.2 Role of Engineer

6.2.1 The dual role of the Engineer in the administration of the contract is:

- (a) As expert adviser to and representative of the Principal, giving directions to the Contractor on behalf of the Principal and issuing Payment Schedules on behalf of the Principal at due times; and
- (b) Independently of either contracting party, fairly and impartially to make the decisions entrusted to him or her under the Contract Documents, to value the work and to issue certificates.

6.2.2 The Engineer shall exercise the powers entrusted to him or her by the Contract Documents without undue delay.

6.2.3 Except where the contract otherwise provides, directions or instructions necessary for the administration of the contract shall be given only through the Engineer. Directions or instructions shall where appropriate or when requested by the Contractor be given in writing at the time of the instruction or as soon as practicable thereafter.

6.2.4 If the Contractor suffers delay in the completion of the Contract Works or incurs additional Cost by reason of the failure or inability of the Engineer to carry out properly his or her duties as described in the Contract Documents, that failure shall be treated as if it was a Variation.

6.3 Engineer's representative

6.3.1 The Engineer may from time to time by notice to the Contractor in writing appoint an Engineer's representative who shall be one person only not being a body corporate or firm.

6.3.2 The Contractor may at any time by notice in writing to the Engineer object on reasonable grounds to the continuance of any person as Engineer's



representative. The notice shall state the grounds upon which the objection is based. The Engineer shall thereupon appoint another competent person in place of the person about whom the objection has been made.

6.3.3 The Engineer's representative may exercise any of the powers vested in the Engineer under the contract except:



- (a) The reviewing of matters in dispute;
- (b) The valuing of Variations, the issuing of Payment Schedules or certificates in the form of provisional Payment Schedules, the issuing of a certificate of Practical Completion or Defects Liability Certificate, the granting of extensions of time and any changing of the Drawings or Specifications unless expressly authorised by the Engineer by written notice to the Contractor;
- (c) Any other powers excluded by the Engineer by written notice to the Contractor.

6.3.4 Any instruction or decision given by the Engineer's representative to the Contractor within the scope of his or her authority shall bind the Contractor and the Principal as though it had been given by the Engineer, provided that:

- (a) Failure of the Engineer's representative to inspect or disapprove any work or Materials shall not prejudice the power of the Engineer thereafter to inspect or disapprove such work or Materials and order the removal or rectification thereof if not in accordance with the contract; and
- (b) If the Contractor is dissatisfied with any instruction or decision of the Engineer's representative it may refer the matter to the Engineer who after investigation shall confirm, reverse or vary the instruction or decision.

6.3.5 The Engineer may appoint any Persons to assist the Engineer's representative in carrying out his or her duties. The Engineer shall give written notification to the Contractor of Persons appointed to assist the Engineer's representative.

6.4 Inspection, recording, measuring and testing

6.4.1 The Engineer may at any time prior to the expiry of the Period of Defects Liability require that any Materials or work forming part of the Contract Works shall be inspected or tested at the place of manufacture or at the Site. The Contractor shall provide the assistance, labour and Materials required for sampling, inspecting or testing any Materials or work.

6.4.2 The providing of samples or making and reporting tests ordered by the Engineer and not otherwise provided for in the Contract Documents shall be a Variation except that where the work or Materials are found to be not in accordance with the requirements of the Contract Documents, the Cost, including any Costs incurred by the Engineer or the Principal, shall be borne by the Contractor.

6.4.3 The Engineer and any Person authorized in writing by him or her shall have access at all reasonable times to the Site and to all places where work is being carried out for the purposes of inspection, recording, measuring or testing. The Contractor shall afford every reasonable facility for and assistance in obtaining access for the purpose of inspection, recording, measuring or testing.

6.4.4 The Contractor shall notify the Engineer when the work is ready or about to be ready for inspection recording, measuring or testing. The Engineer shall within a reasonable time examine and measure the work unless he or she considers it unnecessary to do so. In such case the Engineer shall advise the Contractor

accordingly. If the Engineer fails to carry out inspection, recording, measurement and testing within a reasonable time and the Contractor thereby suffers delay in the completion of the Contract Works or incurs additional Cost, that failure shall be treated as if it was a Variation.

6.4.5 Work specified by the Contract Documents as requiring inspection, recording, measuring or testing shall not be covered up or put out of view without the consent of the Engineer. If such work has been covered up without consent, the Contractor shall open up the same when required at its own Cost.

6.4.6 If the Contractor acts unreasonably in notifying that the work is or will be ready for inspection, recording, measuring or testing when clearly it is not, and the Engineer attends by appointment and loses time resulting in additional Cost to the Principal, then the Principal may deduct the reasonable amount of such Cost from the Contract Price. The fact that work does not pass an inspection or test shall not of itself mean that it was not ready for inspection or testing nor shall the fact that the work is not ready at the time notified of itself mean that the Contractor has acted unreasonably. No deduction shall be made unless the Engineer has notified the Contractor of the circumstances and amount within 10 Working Days of the additional Cost being incurred.



6.4.7 The Engineer may at any time prior to the expiry of the Period of Defects Liability instruct the Contractor to open up or otherwise expose for inspection, recording, measuring or testing any part of the Contract Works. The Contractor shall comply with the direction and shall reconstruct or reinstate the work opened up or exposed so that it complies with the requirements of the Contract Documents. Except as set out in 6.4.5, if the work is found to comply with the requirements of the Contract Documents, then the opening up or pulling down, reconstructing and reinstating the work shall be treated as if it was a Variation but in every other case the Cost shall be borne by the Contractor.

6.5 Removal and making good

6.5.1 The Engineer may at any time prior to the expiry of the Period of Defects Liability by notice in writing instruct the Contractor to remove and re-execute or to make good any work which in respect of Materials or workmanship is not in accordance with the contract. The Contractor shall comply with the instruction at its own Cost.

6.5.2 If the Contractor supplies any Materials or carries out any work not in accordance with the contract, the Engineer may at his or her discretion allow such Materials to be used or such work done to remain and decide the price or rate of payment to the Contractor for such Materials or work carried out.

6.6 Certification

6.6.1 The Engineer shall issue Progress Payment Schedules, the certificate of Practical Completion, the Defects Liability Certificate and the Final Payment Schedule as required by the Contract Documents. Each certificate or Payment Schedule shall be sent to the Principal and a signed copy shall be sent at the same time to the Contractor.

6.6.2 A certificate or Payment Schedule shall not constitute approval of any work or release the Principal or the Contractor from any obligation under the contract except as provided in the Contract Documents.



6.6.3 The Engineer may by any Payment Schedule correct a sum certified by the Engineer in any previous Payment Schedule which has been issued by him or her, or by any previous Engineer, provided he or she notifies the Contractor in writing of his or her reasons for so doing.

6.6.4 If the Engineer fails to issue a certificate of Practical Completion or a Defects Liability Certificate within the time provided under the Contract Documents and the Contractor thereby suffers delay in the completion of the Contract Works or incurs additional Cost, that failure shall be treated as if it was a Variation.

6.7 Suspension of work

6.7.1 If the suspension of the whole or a part of the Contract Works becomes necessary the Engineer shall instruct the Contractor in writing to suspend the progress of the whole or any part of the Contract Works for such time as the Engineer may think fit, and the Contractor shall comply with the instruction.

6.7.2 During the suspension the Contractor shall properly secure and protect the Contract Works against damage and leave the Site in a safe and tidy condition.

6.7.3 Unless the suspension is due to default on the part of the Contractor, the suspension shall be treated as if it was a Variation.

6.7.4 If the suspension remains in effect for more than three Months, the Contractor may request the Engineer in writing to permit the suspended work to be continued. If the Engineer does not grant permission to continue within one Month of receipt of the request, then the Contractor shall be entitled to treat the suspension as a Variation deleting the uncompleted portion of the suspended work from the contract, or where the suspension affects the whole of the Contract Works as an abandonment of the contract by the Principal.

6.7.5 Notwithstanding the above the Principal and the Contractor may by agreement in writing suspend the Contract Works for any period, and the provisions of 6.7.2, 6.7.3 and 6.7.4 shall apply unless expressly excluded.

6.8 Emergency work

6.8.1 If by reason of any accident or failure or other event occurring to, or in connection with the Contract Works and if the Contractor or its representative cannot be contacted or is unwilling or unable to act in time to secure the works, the Engineer on behalf of the Principal may take such emergency action as the Engineer reasonably considers necessary. The Contractor shall be entitled to take control of such operations as soon as it is willing and able to do so.

6.8.2 If the emergency action involves work which the Contractor was liable to do at its own expense under the contract, the reasonable Cost of that work shall be recoverable from the Contractor by the Principal. As soon as practicable after the taking of the action the Engineer shall notify the Contractor of the emergency and thereafter confirm in writing its extent and Cost.

6.8.3 The taking of any emergency action by the Engineer shall not relieve the Contractor of any of its obligations under the contract.

SECTION 7 – Indemnity



7.1 Indemnity

7.1.1 Except as otherwise provided in the Contract Documents the Contractor shall indemnify the Principal against:

- (a) Any loss suffered by the Principal which may arise out of, or in consequence of the construction of, or remedying of defects in the Contract Works;
- (b) Any liability incurred by the Principal in respect of injuries to Persons or damage to property which may arise out of, or in consequence of the construction of, or remedying of defects in the Contract Works;
- (c) Any Costs the Principal may incur in respect of that loss or liability.

7.1.2 The Contractor's liability to indemnify the Principal shall not extend to any loss, liability or Cost in respect of:

- (a) The permanent use of or occupation of land by the Contract Works and the right of the Principal to carry out the Contract Works on the Site;
- (b) Injuries to Persons or damage to property or interference with the rights of other Persons which is the unavoidable result of carrying out or remedying of defects in the Contract Works in accordance with the Contract Documents;
- (c) Any act or omission of the Principal or of the Engineer, or his or her assistants, or of any other Persons for whose acts or omissions the Principal is as between it and the Contractor responsible;
- (d) Any risks specifically excepted in the Contract Documents.

7.1.3 The Principal shall indemnify the Contractor against any loss suffered by the Contractor or liability incurred by it in respect of any of the matters referred to in paragraphs (a), (b) and (c) of 7.1.2 and any Cost it may incur in respect of any such loss or liability.

7.1.4 The Contractor's liability to indemnify the Principal and the Principal's liability to indemnify the Contractor shall be reduced proportionately to the extent that the act or omission of the indemnified party or its servants or agents may have contributed to the loss, liability or Cost.



SECTION 8 – Insurance

8.1 Contractor to insure Contract Works and Materials

8.1.1 Without limiting its obligations under 5.6 and 7.1, the Contractor shall, in the joint names of the Principal and the Contractor, effect insurance of the Contract Works (including Temporary Works) and the Materials which are in the care or possession of the Contractor within New Zealand or in transit from elsewhere in New Zealand.

8.1.2 The sum insured shall be not less than the total of the Contract Price and the sums or percentages stated in the Special Conditions in respect of:



- (a) The Cost of demolition, disposal and preparation for replacement works;
- (b) Professional fees including the Cost of clerks of works and inspectors;
- (c) The value of items incorporated or to be incorporated in the Contract Works the Cost of which is not included in the Contract Price;
- (d) Increased construction Costs not already provided for in the Contract Price during the period from the acceptance of the tender or other offer until the issue of the Defects Liability Certificate for the Contract Works.

8.1.3 Except as provided in 8.1.4, the Contractor shall maintain the insurance under 8.1.1 to cover loss or damage to the property insured where the cause of the loss or damage arises:



- (a) Up to the time of Practical Completion of the Contract Works or of the relevant Separable Portion; or
- (b) In the case of any portion of the Contract Works of which the Principal takes occupancy under 10.7.2, until the date and time of such occupancy; or
- (c) From any act or omission of the Contractor in the course of operations carried out by it for the purpose of complying with its obligations under the contract after Practical Completion or after the Principal's occupation under 10.7.2.

8.1.4 The insurance under 8.1.1 shall cover loss or damage to the property insured from any cause but may except:



- (a) An excepted risk under 5.6.6, which risks are to be carried by the Principal;
- (b) Loss or damage for which the Contractor is not liable under 7.1.2;
- (c) The direct Cost of remedying electrical or mechanical breakdown, wear and tear or gradual deterioration. This exclusion shall be limited to the defective items in the Contract Works or Materials but the insurance shall extend to other insured items which are consequently lost or damaged;
- (d) Liability of the Contractor for liquidated damages;
- (e) Any risk, or any loss or damage not covered by reason of a term or condition of insurance cover and which is approved by the Principal under 8.5.1.

8.1.5 The insurance under 8.1.1 shall not be an annual cut-off policy unless agreed in writing by the Principal.



8.2 Contractor to insure Contractor's construction machinery

8.2.1 Where required by the Special Conditions, the Contractor shall insure those items of construction machinery on the Site which are owned by the Contractor and have a current market value of more than the sum stated in the Special Conditions.

8.2.2 Except as provided in 8.2.3, the Contractor shall maintain insurance under 8.2.1 until the issue of the Defects Liability Certificate for the Contract Works.

8.2.3 The insurance under 8.2.1 shall cover loss or damage to the construction machinery insured from any cause but may except:

- (a) An excepted risk under 5.6.6, which risks are to be carried by the Principal;
- (b) Loss or damage for which the Contractor is not liable under 7.1.2;
- (c) The direct Cost of remedying loss or damage caused by defective Materials or workmanship or Contractor's design, electrical or mechanical breakdown, wear and tear or gradual deterioration. This exclusion shall be limited to the defective item of construction machinery but the insurance shall extend to other insured items which are consequently lost or damaged;
- (d) Any risk, or any loss or damage not covered by reason of a term or condition of insurance cover and which is approved by the Principal under 8.5.1.

8.3 Contractor to insure against public liability risks

8.3.1 Without limiting its obligations under 5.6 and 7.1, the Contractor shall in the joint names of the Principal and the Contractor or by separate policies in the respective names of the Principal and Contractor, effect public liability insurance for an amount not less than that stated in the Special Conditions for any one occurrence.

8.3.2 The Contractor shall effect motor vehicle third party insurance against legal liability to third parties arising from the use of any motor vehicle belonging to or under the care, custody or control of the Contractor in connection with the execution of the Contract Works. In this clause 8.3 the term "motor vehicle" shall mean any item of construction machinery which is licensed or required by law to be licensed as a motor vehicle. The insurance shall be for an amount not less than that stated in the Special Conditions for any one claim or series of claims arising out of the same occurrence.

8.3.3 Except as provided in 8.3.4 the Contractor shall maintain the insurance under 8.3.1 and 8.3.2 to indemnify the Principal and the Contractor against legal liability for damage, loss or injury caused by any act or omission of the Contractor in the course of operations carried out by it for the purpose of complying with its obligations under the contract up to the issue of the Defects Liability Certificate for the Contract Works. This insurance shall include legal liability for damage, loss or injury to the Principal and to the Principal's property other than the Contract Works, caused by any act or omission of the Contractor.

8.3.4 The insurance under 8.3 may except:

- (a) An excepted risk under 5.6.6, which risks are to be carried by the Principal;
- (b) Damage, loss or injury for which the Contractor is not liable under 7.1.2;
- (c) Liability of the Contractor for liquidated damages;



- (d) Risks and property damage to the extent that cover has been provided under 8.1, 8.2 and 8.7;
- (e) Any risk, or any loss or damage not covered by reason of a term or condition of insurance cover and which is approved by the Principal under 8.5.1.

8.3.5 The public liability insurance shall extend to cover legal liability for the loss of use of property whether it has been damaged or not, provided such loss results from an insured event.

8.4 Professional indemnity insurance for Contractor's design

8.4.1 Where the Special Conditions so provide and without limiting its obligations under 5.1.3, 5.1.4, 5.6 and 7.1, the Contractor shall in the name of the Contractor, effect professional indemnity insurance for Contractor's design for an amount not less than that stated in the Special Conditions for any one claim or series of claims arising out of the same occurrence and in the aggregate.



8.4.2 The Contractor shall maintain the insurance under this clause 8.4 for liability for damage or loss caused by the Contractor not meeting its obligations under 5.1.4 of the contract. The Contractor shall maintain the professional indemnity insurance up to Practical Completion of the whole of the Contract Works and thereafter for a further period of six years. The insurance policy under this clause 8.4 shall not be one which must be renewed or replaced during the period of insurance unless agreed in writing by the Principal.



8.4.3 The insurance under this clause 8.4 may except:

- (a) An excepted risk under 5.6.6, which risks are to be carried by the Principal;
- (b) Loss or damage for which the Contractor is not liable under 7.1.2;
- (c) Liability of the Contractor for liquidated damages;
- (d) Risks and property damage for which cover has been provided under 8.6 and 8.7;
- (e) Any risk, or any loss or damage not covered by reason of a term or condition of insurance cover and which is approved by the Principal under 8.5.1.

8.5 Contractor's insurance – General

8.5.1 The insurances required under 8.1, 8.2, 8.3 and 8.4 shall be effected with insurers acceptable to the Principal and in terms approved by the Principal and shall be in effect prior to the commencement of the Contract Works. The acceptance and approval shall not be unreasonably withheld.



8.5.2 The insurances required under 8.1, 8.2, 8.3 and 8.4 shall not include a discretionary cancellation clause unless they are annual policies.



8.5.3 The insurances required under 8.1, 8.2, 8.3 and 8.4 shall provide that:

- (a) Except as otherwise approved by the Principal under 8.5.1, in the event of a claim being made and accepted, the amount of the cover shall be automatically reinstated to the full cover required by the Contract Documents;

- (b) Except in the case of an annual policy as noted in the Seventh to Eleventh Schedules, the insurance shall not be cancelled for non-payment of premiums without five Working Days' prior notification by the insurer in writing to the insured party which has arranged the insurances;
- (c) Any insurance policy arranged in joint names shall include a cross liability clause such that the insurance shall apply to the Contractor and the Principal as separate insureds;
- (d) Settlement of any claims shall not be deferred or delayed by reason of the exercise by the insurer of rights of subrogation.

8.5.4 The Contractor shall, prior to the commencement of the Contract Works, deposit with the Engineer information from insurers or insurance brokers that all the insurances required by the General Conditions and Special Conditions, other than any insurance required under 8.6 and 8.7, are in force. The information shall be in the form set out in the Seventh to Eleventh Schedules as appropriate to the type of insurance. The insurance information form for construction machinery may cover either all the construction machinery on the Site which is owned by the Contractor or may list such construction machinery which is insured.



8.5.5 The Contractor shall, 15 Working Days prior to the cancellation or expiry date of any policy, deposit with the Engineer a replacement insurance information form as set out in the Seventh to Eleventh Schedules.

8.5.6 The Contractor shall produce to the Principal, whenever required by the Principal, the policy or policies and either the receipts for payment of the current premiums or certificates of currency.

8.5.7 If the Contractor:

- (a) Fails to arrange or keep in force any insurance under 8.1, 8.2, 8.3 and 8.4 or any other insurance which it is required by the Contract Documents to arrange or keep in force; or
- (b) Has failed to supply the insurance information forms as required by 8.5.5;

the Principal may after notifying the Contractor in writing, arrange or keep in force the required insurance. The Principal may pay the premium or premiums and may deduct the amount from any monies due to the Contractor.

8.5.8 Any party that has received written advice under 8.5.3(b) shall forthwith advise the other party.

8.6 Principal's option to insure Contract Works and Materials



8.6.1 Where the Special Conditions so provide, this clause 8.6 shall apply in place of 8.1. The Principal shall effect insurance in the joint names of the Principal, the Contractor and Subcontractors for the Contract Works (including Temporary Works) and the Materials which are in the care or possession of the Principal, the Contractor or any Subcontractor within New Zealand or in transit from elsewhere in New Zealand for the sum insured as stated in 8.1.2. Any existing structure, its contents, the Contract Works and the Materials shall be at the sole risk of the Principal as to loss or damage to be insured under 8.6.2.

8.6.2 Where the Contract Works are in the nature of additions, alterations, repairs or maintenance to an existing structure, or where the Contract Works are in the vicinity of another structure the insurance effected under 8.6.1 shall include cover for:

- (a) The replacement value of the existing or other structures;
- (b) Any contents which are owned by the Principal.

8.6.3 Except as provided in 8.8.1, the Principal shall maintain the insurance under this clause 8.6 to cover loss or damage to the property insured from any cause arising from the commencement of the Contract Works:

- (a) Up to the time of Practical Completion;
- (b) In the case of any portion of the Contract Works of which the Principal takes occupancy under 10.7.2, until the date and time of such occupancy;
- (c) From any act or omission of the Contractor in the course of operations carried out by it for the purpose of complying with its obligations under the contract after Practical Completion or after the Principal's occupation under 10.7.2.

8.7 Principal's option to insure public liability

8.7.1 Where the Special Conditions so provide, this clause 8.7 shall apply in place of 8.3. The Principal shall effect insurance in the joint names of the Principal, the Contractor and Subcontractors to indemnify each of them against legal liability for damage, loss or injury (including loss of use of property whether damaged or not) caused by any act or omission by any of them in the course of carrying out the Contract Works or by the Contractor or any Subcontractor in the course of operations carried out for the purpose of complying with the Contractor's obligations under the contract. It shall not cover legal liability for damage which is covered by the insurances under 8.1 or 8.6.

8.7.2 Except as provided in 8.8.1, the Principal shall maintain the insurance under 8.7.1 to cover legal liability from any cause arising from the commencement of the Contract Works until the issue of the Defects Liability Certificate.

8.8 Principal's insurances – General

8.8.1 Subject to the deductibles and exclusions notified under 8.8.2, the insurance under 8.6 and 8.7 shall cover loss, damage or liability from any cause but may except:

- (a) An excepted risk under 5.6.6 (a), (b), (c) or (f);
- (b) The direct Cost of remedying loss or damage caused by defective Materials or workmanship or Contractor's design, electrical or mechanical breakdown, wear and tear or gradual deterioration. This exclusion shall be limited to the defective item in the Contract Works or Materials but the insurance shall extend to other insured items which are consequently lost or damaged;
- (c) Liability of the Contractor for liquidated damages;
- (d) Any risk, or any loss or damage not covered by reason of a term or condition of insurance cover, and which notice has been given in the Special Conditions.

8.8.2 The insurance under 8.6 or 8.7 may be subject to any deductible, exclusion, condition or warranty provided under the policy of which notice has been given in the Special Conditions. The Principal shall be liable for such deductible unless otherwise stated in the Special Conditions.



8.8.3 If the Principal is in default of its obligations under 8.6, 8.7 or 8.8 the Engineer shall by notice in writing under 6.7 suspend the Contract Works until the default is remedied. The Contractor may, after notifying the Principal in writing, arrange or keep in force the insurance, and the suspension shall thereupon cease. The Contractor may pay any unpaid premiums and recover the amount from the Principal.

8.8.4 The insurances required under 8.6 or 8.7 shall not contain a discretionary cancellation clause, but shall contain provisions to the same effect as in 8.5.3 and 8.5.8. Notwithstanding the foregoing, the insurances under 8.6 and 8.7 may be in the form of an annual policy, provided the policy is renewed or replaced so that the insurance cover remains in force for the period required by 8.6.3 and 8.7.2.

8.8.5 The Principal shall, prior to the commencement of the Contract Works, deliver to the Contractor information forms confirming that all the insurances required by 8.6, 8.7 or 8.8 are in force. The information forms shall be from insurers or insurance brokers named in the Contract Documents or approved by the Contractor, such approval not to be unreasonably withheld. The information forms shall be in the form set out in the Seventh or Eighth Schedule.

8.8.6 The Principal shall produce to the Contractor, whenever required by it, the policy or policies and either the receipts for payment of the current premiums or certificates of currency.

8.8.7 Insurance by the Principal shall not relieve the Contractor of any of its obligations under the Contract Documents except as provided in 8.6, 8.7 and 8.8.

SECTION 9 – Variations

9.1 Variations permitted

9.1.1 The Engineer may order any Variations to the Contract Works within the scope of the contract which:



- (a) Increase or decrease the quantity of any work;
- (b) Omit any work;
- (c) Change the character or quality of any Material or work;
- (d) Require additional work to be done;
- (e) Change the level, line, position, or dimensions of any part of the Contract Works.

9.1.2 The Engineer may direct or change the order in which the work is to be carried out. Any such direction shall be a Variation.

9.1.3 The Engineer shall not, without the consent of the Contractor, order any Variation after the issue of the certificate of Practical Completion of the Contract Works or of any Separable Portion to which the Variation relates.



9.1.4 The Contractor shall carry out and comply with any Variation ordered under this clause 9.1.

9.1.5 The value of Variations shall be added to or deducted from the Contract Price.

9.2 Variation orders

9.2.1 The Contractor shall not vary the Contract Works without an order in writing from the Engineer.

9.2.2 Where an instruction is given by the Engineer or his or her representative which is not in writing or is not expressly stated to be a Variation, and the Contractor considers that the instruction involves a Variation, it shall within one Month of receiving the instruction or as soon as practicable thereafter give written notice to the Engineer to that effect. Unless the Engineer by notice in writing within a reasonable time rejects the Contractor's claim the instruction shall be treated as if it was a Variation.

9.2.3 Where the Contractor considers any matter which is not described in 9.1 should be treated as a Variation, the Contractor shall within one Month of becoming aware of that matter or as soon as practicable thereafter give written notice to the Engineer to that effect.

9.2.4 For the purposes of 9.2.2 and 9.2.3 oral notice which is recorded in written records such as Site minutes, correspondence or memoranda held by the Contractor and by the Engineer or Principal shall be treated as written notice.

9.3 Valuation of Variations

9.3.1 The value of each Variation shall as far as possible be determined by agreement between the Contractor and the Engineer. Failing agreement the value shall be determined by the Engineer in accordance with this clause 9.3.



9.3.2 Wherever practicable all Variations shall be valued before the work involved is commenced, but any failure to do so shall not invalidate the Variation.

9.3.3 Where the valuation of the Variation requires that the work be measured, the Engineer shall measure the work and shall notify the Contractor of his or her measurement. The Contractor and the Engineer shall each provide to the other without undue delay such evidence as may reasonably be required to establish the correctness of all relevant quantities and Costs and the effect on the programme, and shall exchange their respective calculations and estimates of the value of the Variation.



9.3.4 Where the Contract Documents include a Schedule of Prices which contains prices or rates applicable to the circumstances and nature of the work, or part of the work, a value (in this clause 9.3 called the Base Value) shall be determined by applying those prices or rates.



9.3.5 Where the Schedule of Prices contains prices or rates which are not directly applicable but which have a sufficient relationship to the Variation for it to be reasonable for new prices or rates to be derived from them, having regard to the matters referred to in 9.3.6, the Base Value shall be determined by applying such derived prices or rates.



9.3.6 Where there is no Schedule of Prices, or where there is no applicable item in the Schedule of Prices and it would not be reasonable to derive new prices or rates under 9.3.5 by reason of the Variation:



- (a) Not being similar to the original work; or
- (b) Having to be executed under conditions different from those applying to the original work; or
- (c) Having to be undertaken at a time which affects the Cost of the work; or
- (d) Involving quantities increased or decreased from the original work or from the scheduled quantities;

then the Base Value shall be determined on the basis of Net Cost.

9.3.7 To the extent that the Base Value has been determined under 9.3.4 or 9.3.5 it shall be deemed to include full allowance for:



- (a) All On-Site Overheads except those covered under 9.3.10, 9.3.13 and 9.3.14 unless the Schedule of Prices provides separately for On-Site Overheads in which case 9.3.8 shall apply;
- (b) All Off-Site Overheads and Profit except those covered under 9.3.10, 9.3.13 and 9.3.14 unless the Schedule of Prices provides a separate item for Off-Site Overheads and Profit in which case 9.3.9 shall apply.

9.3.8

- (a) Where the Schedule of Prices provides separately for On-Site Overheads or where 9.3.6 applies, there shall be added to the Base Value a percentage to cover all On-Site Overheads except those covered under 9.3.10, 9.3.13 and 9.3.14;
- (b) If the Conditions of Tendering provide for a percentage or percentages to be nominated in the tender for this purpose, the percentage or percentages if any so nominated shall be used;
- (c) If no percentage is required to be nominated, a reasonable percentage shall be used.



9.3.9

- (a) Where the Schedule of Prices provides separately for Off-Site Overheads and Profit, or where 9.3.6 applies, there shall be added to the Base Value as increased under 9.3.8 a percentage to cover all Off-Site Overheads and Profit except those covered under 9.3.10, 9.3.13 and 9.3.14;
- (b) If the Conditions of Tendering provide for a percentage to be nominated in the tender for this purpose, the percentage if any so nominated shall be used;
- (c) If no percentage is required to be nominated, a reasonable percentage shall be used.

**9.3.10**

- (a) Where the Contractor is entitled to an extension of time by reason of the net effect of any Variation, the Contractor shall be entitled to compensation for the time related Cost incurred in relation to that extension together with an allowance for profit. To the extent that such Cost has not been compensated in arriving at the Base Value of the Variation, or under the following provisions of this clause 9.3.10, it shall be determined in accordance with 9.3.4, 9.3.5 and 9.3.6 and included in the Base Value.
- (b) Where the Conditions of Tendering provide for a rate per Working Day to be nominated in the tender then such rate shall be deemed to provide for time related On-Site Overheads, Off-Site Overheads and Profit and shall be used to determine the amount to which the Contractor is entitled for time related On-Site Overheads, Off-Site Overheads and Profit.
- (c) Where the Conditions of Tendering do not provide such a rate, the Contractor shall be entitled to reasonable compensation for time related On-Site Overheads, Off-Site Overheads and Profit.
- (d) In assessing compensation for Cost and profit under paragraphs (b) or (c) of this subclause 9.3.10 there shall be taken into account any allowance for time related Cost and profit included in the prices and rates where the Base Value has been determined under 9.3.4 or 9.3.5 or included in the evaluation of overheads and profit under 9.3.8 and 9.3.9.



9.3.11 Where a percentage has been nominated under 9.3.8 or 9.3.9, or a rate per Working Day under 9.3.10, and the nature or the circumstances of the Variation are an extreme case, so different from the nature or circumstances which could reasonably have been contemplated by an experienced Contractor when preparing the Tender as to make it clearly inequitable to use the nominated percentages or rate, then reasonable percentages or a reasonable rate per Working Day shall be used.

9.3.12 Where the Base Value is a negative figure then 9.3.8 and 9.3.9 shall not apply.



9.3.13 Where a part of the Contract Works is delayed by reason of a Variation for a greater period than the delay if any to the Contract Works as a whole, and the Contractor thereby incurs time related Cost, the Contractor shall be entitled to reasonable compensation for such time related Cost and profit after taking into account any allowance for time related Costs included in the prices and rates where the Base Value has been determined under 9.3.4 or 9.3.5 or in the evaluation of overheads and profit in 9.3.8 and 9.3.9.



9.3.14 If the Conditions of Tendering provide for a percentage to be nominated for the processing of Variations the Contractor shall be paid that percentage of the value of the Variations, including for this purpose any Variations which do not proceed. Where no such provision is contained in the Conditions of Tendering, the Contractor shall be entitled to the reasonable Cost of processing Variations, whether or not they proceed.



9.3.15 The Base Value after being increased where required under the preceding subclauses 9.3.8, 9.3.9 and 9.3.12 shall be the value of the Variation subject to allowance where appropriate under 9.3.10, 9.3.13 and 9.3.14.

9.3.16 The value of each Variation when determined shall be confirmed or notified to the Contractor in writing. Where the value as determined differs from that proposed by the Contractor, the notice shall include the Engineer's reasons for his or her valuation.



9.4 Daywork

9.4.1 This clause 9.4 shall apply to any Variation for which applicable items do not exist in the Schedule of Prices and which:



- (a) Is of a relatively minor nature not involving significant mobilization of additional labour or Plant, or substantial planning and supervision; and
- (b) Is able to be done concurrently with other work on Site so as not to entitle the Contractor to an extension of time; and
- (c) Does not by reason of interference or disruption increase the Cost of any other part of the Contract Works.

9.4.2 The Engineer may order in writing that any Variation to which this clause 9.4 applies be carried out on a Daywork basis. The Contractor shall be paid for Daywork under the conditions and at the rates set out in the Contract Documents. If the Contract Documents do not provide rates for Daywork it shall be paid on the basis of Net Cost plus percentages as provided in 9.3.8 and 9.3.9.

9.4.3 In respect of all work executed on a Daywork basis, the Contractor shall record on a daily basis during the continuation of the work, in a manner acceptable to the Engineer, the time spent by each workman and each item of Plant, and the quantities of Materials used for the execution of the Dayworks. These records shall, if agreed correct, be signed by the Engineer or his or her representative if possible on a daily basis and shall be the basis of payment. If neither the Engineer nor his or her representative is available these records shall be signed by, or on behalf of the Contractor. One signed copy shall be submitted with the Contractor's payment claim and in such case shall be prima facie evidence of its content.

9.5 Unforeseen physical conditions

9.5.1 The term physical conditions shall include artificial obstructions but shall not include weather conditions or conditions due to weather unless those conditions occur as a result of weather away from the Site.

9.5.2 If during the contract the Contractor encounters on the Site physical conditions which it considers could not reasonably have been foreseen when tendering by an experienced contractor and which will in its opinion substantially increase its Costs the Contractor shall as soon as practicable and where possible before the conditions are disturbed notify the Engineer and confirm such notification in writing.

9.5.3 If as a result of such conditions the Contractor proposes to make an additional payment claim the Contractor shall follow such notice as soon as is practicable with details of the additional Materials, Plant, labour and programme of works proposed to be used, the anticipated delay to, or interference with, the Contract Works and an estimate of the additional payment claim.

9.5.4 On receipt of such notice from the Contractor, the Engineer shall forthwith investigate the conditions and after discussion with the Contractor shall determine whether or not the conditions are such as the Contractor has notified in terms of 9.5.2. To the extent that the conditions notified could not reasonably have been foreseen by an experienced contractor and will in the Engineer's opinion substantially increase the Contractor's Costs, the effect of the conditions notified shall be treated as if it was a Variation.

SECTION 10 – Time for Completion

10.1 Commencement

10.1.1 The contract period shall commence on the date on which the Contractor becomes entitled to possession of the Site under 5.4.1 or would become entitled but for non compliance with the Contractor's obligations under 8.5.4.

10.1.2 The Contractor shall commence the Contract Works within 10 Working Days after it becomes entitled to possession of the Site, or as soon thereafter as is reasonable, and shall then proceed with the execution of the Contract Works with due diligence except as may be sanctioned or instructed by the Engineer.

10.2 Due Date for Completion

10.2.1 The Due Date for Completion of the Contract Works or any Separable Portion shall be calculated by adding to the date of commencement of the contract period as defined in 10.1.1:

- (a) The period provided in the Special Conditions; and
- (b) All extensions of time, if any, awarded under 10.3.

10.2.2 The Contract Works or any Separable Portion shall be carried out to the stage of Practical Completion as defined in 10.4 by the relevant Due Date for Completion.

10.3 Extension of time

10.3.1 The Engineer shall grant an extension of the time for completion of the Contract Works or for any Separable Portion if the Contractor is fairly entitled to an extension by reason of:



- (a) The net effect of any Variation; or
- (b) Weather sufficiently inclement to interfere with the progress of the works; or
- (c) Any strike, lockout or other industrial action; or
- (d) Loss or damage to the Contract Works or Materials; or
- (e) Flood, volcanic or seismic events; or
- (f) Any circumstances not reasonably foreseeable by an experienced contractor at the time of tendering and not due to the fault of the Contractor.

10.3.2 The Engineer shall not be bound to grant an extension unless:



- (a) The Contractor notifies the Engineer that it claims an extension and states the grounds for the extension;
- (b) The notice is given within 20 Working Days after the circumstances arise which are relied on as the grounds for extension, or as soon as practicable thereafter;
- (c) The notice either gives details of the period of extension sought or is followed within a reasonable time by a further notice giving such details.

10.3.3 Where the effect of any ground for an extension is of a continuing nature, the Contractor may give more than one notice each claiming a specific period of extension on that ground.

10.3.4 Upon receipt of notice of a claim for extension of time the Engineer shall investigate the claim. The Engineer shall within 20 Working Days or as soon as practicable thereafter determine whether or not the Contractor is fairly entitled to an extension and shall notify the Contractor of his or her decision.

10.3.5 Upon receipt of details of the period of extension sought by the Contractor the Engineer shall, if he or she has determined that the Contractor is fairly entitled to an extension, then determine the period of the extension and notify the Contractor of his or her decision as soon as practicable.

10.3.6 In any circumstances in which the Engineer determines that the Contractor is entitled to an extension of time the Engineer may, subject to the agreement of the Principal and the Contractor, approve the taking by the Contractor of steps to accelerate the work. In such case the Engineer shall grant either no extension of time or such lesser extension as may be agreed. The Contractor shall be entitled to be paid such sum as may be agreed or failing agreement such sum as is reasonable to compensate the Contractor for the additional Cost of the agreed steps taken to accelerate the work and of the effect of those steps on other aspects of the work together with an allowance for profit. The sum payable should be calculated in accordance with 9.3.6, 9.3.8, 9.3.9 and 9.3.14.

10.3.7 The Contractor shall not be entitled to compensation for time related Costs where an extension of time is granted on grounds other than the net effect of a Variation.

10.4 Certificate of Practical Completion

10.4.1 Practical Completion is that stage in the execution of the work under the contract when the Contract Works or any Separable Portion are complete except for minor omissions and minor defects:



- (a) Which in the opinion of the Engineer the Contractor has reasonable grounds for not promptly correcting; and
- (b) Which do not prevent the Contract Works or Separable Portion from being used for their intended purpose; and
- (c) Rectification of which will not prejudice the convenient use of the Contract Works or any Separable Portion.

10.4.2 When the Contract Works or any Separable Portion are believed to qualify for the issue of a certificate of Practical Completion the Contractor shall notify the Engineer accordingly.



10.4.3 Within five Working Days of receipt of such notice or as soon as practicable thereafter the Engineer shall inspect the Contract Works or Separable Portion and shall thereupon either:

- (a) Issue a certificate of Practical Completion stating the date and time at which the Contract Works or Separable Portion were so completed; or
- (b) Give the Contractor written notice of the work to be altered or completed in order to qualify for a certificate of Practical Completion.

10.4.4 On satisfactory completion of any work required under 10.4.3 the Engineer shall issue a certificate of Practical Completion stating the date and time at which the Contract Works or Separable Portion were so completed.

10.4.5 If required by the Special Conditions, prior to the Engineer issuing a certificate of Practical Completion, the Contractor shall provide to the Engineer:

- (a) A producer statement in the form set out in the Sixth Schedule or other form(s) as noted in the Special Conditions; and
- (b) As-built drawings and operation and maintenance manuals in draft form as required by 5.18.3(a).

10.5 Damages for late completion

10.5.1 The sum stated as liquidated damages in the Special Conditions shall be paid by the Contractor to the Principal for the period between the Due Date for Completion of the Contract Works or any Separable Portion and the time of Practical Completion. The liquidated damages for any Separable Portion shall not apply in respect of any period for which liquidated damages are applied in respect of the whole of the Contract Works.

10.5.2 If, before the time of Practical Completion of the Contract Works or any Separable Portion of which notice has been given in the Special Conditions, the Principal shall occupy or use any portion thereof under 10.7.2, the amount of any liquidated damages that would otherwise be payable in respect of the period between the Due Date for Completion and the time of Practical Completion shall be reduced by such proportion as may be equitable. The amount of such proportional reduction shall be determined by the Engineer.

10.5.3 The Principal may without prejudice to any other method of recovery deduct the amount of liquidated damages from any monies payable to the Contractor in terms of the contract and, for that purpose, give notice to the Engineer in accordance with 12.2.3 and 12.5.2 requiring the deduction. Payment or deduction of liquidated damages for late completion shall not relieve the Contractor from any of its other liabilities or obligations under the contract.

10.6 Bonus for early completion

10.6.1 Where provided in the Special Conditions a bonus shall be paid by the Principal to the Contractor for the period between the time of Practical Completion and the Due Date for Completion of the Contract Works or any Separable Portion.

10.7 Occupancy by the Principal

10.7.1 The Principal shall be entitled to the occupancy or use by itself or its nominee of the Contract Works or any Separable Portion once a certificate of Practical Completion has been issued.

10.7.2 The Principal shall be entitled prior to the issue of a certificate of Practical Completion to the occupancy or use by itself or its nominee of any portion of the Contract Works which is sufficiently completed to allow such occupancy or use without undue interference with the work of the Contractor. Such occupancy or use shall be subject to the consent of the Contractor and to the agreement of the Principal and the Contractor that the portion of the Contract Works shall be a Separable Portion. The Contractor shall not unreasonably withhold its consent and its agreement to the portion of the Contract Works being a Separable Portion.

10.7.3 Occupancy or use under 10.7.1 or 10.7.2 shall not affect any of the obligations of the Contractor.

10.7.4 If by reason of occupancy or use under 10.7.1 or 10.7.2 the Contractor suffers delay in the completion of the Contract Works or incurs additional Cost, which in either case is not otherwise provided for in the Contract Documents, then the effect of the occupancy shall be treated as a Variation.

SECTION 11 – Defects Liability

11.1 Period of Defects Liability

11.1.1 The Period of Defects Liability for the Contract Works or any Separable Portion shall commence on the date of Practical Completion of the Contract Works or Separable Portion. The Period of Defects Liability shall be three Months unless some other period is stated in the Special Conditions.



11.2 Defects liability

11.2.1 The Contractor shall remedy defects arising before the end of the Period of Defects Liability in the Contract Works from defective workmanship or Materials. The Engineer shall give notice in writing to the Contractor during the Period of Defects Liability or within five Working Days thereafter of defects to be remedied.

11.2.2 The Contractor shall not be liable for fair wear and tear during the Period of Defects Liability.

11.2.3 If the Contractor fails to complete the remedial works within a reasonable time the Principal shall be entitled, after giving the Contractor notice, to employ others to carry out such remedial work. The Principal shall be entitled to recover the Cost of such work from the Contractor.

11.2.4 The Engineer may direct the Contractor to search for any defect, prior to the expiry of the Period of Defects Liability. Unless the defect is one which the Contractor is liable to rectify, the search and any remedial work shall be treated as if they were Variations.

11.2.5 The Contractor shall have the right of entry on to the Site at reasonable times for the purpose of searching for defects or carrying out remedial work.

11.2.6 Outstanding work under 5.6.3, 5.18 and 10.4.1 shall be deemed to be remedial work for the purposes of 11.2.3 and 11.2.5.

11.3 Defects Liability Certificate

11.3.1 The Engineer shall issue to the Principal and to the Contractor a Defects Liability Certificate for the Contract Works or any Separable Portion when in respect of the Contract Works or that Separable Portion:

- (a) The Period of Defects Liability under 11.1.1 has expired; and
- (b) The Contractor has remedied any minor omissions or minor defects under 10.4.1 and any defects under 11.2.

11.3.2 If required by the Special Conditions, prior to the Engineer issuing a Defects Liability Certificate the Contractor shall provide to the Engineer:

- (a) A producer statement in the form set out in the Sixth Schedule, and other forms as noted in the Special Conditions; and
- (b) As-built drawings and operation and maintenance manuals as required by 5.18.3(d).

11.4 Effect of Defects Liability Certificate

11.4.1 Notwithstanding the issue of the Defects Liability Certificate, the Contractor shall remain liable for the fulfilment of any obligation of the Contractor under the Contract Documents which then remains unperformed or not properly performed.

11.5 Guarantees

11.5.1 The Contractor shall provide the Principal with written guarantees where required by the Special Conditions.


11.5.2 Such guarantees shall be supplied to the Engineer in writing before the Engineer issues the Defects Liability Certificate and shall be in the form required by the Special Conditions.

SECTION 12 – Payments

12.1 Contractor's payment claims


12.1.1 The Contractor may submit to the Engineer payment claims under the contract. Unless otherwise provided in the Contract Documents such payment claims shall be submitted in respect of work carried out during periods of not less than one Month.

12.1.2 The Contractor's payment claims shall:

- 
- (a) Identify the construction contract and the relevant period to which the payment claim relates;
 - (b) Identify the Contract Works to which the payment claim relates, the claimed amount in respect of those Contract Works and the manner in which the claimed amount has been calculated, in particular:
 - (i) The estimated extent and value of the Contract Works, excluding Variations, which have been carried out;
 - (ii) The estimated extent and value of all work done or other Cost which is claimed in respect of Variations;
 - (iii) The estimated extent and value of Materials delivered to the Site which are intended to be incorporated in the Contract Works but have not yet been so incorporated;
 - (iv) Any advances for Temporary Works or Plant or for Materials not yet on Site for which payment is provided in the Special Conditions;
 - (v) The estimated value of Cost fluctuations for which payment is provided under 12.8;
 - (vi) The estimated amount of any bonus to which the Contractor claims to be entitled under 10.6.
 - (c) Indicate the due date for payment which shall be 17 Working Days after the date of service of the payment claim;
 - (d) Where the payment claim is intended to be a payment claim under the Construction Contracts Act 2002, state that it is made under this Act; and
 - (e) Where the payment claim is intended to be a payment claim under the Construction Contracts Act 2002, and the Principal is a "residential occupier" under this Act, include the information set out in Schedule 1, Form 1 of the Construction Contracts Regulations 2003.

12.1.3 The Contractor shall send the original of each payment claim to the Principal and a duplicate copy to the Engineer.

12.1.4 The Engineer shall assess each of the Contractor's payment claims and may amend them as necessary to comply with the terms of the contract and his or her valuation of the work carried out.



12.2 Progress Payment Schedules

12.2.1 Within seven Working Days after the receipt of the Contractor's payment claim the Engineer shall issue a certificate in the form of a provisional Progress Payment Schedule to the Principal and a duplicate copy to the Contractor which shall:

- (a) Identify the Contractor's payment claim to which it relates;
- (b) Show the sum certified by the Engineer which shall comprise the value of the Contractor's payment claim amended as necessary under 12.1.3 and 12.3, less previous payments certified, and less any other deductions which are required by the terms of the contract or by law;
- (c) Show the manner in which the sum under 12.2.1(b) has been calculated; and
- (d) Set out the reason or reasons for any difference between the sum certified by the Engineer under 12.2.1(b) and the claimed amount.

12.2.2 If any item of the Contractor's progress payment claim cannot be verified within the prescribed time, the Engineer shall within that time certify under 12.2.1 a reasonable estimate of the amount due.

12.2.3 Within three Working Days after the receipt of the Engineer's certificate under 12.2.1 the Principal may notify the Engineer of any amendments or deductions that the Principal requires to be made to or from the sum certified by the Engineer. Such notice shall show the manner in which any such amendments or deductions have been calculated, and the reasons for any such amendments or deductions.

12.2.4 Within two Working Days of receiving any notice from the Principal under 12.2.3, and in any event no later than 12 Working Days after the receipt of the Contractor's payment claim, the Engineer (for this purpose acting as agent of the Principal) shall issue a Progress Payment Schedule, which shall contain the information stated under 12.2.1 and shall also show:

- (a) Any amendments or deductions which the Principal has notified under 12.2.3, but which are not included in the sum certified by the Engineer under 12.2.1(b) (and shall not be deemed to be amounts certified by the Engineer), including the manner in which any such amendments or deductions have been calculated, and the reasons for any such amendments or deductions; and
- (b) The scheduled amount which shall be the sum certified by the Engineer under 12.2.1(b) as amended by any amendments or deductions shown under 12.2.4 (a).

12.2.5 The Engineer shall send the original of each Progress Payment Schedule to the Principal and a duplicate copy of each Progress Payment Schedule to the Contractor.

12.2.6 Every scheduled amount under 12.2.4 (b) as shown in a Progress Payment Schedule together with the amount of goods and services tax payable shall be paid by the Principal to the Contractor within five Working Days of the date of the Progress Payment Schedule.

12.2.7 Failure by the Principal to notify the Engineer under 12.2.3 that it requires any amendments or deductions, or failure to deduct any such sums from the amount paid to the Contractor under 12.2.6, shall not prevent the Principal from requiring

any such amendments or deductions to be included in subsequent Payment Schedules, or prejudice any other method of recovery of such sums or the Principal's right to dispute the sum certified by the Engineer.

12.3 Retention monies

12.3.1 The Principal shall, in accordance with the Progress Payment Schedule, retain out of the amount which would otherwise be payable such retention monies as are required under the Special Conditions in respect of the whole of the Contract Works or any Separable Portion. The amount to be retained in respect to the Contract Works shall be reduced upon the completion of any Separable Portion under 10.7.2 by such percentage as shall be equitable. The percentage reduction shall be determined by the Engineer.

12.3.2 The monies retained, less any deductions which the Principal is entitled to make, shall be paid to the Contractor as follows:

- (a) By payment, as part of the first progress payment after the issue of the certificate of Practical Completion for the whole of the Contract Works or for the Separable Portion, of any amount in excess of the defects liability retention specified in the Special Conditions;
- (b) By payment, as part of the first and any subsequent progress payment after the end of the Period of Defects Liability for the whole of the Contract Works or for the Separable Portion, of the defects liability retention less the Engineer's assessment of the value of the Contract Works remaining to be completed in accordance with 11.2 at the time of the progress certification. The assessed value of such remaining Contract Works shall be the assessed Cost to the Principal of making good those omissions and defects in accordance with 11.2.3;
- (c) By payment of any remaining defects liability retention 10 Working Days after the date of the Defects Liability Certificate in respect of the whole of the Contract Works or of the Separable Portion.

12.3.3 Unless otherwise provided in the Special Conditions, the Contractor may provide a bond in lieu of retentions in addition to any bond required under 3.1. The bond shall be in an amount equal to the limit of total sums required to be retained under 12.3.1. Where such a bond is provided, 12.3.1 and 12.3.2 shall not apply. The bond shall be in the form set out in the Fifth Schedule and shall be executed by the Contractor and by the surety named in the tender or approved by the Principal. The bond shall be released upon issue of the Defects Liability Certificate.

12.4 Final payment claim

12.4.1 Not later than two Months after the expiry of the Period of Defects Liability or within such further time as the Engineer may reasonably allow the Contractor shall submit to the Engineer a final account of all the Contractor's payment claims in relation to the contract. This account shall be endorsed "final payment claim" and signed by the Contractor, and shall:

- (a) Identify the construction contract and the relevant period or periods to which the final payment claim relates, which shall cover the period up until completion of all of the Contractor's obligations under the contract;
- (b) Identify the Contract Works to which the final payment claim relates (which shall include all Contract Works yet to be completed by the Contractor or paid for by the Principal);

- (c) Show the claimed amount in respect of those Contract Works, the amount or amounts claimed by the Contractor in respect of all outstanding claims, and the manner in which all such sums have been calculated;
- (d) Indicate the due date for payment which shall be 10 Working Days after the date of any Engineer's certificate issued under 12.5.4 pending the issue of the Final Payment Schedule in accordance with 12.5.8;
- (e) Where the final payment claim is intended to be a payment claim under the Construction Contracts Act 2002, state that it is made under this Act; and
- (f) Where the final payment claim is intended to be a payment claim under the Construction Contracts Act 2002, and the Principal is a "residential occupier" under this Act, include the information set out in Schedule 1, Form 1 of the Construction Contracts Regulations 2003.

12.4.2 The Contractor shall send the original of the final payment claim to the Principal and a duplicate copy to the Engineer.

12.4.3 Submission of the final payment claim by the Contractor shall be conclusive evidence that the Contractor has no outstanding claim against the Principal except as contained therein, and except for any item which has been referred to arbitration under Section 13 or to Adjudication. The Principal shall not be liable to the Contractor for any matter in connection with the contract unless contained within the final payment claim but this shall not preclude the later correction of any clerical or accounting error.

12.5 Final Payment Schedule

12.5.1 As soon as practicable after receipt of the Contractor's final payment claim and the issue of the Defects Liability Certificate, the Engineer shall issue a certificate in the form of a provisional Final Payment Schedule to the Principal and a duplicate copy to the Contractor which shall:

- (a) Identify the Contractor's payment claim to which it relates;
- (b) Show the sum certified by the Engineer which shall comprise the value of the Contractor's payment claim amended as necessary under 12.1.4, less previous payments certified, and less any other deductions which are required by the terms of the contract or by law;
- (c) Show the manner in which the sum under 12.5.1(b) has been calculated; and
- (d) Set out the reason or reasons for any difference between the sum certified by the Engineer under 12.5.1(b) and the claimed amount.

12.5.2 Within ten Working Days after the receipt of the Engineer's certificate under 12.5.1 the Principal may notify the Engineer of any amendments or deductions that the Principal requires to be made to or from the sum certified by the Engineer. Such notice shall show the manner in which any such amendments or deductions have been calculated, and the reasons for any such amendments or deductions.

12.5.3 Within five Working Days of receiving any notice from the Principal under 12.5.2, and in any event no later than 15 Working Days after issue to the Principal of the Engineer's certificate under 12.5.1, the Engineer (for this purpose acting as agent of the Principal) shall issue a Final Payment Schedule, which shall contain the information stated under 12.5.1, and shall also show:

- (a) Any amendments or deductions which the Principal has notified under 12.5.2, but which are not included in the sum certified by the Engineer under 12.5.1(b) (and shall not be deemed to be amounts certified by the Engineer), including the manner in which any such amendments or deductions have been calculated, and the reasons for any such amendments or deductions; and
- (b) The scheduled amount which shall be the sum certified by the Engineer under 12.5.1(b) as amended by any amendments or deductions shown under 12.5.3(a).

12.5.4 Should the issue of the Final Payment Schedule be delayed by more than one Month after the receipt by the Engineer of the Contractor's final payment claim, then the Engineer shall immediately issue a statement of his or her reasons why such a Final Payment Schedule cannot be issued or otherwise dealt with in accordance with the contract. The Engineer shall issue further explanatory statements at Monthly intervals thereafter until the issue of the Final Payment Schedule. At the time of issuing any explanatory statement under this clause, the Engineer shall issue a certificate in the form of a provisional Progress Payment Schedule to the Principal for all amounts due under the contract which can reasonably be certified at that time, and the process under 12.2.1 to 12.2.7 shall apply.

12.5.5 If the Contractor fails to submit its final account as stipulated in 12.4.1, the Engineer may issue a certificate in the form of a provisional Final Payment Schedule for such amount, if any, as he or she may assess and the process under 12.5.1 to 12.5.3 shall apply.

12.5.6 If the Engineer gives a decision under 13.2 which amends the Final Payment Schedule, then the Engineer shall, as soon as practicable, issue a further certificate in the form of a provisional Final Payment Schedule incorporating the amendment, and the process under 12.5.1 to 12.5.3 shall apply.

12.5.7 The Engineer shall send the original of the Final Payment Schedule to the Principal and a duplicate copy of the Final Payment Schedule to the Contractor.

12.5.8 The scheduled amount under 12.5.3(b) as shown in the Final Payment Schedule together with the amount of goods and services tax payable shall be paid by the Principal to the Contractor within 10 Working Days of the date of the Final Payment Schedule.

12.5.9 Failure by the Principal to notify the Engineer under 12.5.2 that it requires any amendments or deductions, or failure to deduct any such sums from the amount paid to the Contractor under 12.5.8, shall not prejudice any other method of recovery of such sums or the Principal's right to dispute the sum certified by the Engineer.

12.6 Effect of Final Payment Schedule

12.6.1 Upon the issue of the Final Payment Schedule the Principal shall cease to be liable to the Contractor in respect of any of the Principal's obligations under the Contract Documents except for the Principal's obligations:

- (a) To pay the scheduled amount shown as payable in the Final Payment Schedule;
- (b) To pay any retention monies under 12.3 which are or become payable;
- (c) To pay any monies which are or become payable under Section 13;
- (d) To pay interest which is or becomes payable under 12.7;
- (e) To pay any scheduled amounts shown in any Payment Schedule issued prior to the issue of the Final Payment Schedule but unpaid at that time.

12.7 Interest

12.7.1 The Principal shall pay the Contractor interest compounding Monthly on all scheduled amounts shown as payable in any Payment Schedule and remaining unpaid after the expiry of the time provided for payment.

12.7.2 In the event of unreasonable delay in the issue of a Payment Schedule for any payment claim or part of a payment claim which is later the subject of a Payment Schedule, the Contractor shall be entitled to interest compounding Monthly on the scheduled amount from the date on which it would have been payable if the delay had not occurred down to the date of payment.

12.7.3 In the event of unreasonable deduction of any amount from any Contractor's payment claim or final payment claim being made in any Payment Schedule, and where such amount is later paid by the Principal or found by an adjudicator to be payable by the Principal, the Contractor shall be entitled to interest compounding Monthly on that amount from the date on which it would have been payable if the unreasonable deduction had not occurred down to the date of payment.

12.7.4 The rate of interest shall be equal to one and a quarter times the average Monthly interest rate as certified by a chartered accountant or trading bank manager, which is currently payable or which would be payable by the Contractor for overdraft facilities.

12.7.5 The right to interest shall be additional to any other remedy to which the Contractor may be entitled at law.

12.8 Cost fluctuations

12.8.1 If after the date of closing of tenders the making of any statute, regulation or bylaw, or the imposition by Government or by a local authority of any royalty, fee or toll increases or decreases the Cost to the Contractor of performing the contract, such increase or decrease not being otherwise provided for in the Contract Documents, the effect shall be treated as a Variation.

12.8.2 A Cost fluctuation adjustment shall be paid in accordance with the provisions of Appendix A unless otherwise provided in the Special Conditions.

12.8.3 Payment claims for Cost fluctuation adjustments in accordance with this clause 12.8 may be submitted by the Contractor each Month and a detailed summary of all such payment claims shall be submitted with the final payment claim.

12.9 Provisional Sums

12.9.1 Provisional Sums may be provided for work which is to be executed by the Contractor or by a Nominated Subcontractor or for any item the Cost of which is to be borne by the Contractor. Such sums shall be expended only on the instructions of the Engineer and as provided below.

12.9.2 The inclusion in the Contract Documents of any Provisional Sum shall not:

- (a) Confer on the Contractor or its Subcontractor the right to perform the work to which the sum relates, or to have the work performed by a Nominated Subcontractor; nor
- (b) Confer on the Principal the right to carry out the work or to have it carried out by others.

12.9.3 The amount payable to the Contractor in respect of work covered by a Provisional Sum shall be varied by the substitution for the Provisional Sum of the following:

- (a) Where work to which the Provisional Sum relates has been carried out by the Contractor, the value of the work so executed valued as a Variation; or
- (b) Where work to which the Provisional Sum relates has been carried out by a Nominated Subcontractor, the amount payable to that Nominated Subcontractor under the terms of the subcontract approved by the Engineer together with a reasonable allowance for the Contractor's expense and profit on the work to which the Provisional Sum relates.

12.10 Prime Cost Sums

12.10.1 Prime Cost Sums may be provided for Materials to be supplied by the Contractor or by a Nominated Subcontractor for incorporation into the Contract Works, and for which freedom of selection by the Engineer is reserved. Such sums shall be expended only on the instructions of the Engineer as provided below.

12.10.2 The Contractor shall obtain quotations and samples for the Materials covered by the Prime Cost Sums as required by the Engineer and submit them to the Engineer for his or her instructions.

12.10.3 The amount payable to the Contractor in respect of Materials covered by a Prime Cost Sum shall be varied by the substitution for the Prime Cost Sum of the following:

- (a) The net purchase price payable by the Contractor on the instructions of the Engineer (without deduction of any cash discount for early payment), together with
- (b) A reasonable allowance for the Contractor's expense and profit on the Materials to which the Prime Cost Sum relates.

12.11 Contingency sums

12.11.1 Contingency sums may be provided for any work which may be executed by the Contractor, but the expenditure on which is unknown at the time of calling tenders. Such sums shall be expended only on the written instruction of the Engineer.

12.11.2 All work carried out under a contingency sum shall be a Variation. The contingency sum shall be deducted from the Contract Price.

12.12 Goods and services tax

12.12.1 This clause 12.12 shall only apply where both the Principal and the Contractor are registered under the Goods and Services Tax Act 1985.

12.12.2 Any payment claim or final payment claim prepared by the Contractor shall not be a GST Invoice. Unless stated otherwise in the Special Conditions, when the Engineer issues a Progress Payment Schedule under 12.2.4 or a Final Payment Schedule under 12.5.3, he or she shall on behalf of the Principal ensure that the Payment Schedule is in the form required to constitute a GST Invoice.



SECTION 13 – Disputes

13.1 General

13.1.1 No decision, valuation, or certificate of the Engineer shall be questioned or challenged more than three Months after it has been given or more than one Month after the date on which any relevant Adjudicator's Determination is given to the parties, whichever is the later, unless notice has been given to the Engineer within that time. This subclause 13.1.1 shall not apply to a Progress Payment Schedule.

13.1.2 Every dispute or difference concerning the contract which is not precluded by the provisions of 12.4, 12.6 or 13.1.1 shall be dealt with under the following provisions of this Section.

13.1.3 The Principal and the Contractor may at any stage agree to suspend any dispute resolution under this Section 13 due to any Adjudication proceedings, but in the absence of any such agreement the provisions of Section 13 shall continue to apply and neither party shall be entitled to suspend or delay any dispute resolution under this Section 13 due to any Adjudication proceedings.



13.2 Engineer's review

13.2.1 Every dispute or difference under 13.1.2 shall be referred to the Engineer not later than one Month after the issue of the Final Payment Schedule or more than one Month after the date on which any relevant Adjudicator's Determination is given to the parties, whichever is the later. The Engineer shall give his or her decision in writing. Except in the case of a decision under 13.2.4 the Engineer may correct or modify his or her decision by a subsequent decision in writing.

13.2.2 The Engineer or the Contractor may before or after the Engineer has given a decision (other than a decision under 13.2.4) ask for a meeting, and in such case the Engineer and a representative of the Contractor shall meet as soon as practicable and endeavour to resolve the dispute amicably.

13.2.3 The Engineer and the Contractor may with the consent of the Principal jointly submit the dispute or any question arising in connection with it to an agreed expert, with a request to make a recommendation to assist them to resolve the matter. The Principal and the Contractor shall each pay one half of the costs of the agreed expert.

13.2.4 Unless the dispute or any question arising in connection with it has been referred under 13.2.3 and is awaiting a recommendation from the agreed expert, the Engineer may, at any time, in respect of any dispute or difference under 13.2.1 give a decision (in this Section called "a formal decision") which states expressly that it is given under this subclause 13.2.4. The Engineer shall give a formal decision on the matter within 20 Working Days of receiving notice in writing from the Principal or the Contractor requiring him or her to give a formal decision and expressly referring to this subclause 13.2.4. Upon making a formal decision the Engineer shall forthwith send copies of it to both the Principal and the Contractor. The Engineer's formal decision shall, subject to 13.3 and 13.4 or any Adjudication proceedings, be final and binding.

13.3 Mediation

13.3.1 If either:

- (a) The Principal or the Contractor is dissatisfied with the Engineer's decision under 13.2.4; or
- (b) No decision is given by the Engineer within the time prescribed by 13.2.4;

then either the Principal or the Contractor may by notice require that the matter in dispute be referred to mediation.

13.3.2 A notice requiring mediation shall be in writing and shall be given by the Principal or the Contractor to the other of them within one Month after the time prescribed for the giving of the Engineer's decision under 13.2.4.

13.3.3 Where a request for mediation is made and is acceded to by the other party then the Principal and the Contractor shall endeavour to agree on a mediator and shall submit the matter in dispute to him or her. The mediator shall discuss the matter with the parties and endeavour to resolve it by their agreement. All discussions in mediation shall be without prejudice, and shall not be referred to in any later proceedings. The Principal and the Contractor shall bear their own Costs in the mediation, and shall each pay half the costs of the mediator.

13.3.4 The Principal and the Contractor may at any stage agree to invite the mediator to give a decision to determine the matter. The mediator's decision shall in such case be binding on both parties unless within 10 Working Days either party notifies the other in writing that it rejects the mediator's determination.

13.3.5 If:

- (a) Mediation has been requested, but has not been agreed upon within 10 Working Days of the request; or
- (b) The parties have agreed upon mediation but have been unable within 10 Working Days of such agreement to agree upon a mediator; or
- (c) No agreement has been reached in mediation and no determination has been issued by the mediator within two Months of the request for mediation, or within such further time as the parties may agree;
- (d) Either party has within the prescribed time rejected the mediator's determination;

then either the Principal or the Contractor may by notice require that the matter in dispute be referred to arbitration.

13.4 Arbitration

13.4.1 If either:

- (a) The Principal or the Contractor is dissatisfied with the Engineer's decision under 13.2.4; or
- (b) No decision is given by the Engineer within the time prescribed by 13.2.4;

then either the Principal or the Contractor may by notice require that the matter in dispute be referred to arbitration.

13.4.2 A notice requiring arbitration shall be in writing and shall be given by the Principal or the Contractor to the other of them:

- (a) Within one Month after the Engineer's formal decision under 13.2.4 or after the time prescribed for the giving of the Engineer's formal decision, whichever shall be the earlier; or
- (b) Within one Month after the happening of the event described in 13.3.5 which gives rise to the right to arbitration; or
- (c) Where the Engineer has issued a formal decision under 13.2.4, or an event has happened under 13.3.5 which gives rise to the right to arbitration, and a relevant Adjudicator's Determination is subsequently given to the parties, within one Month after any such determination is given.

13.4.3 The dispute shall be referred to a sole arbitrator. If the parties cannot agree upon the arbitrator the provisions of the Arbitration Act 1996 shall apply.

13.4.4 The arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction, certificate, valuation of the Engineer or any Payment Schedule and to award upon all questions referred to him or her. Neither party to the arbitration shall be limited to the evidence or arguments put before the Engineer for his or her review or put before a mediator or adjudicator or included in any payment claim or Payment Schedule.

13.4.5 No decision given by the Engineer in accordance with his or her duties under the contract shall disentitle him or her from being called as a witness and giving evidence before any hearing on any matter relevant to the dispute.

13.4.6 Where the matter has been referred to mediation the mediator shall not be called by either party as a witness. No reference shall be made to the determination, if any, issued by the mediator in respect of the matter in dispute.

13.4.7 The award in the arbitration shall be final and binding on the parties.

13.5 Suspension during dispute

13.5.1 No dispute proceeding shall entitle the Contractor to suspend the execution of the Contract Works, except in accordance with the instructions of the Engineer.

13.5.2 No Payment Schedule nor payment due or payable shall be withheld on account of dispute proceedings. Where any item is in dispute, the Engineer shall certify such amount as is properly payable according to his or her view as to the terms of the contract and his or her valuation in accordance with 12.1.3 and include such amount in a certificate in the form of a provisional Progress Payment Schedule and the process under 12.2.1 to 12.2.7 shall apply. No payment due under Section 12 shall be withheld by reason of the existence of any dispute.

13.5.3 Nothing in this clause 13.5 shall affect the Contractor's rights under the Construction Contracts Act 2002.

13.6 Award of interest

13.6.1 The arbitrator may award interest on the whole or any part of any sum which:

- (a) Is awarded to any party, for the whole or any part of the period up to the date of the award; or
- (b) Is in issue in the arbitral proceedings but is paid before the date of the award, for the whole or any part of the period up to the date of payment.

SECTION 14 – Frustration and Default

14.1 Frustration

14.1.1 In the event that either the Principal or the Contractor considers that the contract has become impossible of performance or has been otherwise frustrated, one may notify the other that it considers the contract to be terminated. If the other party agrees, or in the event of disagreement if it is so determined by the Engineer or by mediation or arbitration under Section 13, then 14.1.2 shall apply.

14.1.2 The Engineer shall certify and the Principal shall pay the Contractor:

- (a) The value of the work carried out at the date of termination less the amounts previously paid;
- (b) The Cost of Materials ordered for the Contract Works which have been delivered to the Contractor or of which the Contractor is legally obliged to accept delivery, and which the Contractor delivers to the Principal. These Materials shall become the property of the Principal upon delivery to him;
- (c) Cost fluctuation adjustments due and payable up to the date of termination;
- (d) Fair compensation to the Contractor for any Cost which is included in a rate in the Schedule of Prices to the extent that the termination of the contract causes an under-recovery of that Cost;
- (e) Any Cost reasonably incurred by the Contractor in the expectation of completing the Contract Works in so far as such Cost is not covered by other payments under this clause 14.1;
- (f) The Cost of any works necessitated by the removal of Contractor's Plant and the carrying out of the Engineer's instructions for the making safe of the Contract Works;
- (g) Any other Costs resulting from the termination as are reasonable to compensate the Contractor for disruption and are not otherwise provided in the Contract Documents.

14.2 Default by the Contractor

14.2.1 The Principal may at its option after giving notice to the Contractor either terminate the contract or resume possession of the Site in the event of:

- (a) The Contractor failing to execute the Contract Agreement under 2.7 or the Contractor's bond under 3.1 where required by the Contract Documents; or
- (b) The Contractor subletting the whole or substantially the whole of the Contract Works without the consent in writing of the Principal; or
- (c) The Engineer certifying in writing to the Principal that in his or her opinion the Contractor has abandoned the contract or is persistently, flagrantly or wilfully neglecting to carry out its obligations under the contract;

and the Contractor's default has not been remedied within 10 Working Days of receiving the notice.

14.2.2 In the event of the Contractor:

- (a) Becoming bankrupt; or
- (b) Going into liquidation; or
- (c) Having a receiver or statutory manager appointed;

and the assignee, liquidator, receiver or statutory manager fails within 10 Working Days to make arrangements satisfactory to the Principal for the execution of the Contract Works, the Principal may at its option, after giving notice to the Contractor, either terminate the contract or resume possession of the Site.

14.2.3 If the Principal elects to resume possession of the Site under the provisions of 14.2.1 or 14.2.2 it may:

- (a) Forthwith expel the Contractor without terminating the contract or relieving the Contractor from any of its obligations under the contract; and
- (b) Complete and remedy defects in any part of the Contract Works remaining to be completed and for that purpose may let contracts for such work or employ any Persons other than the Contractor; and
- (c) Take possession of, use and permit other Persons to use Materials, Plant, Temporary Works and other things which are on the Site owned by the Contractor and are necessary for completing and remedying defects in the Contract Works; and
- (d) Require the Contractor to arrange within 10 Working Days the assignment to the Principal or its nominee without payment the benefit of any agreement for the supply of Materials or execution of work under the contract.

In any such case the Contractor shall not be entitled to any further payment until the completion of the Contract Works.

14.2.4 On completion of the Contract Works, any Plant, Temporary Works and surplus Materials of which the Principal has taken possession shall be handed back to the Contractor. The Engineer shall enquire into the Cost to the Principal of completing the Contract Works and certify accordingly. Should the amount certified exceed the Cost to the Principal had the Contract Works been completed by the Contractor, the difference between the two amounts shall be certified by the Engineer and paid by the Contractor to the Principal. Should the amount certified be less than the Cost to the Principal had the Contract Works been completed by the Contractor, the difference between the two amounts shall be paid by the Principal to the Contractor.

14.2.5 If the Principal elects to terminate the contract under 14.2.1 it shall give written notice to the Contractor of its election. The contract shall thereupon be terminated. The Principal may thereupon expel the Contractor from the Site and may take all or any of the further steps in 14.2.3(b), (c) and (d), and may claim damages for the Contractor's breach of contract. If the Principal completes the Contract Works or arranges for them to be completed then 14.2.4 shall apply, but any amount payable to the Contractor thereunder shall be subject to any damages to which the Principal shall be entitled as a result of the Contractor's breach. If the Special Conditions provide for liquidated damages for late completion and the completion of the Contract Works is delayed by reason of the Contractor's breach and the termination of the contract then the Contractor shall be liable for the

liquidated damages calculated from the Due Date for Completion which would have applied if the contract had not been terminated to the actual date of Practical Completion of the Contract Works.

14.3 Default by the Principal

14.3.1 In the event of the Principal:

- (a) Failing to execute the Contract Agreement under 2.7 or the Principal's bond under 3.2 where required by the Contract Documents; or
- (b) Failing to pay the Contractor the amount due under any Payment Schedule; or
- (c) Obstructing the issue of any Payment Schedule or any certificate; or
- (d) Becoming bankrupt or going into liquidation or having a receiver or statutory manager appointed and the assignee, liquidator, receiver or statutory manager as the case may be failing within 10 Working Days to make arrangements satisfactory to the Contractor for continued payment of amounts due under the contract; or
- (e) Abandoning the contract; or
- (f) Persistently, flagrantly or wilfully neglecting to carry out its obligations under the contract;

the Contractor may notify the Engineer of the default.

14.3.2 If the Engineer fails to issue a Progress Payment Schedule within the time provided in 12.2.4, the Contractor may notify the Principal and the Engineer of the failure. If the Payment Schedule is not issued within a further five Working Days after the notice, the Principal shall be deemed to be in default.

14.3.3 If the Principal's default is not remedied within 10 Working Days after the giving of such notice under 14.3.1 or 14.3.2 the Contractor may require the Engineer to suspend the progress of the whole of the Contract Works under 6.7. Following such suspension the Contractor shall be entitled without prejudice to any other rights and remedies to terminate the contract by giving notice in writing to the Principal.

14.3.4 In the event of such termination the Principal, and its surety if 3.2 applies, shall be under the same obligations to the Contractor in regard to payment as apply under 14.1.2 where the contract has been frustrated and shall be liable to pay such other compensation, if any, by way of damages as the Contractor may be entitled at law to recover.

SECTION 15 – Service of Notices

15.1 General

15.1.1 The Principal, Contractor or Engineer may require that any notice or other communication under the contract be given in writing.

15.1.2 Any document which is to be served upon the Principal, the Contractor or the Engineer under the contract shall be sufficiently served if it is handed to that Person, or to their appointed representative, or delivered to their address as stated in the Contract Documents or as subsequently advised in writing. Except for payment claims, or for a notice given to the Principal under 13.3, 13.4 or 14.3.3, or any notice under the Construction Contracts Act 2002, every notice to the Principal shall be sufficiently given if it is given to the Engineer.

15.1.3 Proof that a document has been sent by prepaid post in a correctly addressed envelope shall be prima facie evidence of delivery in the ordinary course of post.

15.1.4 A copy of any notice by the Principal to the Contractor, or by the Contractor to the Principal shall at its time of issue also be delivered to the Engineer.

APPENDIX A – COST FLUCTUATION ADJUSTMENT BY INDEXATION

A1

The provisions of this Appendix shall apply unless otherwise specifically provided in the Special Conditions.

A2

The amounts payable by the Principal to the Contractor under the contract shall be adjusted up or down by amounts calculated in accordance with the following formula:

$$C = V \left[\frac{0.4(L - L')}{L'} + \frac{0.6(M - M')}{M'} \right]$$

where

C = Cost fluctuation adjustment for the quarter under consideration,

V = Valuation of work shown as payable in any Payment Schedule in respect of work having been completed during the quarter under consideration subject to A3, but without deduction of retentions and excluding the Cost fluctuation adjustment,

L = Labour Cost Index; Private Sector: Industry Group – Construction: All Salary and Wage Rates: published by Statistics New Zealand, for the quarter under consideration,

L' = Index as defined under L but applying for the quarter during which tenders close,

M = Producers Price Index; Inputs: Industry Group – Construction, published by Statistics New Zealand applying for the quarter under consideration,

M' = Index as defined under M but applying for the quarter during which tenders close.

A3

For the purpose of calculating the Cost fluctuation adjustment, any Daywork, Prime Cost Sums, Variations and other payment items which are based on actual Cost or current prices and any advances shall be excluded from the Engineer's valuation.

A4

No other Cost fluctuation adjustment will be made by reason of any inaccuracy in the proportions of labour and Material Costs assumed in the above formula.

A5

The Contractor shall not be entitled to claim or have deducted any Cost fluctuation adjustment for any further changes in indices which occur after the Due Date for Completion of the contract.

A6

The indices to be used in the calculation of fluctuation shall be those first published by Statistics New Zealand for the appropriate quarter.

A7

Where indices for the quarter have not yet been published, interim payments will be made on the basis of the indices for the most recent quarter for which indices are available.

A8

If at any time either of the indices referred to in A2 are no longer published by Statistics New Zealand, or if the basis of either index is materially changed, the adjustment shall thereafter be calculated by using such other index, or in such other manner, as will fairly reflect the changes as previously measured by that index.

APPENDIX B – CONSTRUCTION CONTRACTS IN PUBLIC ROADS

B1 Interpretation

Wherever the phrase “possession of the Site” appears in the General Conditions or Special Conditions, it shall mean only the non-exclusive right of occupancy of the Site. Except as provided in the Contract Documents, the Principal, the Engineer and members of the public may use the Site and Contract Works pursuant to their normal right of passage and, in the case of the Principal and Engineer, pursuant to the rights of access under this contract. The rights of access by the public shall be subject only to such reasonable restriction made necessary by the conduct of the Contract Works from time to time.

B2 Engineer’s powers and responsibilities

The Engineer’s power on behalf of the Principal to take emergency action under 6.8.1 shall also be exercisable in the event of failure by the Contractor to comply with the provisions of the contract in relation to traffic control or safety requirements, subject to the other provisions of 6.8.1 and to 6.8.2 and 6.8.3.

B3 Time for completion

Subclause 10.3.1(b) shall be deleted and the following substituted:

“(b) Weather sufficiently inclement to interfere with the progress of the works beyond any allowance provided in that regard in the Special Conditions; or”

APPENDIX C – TERM MAINTENANCE CONTRACTS (INCLUDING ROAD MAINTENANCE CONTRACTS)

C1 Interpretation

C1.1

Wherever the phrase “possession of the Site” appears in the General Conditions or Special Conditions, it shall mean only the non-exclusive right of occupancy of the Site. Except as provided in the Contract Documents, the Principal, the Engineer and members of the public may use the Site and Contract Works pursuant to their normal right of passage and, in the case of the Principal and Engineer, pursuant to the rights of access under this contract. The rights of access by the public shall be subject only to such reasonable restriction as is made necessary by the conduct of the Contract Works from time to time.

C1.2

Any reference to the certificate of Practical Completion shall be deemed to mean a certificate of completion.

C2 General obligations

C2.1

The Contractor shall comply with the performance criteria set out in the Specification.

C2.2

Where the Principal arranges for work to be carried out by separate contractors under 5.5.1, the Principal may require sole occupancy of portions of the Site to be given to separate contractors. The resulting withdrawal of a portion or portions of the Site for a period or periods of time shall be a Variation.

C2.3

Subclause 5.6.3 shall be amended by substituting the words “Due Date for Completion” for the words “Practical Completion”.

C3 Underground and above ground utilities

C3.1

Subclause 5.13.1 shall be deleted and the following substituted:

“The Contractor shall arrange and pay for the searching of records to determine the existence and position of pipes, cables and other utilities on or about the Site.

For the purposes of this clause 5.13, the term “utilities” shall include any cadastral survey mark, as defined in the Cadastral Survey Act 2002, and which at any time have been set in or on the ground for the purposes of survey.”

C3.2

Subclause 5.13.4 shall be deleted and the following substituted:

“Where a utility is not indicated or is not substantially in the position indicated in the records any extra work in physically locating its position or altering or protecting or offsetting or reinstating it shall be a Variation.”

C4 Engineer's powers and responsibilities

The Engineer's power on behalf of the Principal to take emergency action under 6.8.1 shall also be exercisable in the event of failure by the Contractor to comply with the provisions of the contract in relation to traffic control or safety requirements, subject to the other provisions of 6.8.1 and to 6.8.2 and 6.8.3.

C5 Time for completion

C5.1

Subclause 10.1.2 shall be deleted and the following substituted:

"The Contractor shall commence the Contract Works upon commencement of the contract period under 10.1.1 and shall proceed with the execution of the Contract Works with due diligence and in accordance with the Contract Documents and performance criteria, except as may be sanctioned or instructed by the Engineer."

C5.2

Clause 10.2 (Due Date for Completion) shall be amended by deleting paragraph (b) of 10.2.1 and by deleting 10.2.2.

C5.3

The whole of 10.3 (Extension of time) shall be deleted.

C5.4

The whole of 10.4 (Certificate of Practical Completion), 10.5 (Damages for late completion) and 10.6 (Bonus for early completion) shall be deleted and the following substituted:

"10.4 Certificate of completion

10.4.1

Within five Working Days of the Due Date for Completion of the Contract Works or any Separable Portion the Engineer shall inspect the Contract Works or Separable Portion and shall thereupon issue a certificate of completion.

10.4.2

The Engineer shall where applicable identify in the certificate of completion:

- (a) Parts of the Contract Works that are subject to Periods of Defects Liability as identified in the Special Conditions; and
- (b) Defective work.

10.4.3

Notwithstanding the issue of a certificate of completion, the Contractor shall remain liable for the fulfilment of any obligation of the Contractor under the Contract Documents which then remains unperformed or not properly performed.

10.5 Damages

10.5.1

Where provided in the Special Conditions, liquidated damages shall be paid by the Contractor to the Principal in respect of any period specified in the Contract Documents for failure to comply with the Specifications.

10.5.2

The amount of liquidated damages shall be the sum provided in that regard in the Special Conditions.

10.5.3

The Principal may without prejudice to any other method of recovery deduct the amount of liquidated damages from any monies payable to the Contractor in terms of the contract and for that purpose give notice to the Engineer in accordance with 12.2.3 and 12.5.2 requiring the deduction. Payment or deduction of liquidated damages shall not relieve the Contractor from any of its other liabilities or obligations under the contract.

10.6 Bonus**10.6.1**

Where provided in the Special Conditions, a bonus shall be paid by the Principal to the Contractor in respect of any period specified in the Contract Documents where the Contractor has met the performance criteria for the period so specified.

10.6.2

Payment claims for a bonus payment pursuant to 10.6.1 shall be included by the Contractor in the first payment claim submitted by a Contractor following the expiry of the specified period."

C6 Defects liability

The whole of 11.1 (Period of Defects Liability), 11.2 (Defects liability) and 11.3 (Defects Liability Certificate) shall be deleted and the following substituted:

"11.1 Period of Defects Liability

The Period of Defects Liability for those parts of the Contract Works or any Separable Portion identified in the Special Conditions shall commence on the Due Date for Completion of the Contract Works or the Separable Portion. The Period of Defects Liability shall be that period specified in the Special Conditions.

11.2 Defects liability**11.2.1**

The Contractor shall be liable for defects arising before the end of the Period of Defects Liability in the Contract Works arising from defective workmanship or Materials.

11.2.2

At the Principal's discretion, the Principal shall be entitled:

- (a) To require the Contractor to repair defects arising from defective workmanship or Materials which are apparent at the time of issue of the certificate of completion or arise before the end of the Period of Defects Liability; or
- (b) To employ others to carry out such remedial work. The Principal shall be entitled to recover from the Contractor the Cost of such work as determined by the Engineer.

11.2.3

The Contractor shall be liable for fair wear and tear during the Period of Defects Liability to the same extent as prior to the Due Date for Completion in respect of those parts of the Contract Works to which the Period of Defects Liability applies. The Contractor shall not otherwise be liable for fair wear and tear to the Contract Works during the Period of Defects Liability.

11.2.4

Where the Contractor is required in terms of 11.2.1 to remedy defects and the Contractor fails to complete the remedial works within a reasonable time the Principal shall be entitled, after giving the Contractor notice, to employ others to carry out such remedial work. The Principal shall be entitled to recover from the Contractor the Cost of such work as determined by the Engineer.

11.2.5

Where the Contractor is required in terms of 11.2.1 to remedy defects, the Engineer may direct the Contractor to search for any defects, prior to the expiry of the Period of Defects Liability. Unless the defect is one which the Contractor is liable to rectify, the search and any remedial work shall be treated as if they were Variations.

11.2.6

Where the Contractor is required in terms of 11.2.1 to remedy defects, the Contractor shall have the right of entry on to the Site at reasonable times for the purpose of searching for defects or carrying out remedial work.

11.3 Defects Liability Certificate**11.3.1**

The Engineer shall issue to the Principal and to the Contractor a Defects Liability Certificate for the Contract Works or any Separable Portion when in respect of the Contract Works or that Separable Portion:

- (a) The Period of Defects Liability under 11.1 has expired; and
- (b) Defects under 11.2 have been remedied."

C7 Payment

Subclause 12.3.2 shall be deleted and the following substituted:

"The monies retained, less any deductions which the Principal is entitled to make:

- (a) Shall be paid to the Contractor 10 Working Days after the date of the Defects Liability Certificate in respect of the whole of the Contract Works or of the Separable Portion; or
- (b) Where the Contractor is not obliged to remedy defects pursuant to 11.2.1, shall be included in the Final Payment Schedule issued pursuant to 12.5."

APPENDIX D – OBTAINING OF LICENCES BY THE CONTRACTOR

Where it is stated in the Special Conditions that the Contractor is to be responsible, for and on behalf of the Principal, for obtaining project information memoranda, building consents and code compliance certificates required under the Building Act 1991 for the carrying out of the Contract Works which are subject to design by the Contractor, this Appendix D shall apply to the provision and obtaining of such licences and replace subclause 5.11.3 and the subclauses following 5.11.3 in clause 5.11.

5.11.3

The Principal shall at the Principal's expense obtain all licences, which may be required for the construction of the Contract Works and for the use of the Contract Works when constructed except as otherwise provided in the following.

5.11.4

The Contractor shall at the Contractor's expense obtain, for and on behalf of the Principal, the project information memoranda, building consents and code compliance certificates required under the Building Act 1991 for the carrying out of the parts of the Contract Works which are subject to the Contractor's design.

5.11.5

The Contractor shall at the Contractor's expense give all other notices and obtain all other licences in respect of Temporary Works except to the extent that they are designed for, or on behalf of the Principal, and temporary amenities and temporary services required for carrying out the Contract Works.

5.11.6

If licences obtained by either the Principal or the Contractor are issued subject to conditions affecting the design or Specifications provided in the Contract Documents or a Variation, those conditions shall be notified to the Engineer by the Contractor. The Engineer and the Contractor shall consult, and the Engineer shall instruct the Contractor to either:

- (a) Carry out the Contract Works in accordance with such conditions; or
- (b) Modify the Contractor's design and obtain different or modified licences when:
 - (i) Issued with conditions affecting design or Specifications that are acceptable to the Engineer; or
 - (ii) Issued with no conditions affecting design or Specifications; or
- (c) Modify the Contractor's methods of otherwise carrying out the Contract Works and obtain different or modified licences when:
 - (i) Issued with conditions affecting design or Specifications that are acceptable to the Engineer; or
 - (ii) Issued with no conditions affecting design or Specifications.

5.11.7

If either additional licences or modifications to the licences are required by the Principal or an authority controlling licences, the Engineer and the Contractor shall consult, and the Engineer shall instruct the Contractor to either:

- (a) Obtain the required licences for, and on behalf of the Principal; or
- (b) Modify the Contractor's design and obtain additional licences or modifications to licences that are acceptable to the Engineer; or
- (c) Modify the Contractor's design so that no additional licences or modifications to licences are required.

5.11.8

In any case of 5.11.6 paragraphs (b) or (c) or 5.11.7 paragraphs (a) or (b) the Engineer may instruct the Contractor that the Principal will obtain the licences referred to.

5.11.9

If the compliance with paragraphs (a), (b) or (c) of 5.11.6 or 5.11.7 causes delay in the completion of the Contract Works or additional Cost to the Contractor which in either case the Contractor could not reasonably have foreseen when tendering, the compliance will be treated as if it was a Variation.

5.11.10

If in circumstances different from those provided for in 5.11.6 and 5.11.7, licences obtained by the Principal or by the Contractor are subject to conditions affecting the carrying out of the Contract Works, those conditions shall be notified to the other party, and to the Engineer. If the compliance with these conditions causes delay in the completion of the Contract Works or additional Cost to the Contractor which in either case the Contractor could not reasonably have foreseen when tendering, the compliance will be treated as if it was a Variation.

5.11.11

The Principal shall arrange for the Contractor to be supplied with copies of any necessary documents and other information in order to comply with this clause 5.11.

The Contractor shall arrange for the Principal to be supplied with copies of any necessary documents and other information in order to comply with this clause 5.11.

5.11.12

From time to time at the request of the Engineer and in any case before making application for any certificate of Practical Completion, the Contractor shall deliver to the Engineer all documents necessary to prove the issue of notices and licences (other than code compliance certificates) for which the Contractor is responsible under this clause 5.11.

5.11.13

Before making application for any Defects Liability Certificate, the Contractor shall deliver to the Engineer code compliance certificates for which the Contractor is responsible under this clause 5.11.

SCHEDULES TO GENERAL CONDITIONS OF CONTRACT

First Schedule

SPECIAL CONDITIONS OF CONTRACT

(Clause numbers refer to General Conditions)

PART A – SPECIFIC CONDITIONS OF CONTRACT

1.2

The Principal is

of (street address)

.....

(a) There are Separable Portions as set out in the following parts of the Contract Documents;

.....

(b) There are no Separable Portions in this contract.

(Delete provision which does not apply.)

2.1.1

This contract is a:

(a) Lump sum contract;

(b) Measure and value contract;

(c) Cost reimbursement contract.

(Delete provisions which do not apply.)

2.5

This contract is:

(a) A construction contract in public roads;

(b) A term maintenance contract (including a road maintenance contract);

(c) Neither a construction contract in public roads nor a term maintenance contract.

(Delete provisions which do not apply.)

2.6.1

This contract is:

(a) A local authority contract;

(b) Not a local authority contract.

(Delete provision which does not apply.)

2.6.3

Clauses B1 and B2 of Appendix B:

- (a) Shall apply to this contract;
- (b) Shall not apply to this contract.
(Delete provision which does not apply)

NOTE – This provision should only be incorporated in local authority contracts where the Site is in a public roadway or where the public has access to the Site similar to its access to a public roadway.

2.6.4(a)

A safety plan for the Site:

- (a) Is required, as set out in the following parts of the Contract Documents;

.....

- (b) Is not required.
(Delete provision which does not apply.)

2.6.4(b)

A traffic management plan:

- (a) Is required, as set out in the following parts of the Contract Documents;

.....

- (b) Is not required.
(Delete provision which does not apply.)

2.8.1

..... sets of Contract Documents shall be supplied free of charge to the Contractor upon the acceptance of tender in addition to tender, consent, and Contract Agreement sets.

2.9.2

..... sets of Contract Documents shall be supplied free of charge to the Engineer upon the acceptance of tender in addition to tender, consent, and Contract Agreement sets.

3.1.1

A Contractor's bond:

- (a) Is required;
- (b) Is not required.
(Delete provision which does not apply.)

3.1.2

The Contractor's bond shall be for the sum of \$.....

3.2.1

A Principal's bond:

- (a) Is not required;
- (b) Is required and the surety shall be
(Delete provision which does not apply.)

3.2.2

The Principal's bond shall be for the sum of \$.....

5.4.1

The Contractor shall be given possession of the Site on:

(a) 10 Working Days after the Date of Acceptance of Tender;

(b)

(Delete provision which does not apply.)

5.6.6

(g) Risks specifically excepted are

5.11.1

(a) The Contractor is to be responsible, for and on behalf of the Principal, for obtaining project information memoranda, building consents and code compliance certificates under the Building Act 1991 for the carrying out of the following parts of the Contract Works to which Appendix D applies.

(i)

(ii)

(b) There are no parts of the Contract Works to which Appendix D applies.

(Delete provision which does not apply.)

5.17.1

Quality management systems:

(a) Are required and details shall be submitted by

(Add date)

(b) Are not required.

(Delete provision which does not apply.)

5.18.1(a)

(a) As-built drawings, are required, as set out in the following parts of the Contract Documents:

(i)

(ii)

(b) As-built drawings are not required.

(Delete provision which does not apply.)

5.18.1(b)

(a) Operation and maintenance manuals are required as set out in the following parts of the Contract Documents:

(i)

(ii)

(b) Operation and maintenance manuals are not required.

(Delete provision which does not apply.)

6.1.2

The Engineer is

whose professional qualification is

8.1 and 8.6

(a) The Contractor shall insure as provided in 8.1;

(b) The Principal shall insure as provided in 8.6.

(Delete provision which does not apply.)

8.1.2 or 8.6.1

(To be completed irrespective of whether the Principal or the Contractor is insuring.)

The amount of the insurance to be effected in respect of the Contract Works and Materials shall be for not less than the sum of the following:

(a) The Contract Price, after the acceptance of the tender or other offer, excluding any additions or deductions which may be required to be made during the course of the contract;

(b) For the Cost of demolition, disposal and preparation for replacement work, the sum of :

(i) 5 % of the Contract Price as described in (a) above; or

(ii) % of the Contract Price as described in (a) above; or

(iii) \$.....

(Delete provisions which do not apply.)

(c) For professional fees including the Cost of clerks of works and inspectors, the sum of:

(i) 5 % of the Contract Price as described in (a) above; or

(ii) % of the Contract Price as described in (a) above; or

(iii) \$.....

(Delete provisions which do not apply.)

(d) The value of items incorporated, or to be incorporated, in the Contract Works, the Cost of which is not included in the Contract Price, the sum of \$.....

(e) For increased construction Costs not already provided for in the Contract Price during the period from the acceptance of the tender or other offer until the issue of the Defects Liability Certificate for the Contract Works, the sum of:

(i) 5 % of the Contract Price as described in (a) above; or

(ii) % of the Contract Price as described in (a) above; or

(iii) \$.....

(Delete provisions which do not apply.)

The insurance shall make provision for automatic change of cover for items (a) and (e) above, to provide insurance for any additions to or deductions from the Contract Price which occur after acceptance of the tender or other offer.

8.2.1

Contractor's Plant insurance is required for each item of construction machinery on the Site owned by the Contractor that has a market value of more than:

(a) \$50,000; or

(b) \$.....

(Delete provision which does not apply.)

8.3 and 8.7

(a) The Contractor shall insure as provided in 8.3;

(b) The Principal shall insure as provided in 8.7.

(Delete provision which does not apply.)

8.3.1 or 8.7.1

(To be completed irrespective of whether the Principal or the Contractor is insuring.)

Public liability insurance shall be effected for an amount not less than \$.....

8.3.2

Motor vehicle third party liability insurance shall be effected for an amount not less than \$.....

8.4.1

(a) Professional indemnity insurance for design by the Contractor shall be effected for an amount not less than \$.....

(b) Professional indemnity insurance for design by the Contractor is not required.

(Delete provision which does not apply.)

8.6.2

The existing structures are:

- (i)
- (ii)
- (iii)

8.6

For the insurance policies required under the following clauses:

The insurers are:

8.6.2(a)
8.6.2(b)

The deductibles are:

8.6.2(a)
8.6.2(b)

The exclusions and other limitations, if any, are:

8.6.2 (a)
8.6.2(b)

8.7

For the insurance policy required under clause 8.7:

The insurers are:

The deductibles are:

The exclusions and other limitations, if any, are:

Amount of liability insurance cover under clause 8.7 for any one claim or series of claims arising out of the same occurrence \$.....

10.2.1

The periods to be used for calculating the Due Date for Completion are:

- (a) In respect of the Contract Works Weeks;
- (b) In respect of Separable Portions
 - (i) Weeks,
 - (ii) Weeks,
 - (iii) Weeks.

10.3.1 (as amended by B3)

(Only applicable to construction contracts in public roads as defined in 2.5.)

Allowance for inclement weather Working Days.

10.4.5

Prior to the issue of the certificate of Practical Completion:

- (a) A producer statement in the form of the Sixth Schedule is required;
- (b) Producer statements are required as set out in the following parts of the Contract Documents;
 - (i)
 - (ii)

(c) A producer statement is not required.

(Delete provisions which do not apply.)

10.5.1

Liquidated damages shall be applied as follows:

- (a) In respect of the Contract Works \$..... per Week;
- (b) In respect of Separable Portions
 - (i) \$.....per Week,
 - (ii) \$.....per Week,
 - (iii) \$.....per Week.

NOTE – Where liquidated damages are provided for, the amount must be a genuine pre-estimate of the likely loss that would result from delay of completion. Where liquidated damages are provided for Separable Portions it may be necessary to provide different rates for each Separable Portion.

Where liquidated damages are not provided, the Principal can recover and the Contractor will be liable only for such actual loss as the Principal can prove has resulted from the late completion, being loss of a kind reasonably foreseeable to the parties at the time the contract was made as being likely to result.

10.6.1

A bonus shall be paid as follows:

- (a) In respect of the Contract Works \$..... per Week;
- (b) In respect of Separable Portions:
 - (i) \$.....per Week,
 - (ii) \$.....per Week,
 - (iii) \$.....per Week.

(Delete if not applicable.)

11.1.1

The Period of Defects Liability shall be:

- (a) In respect of the Contract Works Weeks;
- (b) In respect of Separable Portions
 - (i) Weeks,
 - (ii) Weeks,
 - (iii) Weeks.

(To be completed if period is other than three Months.)

11.3.2

Prior to the issue of the Defects Liability Certificate:

- (a) A producer statement in the form of the Sixth Schedule is required;
- (b) Producer statements are required as set out in the following parts of the Contract Documents:
 - (i)
 - (ii)
 - (iii)

- (c) A producer statement is not required.
(Delete provisions which do not apply.)

11.5.1

- (a) The Contractor shall provide guarantees as set out below:

.....

- (b) No guarantees are required.
(Delete provision which does not apply.)

11.5.2

The form of guarantee shall be in the form annexed as the Schedule.

12.1.2(b)(iv)

- (a) Advances for Temporary Works, Plant, or Materials not yet on Site shall be made to the Contractor in accordance with:

- (i) The following conditions

.....

- (ii) The conditions attached in

- (b) Advances for Temporary Works, Plant or Materials not yet on Site shall not be made to the Contractor.
(Delete provisions which do not apply.)

12.3.1

The percentage to be retained from each progress payment and the limit of the total sums retained shall be:

(a) In respect of the Contract Works:

Total retention

10 % of the first \$200,000, plus
 5 % of the next \$800,000, plus
 1.75 % of any amount in excess of \$1,000,000
 with a maximum of \$200,000 when aggregated

Defects liability retention

50 % of total retention

(b) In respect of the Contract Works:

Total retention

..... % of first \$, plus
 % of next \$, plus
 % of amount in excess of \$
 with a maximum of \$..... when aggregated

Defects liability retention

50 % of total retention

(Delete either (a) or (b).)

(c) Where there are Separable Portions, the amount to be retained in respect of the Contract Works in accordance with (a) or (b) of this clause shall be reduced upon the completion of each Separable Portion by the following percentages:

- (i) In respect of by %
- (ii) In respect of by %
- (iii) In respect of by %

12.8.2

Cost fluctuation adjustments:

(a) Shall not be paid;

(b) Shall be paid in accordance with Appendix A;

(c) Shall be paid as set out in the Schedule.

(Delete provisions which do not apply.)

12.9.1

(a) Provisional Sums are included in the schedule of quantities;

(b) There is no schedule of quantities and the Provisional Sums included in the contract are:

- (i) : \$.....
- (ii) : \$.....
- (iii) : \$.....
- (iv) : \$.....

(c) There are no Provisional Sums.

(Delete provisions which do not apply.)

12.10.1

(a) Prime Cost Sums are included in the schedule of quantities;

(b) There is no schedule of quantities and the Prime Cost Sums included in the contract are:

(i)	: \$.....
(ii)	: \$.....
(iii)	: \$.....
(iv)	: \$.....

(c) There are no Prime Cost Sums.

(Delete provisions which do not apply.)

12.11.1

The contingency sum to be included in the contract is \$.....

15.1.2

For the purpose of service of payment claims or notices, the postal address of:

(a) The Principal is

For the attention of:

Fax No.

(b) The Engineer is

For the attention of:

Fax No.

(c) The Contractor is

For the attention of:

Fax No.

NOTE – The General Conditions of Contract provide in the following clauses for matters which may be dealt with by further specific conditions of contract:

- 2.4.1 Cost reimbursement contract details
- 2.7.2 Execution of Contract Agreement
- 2.8.3 Variation or modification of General Conditions
- 5.4.3 Access to adjoining properties
- 5.5 Separate contractors
- 5.9.1 Exceptions to Contractor's obligation to supply
- 5.9.3 Advances for Plant or Materials
- 5.10.1 Programme
- 7.1.2(d) Risks specifically excepted
- 8.8.1(d) Risk, loss or damage not covered by Principal's insurance
- 9.4.2 Variations carried out on Daywork basis
- 12.1.1 Frequency of payment claims
- 12.3.3 Contractor's bond in lieu of retentions
- 12.12.2 Goods and services tax

PART B – OTHER CONDITIONS OF CONTRACT

(Include here other Special Conditions that modify the General Conditions)

SECOND SCHEDULE**CONTRACT AGREEMENT**

Contract for

THIS AGREEMENT is made on

BETWEEN
("the Contractor")

AND
("the Principal").

IT IS AGREED as follows:

1. **THE** Contractor shall carry out the obligations imposed on the Contractor by the Contract Documents.
2. **THE** Principal shall pay the Contractor the sum of \$
or such greater or less sum as shall become payable under the Contract Documents together with Goods and Services Tax at the times and in the manner provided in the Contract Documents.
3. **EACH** party shall carry out and fulfil all other obligations imposed on that party by the Contract Documents.
4. **THE** Contract Documents are this Contract Agreement and the following which form part of this agreement:
 - (a) The Conditions of Tendering;
 - (b) Notices to tenderers (give details with dates);
 - (c) The Contractor's tender;
 - (d) The notification of acceptance of tender;
 - (e) The General Conditions of Contract, NZS 3910:2003;
 - (f) The Special Conditions of Contract;
 - (g) Specifications issued prior to the Date of Acceptance of Tender;
 - (h) Drawings issued prior to the Date of Acceptance of Tender;
 - (i) The Schedule of Prices; *(Delete if not applicable)*
 - (j) The following additional documents: (Identify any additional documents to be included for example agreed correspondence.)

WITNESS to the signature
of the Contractor:

.....
Contractor

WITNESS to the signature
of the Principal:

.....
Principal

THIRD SCHEDULE**FORM OF CONTRACTOR'S PERFORMANCE BOND**

Contract for

THIS DEED is made on

BY

of
("the Contractor")

AND

of
("the Sureties")

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A** The Contractor has entered into an agreement with
of ("the Principal")
to carry out and fulfil the obligations imposed on the Contractor by the Contract Documents.
- B** The Contract Documents require the Contractor to provide the Principal with security in the form of a bond to ensure performance of the Contractor's obligations under the Contract Documents.

BY THIS DEED:

- 1. THE** Contractor and Sureties are jointly and severally held and bound to the Principal in the sum of \$NZ..... and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. THE** condition of this bond is that it shall be null and void if:
 - (a) The Contractor duly carries out and fulfils all the obligations imposed on the Contractor by the Contract Documents prior to the commencement of the Period of Defects Liability referred to in the Contract Documents; or
 - (b) The Contractor satisfies and discharges the damages sustained by the Principal in respect of all defaults by the Contractor up to the commencement of the Period of Defects Liability or the termination of the contract; or
 - (c) The Sureties satisfy and discharge up to the amount of the bond the damages sustained by the Principal in respect of all defaults by the Contractor up to the commencement of the Period of Defects Liability or the termination of the contract; or
 - (d) A Practical Completion certificate has been issued in respect of the Contract Works in accordance with clause 10.4 of the General Conditions of Contract.
- 3. EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
- 4. THE** Sureties shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the contract between the Principal and the Contractor;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered and having defects remedied;

- (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract Documents;
- (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.

5. **THIS** bond shall be governed by New Zealand law.

THE COMMON SEAL of
 was affixed in the presence of: }

THE COMMON SEAL of
 was affixed in the presence of: }

SIGNED by
 in the presence of: }

SIGNED by
 in the presence of: }

NOTE – This bond must be executed by the Contractor and by the Surety or Sureties in the manner required for execution of a deed. Any of these parties which are a company must execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) must execute by affixing its seal, which must be attested in the manner provided for in the rules of, or applicable to, the body corporate. In the case of a party who is an individual, the party must sign and the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address.

FOURTH SCHEDULE**FORM OF PRINCIPAL'S BOND**

Contract for

THIS DEED is made on

BY

of
("the Principal")

AND

of
("the Sureties")

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES

- A** The Principal has entered into an agreement with
of ("the Contractor")
by which the Contractor has agreed to carry out and fulfil the obligations imposed on the Contractor by the Contract Documents.
- B** The Contract Documents require the Principal to provide the Contractor with security in the form of a bond to ensure performance of the Principal's obligations under the Contract Documents.

BY THIS DEED

- 1. THE** Principal and Sureties are jointly and severally held and bound to the Contractor in the sum of \$NZ..... and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. THE** condition of this bond is that it shall be null and void if:
 - (a) The Principal pays the Contract Price and any other monies payable under the Contract Documents and:
 - (i) Duly carries out and fulfils all the obligations imposed on the Principal by the Contract Documents;
or
 - (ii) Satisfies and discharges the damages sustained by the Contractor in respect of all defaults by the Principal;
 - or
 - (b) The Sureties pay, satisfy and discharge up to the amount of the bond any unpaid balance of the Contract Price and of any other monies payable under the Contract Documents, and of the damages sustained by the Contractor in respect of all defaults by the Principal.
- 3. EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
- 4. THE** Sureties shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the contract between the Principal and the Contractor;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered and having defects remedied;

- (c) By any allowance of time by the Contractor;
- (d) By any forbearance or waiver by the Contractor in respect of any of the Principal's obligations or in respect of any default on the part of the Principal.

5. THIS bond shall be governed by New Zealand law.

THE COMMON SEAL of _____ }
was affixed in the presence of: _____ }

THE COMMON SEAL of _____ }
was affixed in the presence of: _____ }

SIGNED by _____ }
in the presence of: _____ }

SIGNED by _____ }
in the presence of: _____ }

NOTE – This bond must be executed by the Principal and by the Surety or Sureties in the manner required for execution of a deed. Any of these parties which are a company must execute by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) must execute by affixing its seal, which must be attested in the manner provided for in the rules of, or applicable to, the body corporate. In the case of a party who is an individual, the party must sign and the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address.

FIFTH SCHEDULE**FORM OF CONTRACTOR'S BOND IN LIEU OF RETENTIONS**

Contract for

THIS DEED is made on

BY

of
("the Contractor")

AND

of
("the Sureties")

IT IS MADE IN THE FOLLOWING CIRCUMSTANCES:

- A** The Contractor has entered into an agreement with
of ("the Principal")
to carry out and fulfil the obligations imposed on the Contractor by the Contract Documents.
- B** The Contractor has agreed to provide the Principal with security in the form of a bond in lieu of retentions additional to any other bond required under the Contract Documents.

BY THIS DEED

- 1. THE** Contractor and Sureties are jointly and severally held and bound to the Principal in the sum of \$NZ..... and bind themselves, their successors and assigns jointly and severally for the payment of that sum.
- 2. THE** condition of this bond is that it shall be null and void if:
 - (a) The Contractor duly carries out and fulfils all the obligations imposed on the Contractor by the Contract Documents prior to the issue of the Defects Liability Certificate referred to in the Contract Documents; or
 - (b) The Contractor satisfies and discharges the damages sustained by the Principal in respect of all defaults by the Contractor up to the issue of the Defects Liability Certificate or the termination of the contract; or
 - (c) The Sureties satisfy and discharge up to the amount of the bond the damages sustained by the Principal in respect of all defaults by the Contractor up to the issue of the Defects Liability Certificate or the termination of the contract.
- 3. EXCEPT** as provided in clause 2 above this bond shall be and remain in full force and effect.
- 4. THE** Sureties shall not be released from any liability under this bond:
 - (a) By any alteration in the terms of the contract between the Principal and the Contractor;
 - (b) By any alteration in the extent or nature of the Contract Works to be completed, delivered and having defects remedied;
 - (c) By any allowance of time by the Principal or by the Engineer appointed by the Principal under the Contract Documents;
 - (d) By any forbearance or waiver by the Principal or by the Engineer in respect of any of the Contractor's obligations or in respect of any default on the part of the Contractor.

5. **THIS** bond shall be governed by New Zealand law.

THE COMMON SEAL of
was affixed in the presence of: }

THE COMMON SEAL of
was affixed in the presence of: }

SIGNED by
in the presence of: }

SIGNED by
in the presence of: }

NOTE – This bond must be executed by the Contractor and by the Surety or Sureties in the manner required for execution of a deed. Any of these parties which are a company must execute the bond by having it signed, under the name of the company, by two or more directors. If there is only one director, it is sufficient if the bond is signed under the name of the company by that director, but the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address. Alternatively, companies may execute under power of attorney. Any party which is a body corporate (other than a company) must execute by affixing its seal, which must be attested in the manner provided for in the rules of, or applicable to, the body corporate. In the case of a party who is an individual, the party must sign and the signature must be witnessed by another person. The witness must not only sign but must also add his or her occupation and address.

SIXTH SCHEDULE**FORM OF PRODUCER STATEMENT – CONSTRUCTION**

ISSUED BY:
(Contractor)

TO:
(Principal)

IN RESPECT OF:
(Description of Contract Works)

AT:
(Address)

..... has contracted to
(Contractor) (Principal)

to carry out and complete certain building works in accordance with a contract, titled
..... (“ the contract”)
(Project)

I a duly authorized representative of
(Duly Authorized Agent) (Contractor)

believe on reasonable grounds that has carried out
and completed
(Contractor)

☐ All ☐ Part only as specified in the attached particulars of the building works in accordance
with the contract.

..... Date.....
(Signature of Authorized Agent on behalf of)

.....
(Contractor)

.....

.....
(Address)

SEVENTH SCHEDULE

INFORMATION AS TO CONTRACT WORKS INSURANCE

To Whom It May Concern:

From:
(Name of insurance company)

.....
(Branch)

.....
(Address)

We confirm having effected contract works insurance for:

.....
(The Contractor)

.....
(The Principal)

In respect of:
(Project title)

8.1.2 The sums insured are:

(a) Contract price	\$	(Plus GST)
(b) Costs of demolition	\$	(Plus GST)
(c) Professional fees	\$	(Plus GST)
(d) Value of items incorporated or to be incorporated	\$	(Plus GST)
(e) Increased construction costs	\$	(Plus GST)
TOTAL SUM INSURED	\$	(Plus GST)

The policy deductibles are:

Non earthquake	(GST inclusive)	\$
Earthquake	(GST inclusive)	\$
Other (name)	(GST inclusive)	\$

We advise the 'special' terms, copy attached,
have been applied to this policy

Yes / No

8.5.3, 8.8.4 Policy cover terms included are:

(a) Automatic reinstatement	Yes / No
(b) No cancellation for non-payment without prior notification	Yes / No
(c) Severally insured	Yes / No
(d) No settlement delay due to exercise of subrogation	Yes / No
Project specific policy	Yes / No

8.1.3 Construction period
Defects liability period
(both subject to alteration under construction contract)
Annual run-off policy Yes / No

8.1.5 Annual cut-off policy Yes / No
Policy expiry date

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2003.

Insurance Company Stamp **Date**
(Or name of insurance broking company confirming cover)

SIGNED BY

SIGNATORY TITLE

(Clause numbers refer to NZS 3910:2003 and are for information only)

EIGHTH SCHEDULE**INFORMATION AS TO PUBLIC LIABILITY INSURANCE****To Whom It May Concern:**

From:

(Name of insurance company).....
(Branch).....
(Address)

We confirm having effected public liability insurance for:

.....
(The Contractor).....
(The Principal)

In respect of:

(Project title)

Annual policy: Yes / No

Policy expiry date:

8.3.1 The limit of indemnity \$ (Plus GST)

Sub limit insured for vibration, removal or weakening of support \$ (Plus GST)

Deductible is (GST inclusive) \$

Deductible for vibration, removal or
weakening of support (GST inclusive) \$We advise that "additional" terms, copy attached, have been
specifically applied to this project Yes / No

The policy covers liability arising out of:

The ownership / use of construction machinery
not required to be registered for road use Yes / No

The use of hired plant Yes / No

The ownership / use of watercraft up to 8 m Yes / No

The ownership / use of aircraft Yes / No

The use of explosives Yes / No

8.5.3, 8.8.4 Policy cover terms included are:

(a) Automatic reinstatement Yes / No

(b) No cancellation for non-payment without prior notification Yes / No

(c) Severally insured Yes / No

(d) No settlement delay due to exercise of subrogation Yes / No

We undertake that this policy will not be cancelled or amended by us without written advice to the insured party
which has arranged the insurances.The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy
complies with the requirements of NZS 3910:2003.**Insurance Company Stamp** **Date***(Or name of insurance broking company confirming cover)***SIGNED BY****SIGNATORY TITLE**

(Clause numbers refer to NZS 3910:2003 and are for information only)

NINTH SCHEDULE**INFORMATION AS TO THE CONTRACTOR'S CONSTRUCTION MACHINERY INSURANCE****To Whom It May Concern:**

From:
 (Name of insurance company)

.....
 (Branch)

.....
 (Address)

We confirm having effected construction machinery insurance for:

.....
 (The Contractor)

In respect of:
 (Project title)

Annual policy Yes / No
 Policy expiry date:

8.2.1 The sums insured are:
 Schedule of construction machinery attached \$_____ (Plus GST)
 The policy deductible is (GST inclusive) \$_____

We advise that "special" terms, copy attached, have been applied to this policy Yes / No

8.5.3 Policy cover terms included are:
 (a) Automatic reinstatement Yes / No
 (b) No cancellation for non-payment without prior notification Yes / No
 (c) No settlement delay due to exercise of subrogation Yes / No

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2003.

Insurance Company Stamp **Date**

(Or name of insurance broking company confirming cover)

SIGNED BY

SIGNATORY TITLE

(Clause numbers refer to NZS 3910:2003 and are for information only)

TENTH SCHEDULE**INFORMATION AS TO THE CONTRACTOR'S MOTOR VEHICLE INSURANCE****To Whom It May Concern:**

From:
(Name of insurance company)

.....
(Branch)

.....
(Address)

We confirm having effected motor fleet insurance for:

.....
(The Contractor)

In respect of:
(Project title)

Annual policy	Yes / No
Policy expiry date:	

8.3.1	The sums insured are:	
	Section 2 – liability	\$_____ (Plus GST)

The policy deductibles are:	
Section 2 (GST inclusive)	\$_____

We advise that "special" terms, copy attached, have been applied to this policy Yes / No

8.5.3	Policy cover terms included are:	
	(a) Automatic reinstatement	Yes / No
	(b) No cancellation for non-payment without prior notification	Yes / No
	(c) No settlement delay due to exercise of subrogation	Yes / No

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2003.

Insurance Company Stamp **Date**.....
(Or name of insurance broking company confirming cover)

SIGNED BY

SIGNATORY TITLE

(Clause numbers refer to NZS 3910:2003 and are for information only)

ELEVENTH SCHEDULE**INFORMATION AS TO CONTRACTOR'S PROFESSIONAL INDEMNITY INSURANCE****To Whom It May Concern:**

From:
 (Name of insurance company)

.....
 (Branch)

.....
 (Address)

We confirm having effected professional indemnity insurance for:

.....
 (The Contractor)

In respect of:
 (Project title)

Annual policy Yes / No
 Policy expiry date:

8.4.1 The limit of indemnity \$ (Plus GST)

Deductible (GST inclusive) \$

The policy covers:
 The number of automatic reinstatements

We advise that additional terms, copy attached, have been
 specifically applied to this project Yes / No

We undertake that this policy will not be cancelled or amended by us within the period of insurance without written advice to the insured party which has arranged the insurances.

The insurance issued is subject to the terms and conditions of the policy. We do not warrant that this policy complies with the requirements of NZS 3910:2003.

Insurance Company Stamp **Date**.....
 (Or name of insurance broking company confirming cover)

SIGNED BY

SIGNATORY TITLE

(Clause number refers to NZS 3910:2003 and is for information only)

CONDITIONS OF TENDERING

101 Interpretation

101.1 The provisions of Section 1 of NZS 3910:2003 shall apply to these conditions of tendering.

102 Issue of documents

102.1 Tender Documents issued to prospective tenderers except schedules of quantities for use in the preparation of tenders remain the property of the Principal.

102.2 Any deposit charged on the Tender Documents shall be refunded as soon as practicable:

- (a) To the successful tenderer without requiring return of the documents, and
- (b) To other tenderers, providing the documents are returned in reasonable condition not later than 10 Working Days after the date on which advice is notified that another tender has been accepted or that no tender is being accepted, and
- (c) To others, providing the documents are returned in reasonable condition not later than the time of closing of tenders.

103 Tenderers to inform themselves

103.1 Each tenderer shall be deemed to have inspected the Site, examined the Tender Documents and any other information supplied in writing and to have satisfied itself as far as is practicable for an experienced contractor before tendering as to the correctness and sufficiency of its tender for the Contract Works and of the prices stated in its tender.

103.2 The tendered price shall, except where otherwise provided, allow for all the Contractor's obligations under the contract as set out in the Tender Documents.

104 Ambiguities in Tender Documents

104.1 Where the Tender Documents issued to prospective tenderers are ambiguous or unclear to a tenderer, it may request the issue of an explanatory notice. If an explanatory notice is issued, it shall be sent to all tenderers and shall upon issue become part of the Tender Documents.

104.2 In the absence of an explanatory notice, tenders may be submitted subject to any reasonable interpretation of any ambiguity or uncertainty in the Tender Documents, which shall be endorsed on the tender.

104.3 The Principal would prefer to receive tenders based on the Tender Documents, but reserves the right to consider any tender whether or not that tender has been submitted with endorsement.

105 Submission of tenders

105.1 Tenders will close at the time and place stated in the schedule to these conditions and each shall be enclosed in a sealed envelope, identified as a tender for the particular contract and addressed as required by the Schedule to the Conditions of Tendering.

105.2 Tenders shall be delivered at the place for closing before the closing time. It shall be sufficient if the tendered price is submitted by fax received before the closing time and is confirmed by a tender conforming with the other provisions of this clause 105 and posted before the closing time.

105.3 Tenders shall be prepared in the form required by the Tender Documents. Where no such form is provided they shall include:

- (a) The name of the tenderer and a complete postal address within New Zealand for service of notices;
- (b) The tendered price together with any completed schedules required by the Tender Documents for submission at that time to show how the tendered price is made up;
- (c) Any supplementary information required by the Tender Documents as listed in the schedule to these conditions;
- (d) Any interpretation or other statements by the tenderer affecting the tender.

105.4 The tender shall be signed by, or on behalf of the tenderer.

105.5 The Cost of preparing and submitting a tender shall be borne by the tenderer.

105.6 If the tender contains any error in extension of unit rates or in summation of items such as to vary the tendered sum, and the Principal or its agent becomes aware of the error prior to acceptance of any tender, then the Principal shall draw the error to the attention of the tenderer whose tender contains the error. The Principal shall invite the tenderer to confirm that its tender remains open for acceptance at the tendered sum notwithstanding the error. Unless the tenderer so confirms its tender it shall be deemed to be withdrawn. No amended tender shall be considered if received after the closing time for tenders.

106 Acceptance of tender

106.1 The lowest priced or highest scoring or any tender will not necessarily be accepted.

106.2 The successful tenderer shall be notified in writing by the Principal or its agent, that its tender has been accepted.

106.3 If the Principal is entering into the contract otherwise than in trade, then no acceptance of tender shall be valid and effective unless accompanied with a separate written agreement by which the Principal certifies that, having read and understood the arbitration agreement contained in section 13 of the General Conditions, the Principal agrees to be bound by it. The separate written agreement shall be in the form set out in the Schedule to Conditions of Tendering.



107 Notification of acceptance

107.1 If no tender has been accepted within one Month after the closing of tenders, each tenderer shall be notified in writing by the Principal or its agent whether its tender is or is not still under consideration.

107.2 Unsuccessful tenderers who have submitted bona fide tenders complying with the Tender Documents shall be notified by the Principal or its agent of the name and tender price of the successful tenderer and the other tender prices within 10 Working Days of acceptance of the successful tender.

SCHEDULE TO CONDITIONS OF TENDERING

Contract for

The conditions of tendering are those set out in NZS 3910:2003.

Clause numbers refer to conditions of tendering clauses.

102.2

- (a) A Tender Documents deposit is not required;
- (b) A Tender Documents deposit of \$..... is required.

(Delete provision which does not apply.)

103.1

- (a) An appointment to view the Site shall be made
- (b) No appointment need be made to view the Site.

(Delete provision which does not apply.)

105.1 Tenders shall close at(address)
at am/pm on the day of

- (a) Faxed tenders will be acceptable;
- (b) Faxed tenders will not be acceptable.

(Delete provision which does not apply.)

105.3

- (a) The percentage for On-Site Overheads shall be nominated in the tender;
- (b) No percentage for On-Site Overheads shall be nominated in the tender.

(Delete provision which does not apply. See clause 9.3.8 of the General Conditions of Contract.)

- (c) The percentage for Off-Site Overheads and Profit shall be nominated in the tender;
- (d) No percentage for Off-Site Overheads and Profit shall be nominated in the tender.

(Delete provision which does not apply. See clause 9.3.9 of the General Conditions of Contract.)

- (e) The rate per Working Day in compensation for time related On-Site Overheads, Off-Site Overheads and Profit incurred in relation to an extension of time shall be nominated in the tender;
- (f) No rate per Working Day in compensation for time related On-Site Overheads, Off-Site Overheads and Profit incurred in relation to an extension of time shall be nominated in the tender.

(Delete provision which does not apply. See clause 9.3.10 of the General Conditions of Contract.)

- (g) Supplementary information required to be submitted with the tender is
.....
.....

106.3

The separate agreement required to satisfy section 11 of the Arbitration Act 1996 may be in the following form:

**AGREEMENT AS TO ARBITRATION**

THIS AGREEMENT is made on
(insert date)

BETWEEN
("the Principal")

AND
("the Contractor")

The Contractor has submitted a tender for a contract for

.....
(*identify the contract*)

The Principal intends to accept such tender by the letter of acceptance which accompanies this agreement. Such tender and its acceptance, together with the General Conditions and other documents intended to form part of the contract, will constitute a contract. By clause 106.3 of the Conditions of Tendering, no acceptance of tender is valid and effective unless accompanied with a separate agreement to the effect there set out.

By this present separate agreement, and in consideration of the Contractor's tender, the Principal certifies that, having read and understood the arbitration agreement contained in section 13 of the General Conditions, it agrees to be bound by it.

SIGNED on behalf of the Principal by

.....

in the presence of:

.....

GUIDELINES

These guidelines are part of NZS 3910 and have contractual status as between the Principal and the Contractor, but only to the extent that they may be referred to as an aid to the interpretation of the substantive clauses. Their purpose is to provide assistance in understanding the principles behind the substantive clauses and in applying these clauses to situations which are not dealt with specifically.

Section G1 – Interpretation

G1.2 Definitions

The defined words and phrases are printed with initial letters in capitals.

NET COST. This is intended to cover all costs incurred by the Contractor in performing the work in question, other than those costs which fall within the description of overheads. It does not include profit, but does include return on investment in Plant which would normally be recovered in Plant hire rates. If the Contractor's own Plant is used then depreciation, financing costs and return on the investment in the Plant as appropriate should be assessed and recovered as part of the Net Cost, using a reasonable hire rate. Where a Variation causes additional finance costs beyond what is normal, e.g. where it involves a longer than normal delay between the incurring of expenditures and their reimbursement, such as early payment for Materials, these will form part of the Net Cost of that Variation. Net Cost is the Cost after the deduction of trade discounts but not special discounts for early payment or obtained by the Contractor by special arrangement.

Net Cost can be agreed or fixed either on the basis of actual Cost, or on the basis of an assessment of Cost, as may be appropriate. Assessment should be used not merely where the price is fixed in advance of the work being done, but also after the work has been done where assessment provides a simpler and more convenient, but still sufficiently reliable, method. The identifying of full details of actual costs may in some cases be unnecessarily burdensome.

OFF-SITE OVERHEADS AND PROFIT and ON-SITE OVERHEADS. These two items are intended together to cover all the Contractor's overheads and also the Contractor's profit. Costs which are readily identified with one particular work item will not form part of the overheads but will be included in the Net Cost of that item.

ON-SITE OVERHEADS may include costs incurred away from the Site if they have the character described in the definition, e.g. where they are overheads which relate to fabrication or other work carried out elsewhere and are not part of the Net Cost.

General finance costs, e.g. for the normal delay between the incurring of expenditures and their reimbursement under the contract, are part of the Off-Site Overheads. Where a Variation causes additional finance costs beyond what is normal, these will form part of the Net Cost of that Variation.

Profit does not include return on investment in Plant which would normally be recovered in Plant hire rates.

Section G5 – General Obligations

G5.10 Programme

G5.10.4 The intention is that the Contractor is to provide realistic information, even if this indicates a completion date later than the Due Date for Completion and any further extensions claimed. The purpose is to provide the Engineer with a

realistic assessment so that he or she can consider how best to deal with the situation. The fact that the Contractor indicates a later date than is required under the Contract Documents will not, of course, excuse the Contractor in any way from liability to complete within the time allowed by the Contract Documents.

Section G6 – Engineer’s Powers and Responsibilities

G6.2 Role of Engineer

G6.2.1 This clause is intended to reflect the common law and to record that while the Engineer is retained by the Principal and has certain duties owed exclusively to the Principal, the Engineer is also vested by both parties to the contract with the power to make certain decisions which become binding on them both, and in the latter role is bound to act fairly and impartially.

The Engineer will act solely on behalf of the Principal in such matters as ordering a Variation to the Contract Works, or in giving directions as to matters left by the Specification for subsequent decision. Examples are the nomination of colours for paintwork, or matters of surface finish or texture where the Specification may define alternative surface finishes to be applied to areas to be designated by the Engineer. In designating the areas the Engineer is acting solely for the Principal. As agent the Engineer can bind the Principal but is accountable to the Principal. If the Engineer exceeds the express or implied authority under his or her contract with the Principal he or she will be liable to the Principal.

In a number of matters the Engineer is called on to exercise his or her own professional judgment and must act independently of either party in the sense that his or her own professional decision must be made. An example is in deciding whether or not work is in compliance with the Specification or whether the Engineer’s discretion under 6.5.2 should be exercised. Whether work complies with the Specification is a matter of the proper meaning of the Specification and an exercise of professional judgment as to whether or not the work complies. Another example is in requiring inspection or testing under 6.4.1. If the Principal wishes to retain some additional right to require inspection, then this must be stated in the Contract Documents or directed as a Variation under 6.4.2 and defined with some precision, as the Contractor will no longer be able to rely on it being required only when considered necessary in the professional judgment of an independent person.

The fact that the Engineer is required to act independently in such matters does not prevent consultation with the Principal and taking note of the Principal’s concerns. Nor does it preclude consultation with the Contractor and taking note of the Contractor’s concerns, but the decision must be the honest decision of the Engineer exercising his or her own professional judgment.

G6.3 Engineer’s representative

G6.3.3 In the exercise of the powers vested in the Engineer, the Engineer’s representative must observe the requirements of 6.2.1, as explained in the Guideline to that clause.

G6.4 Inspection, recording, measuring and testing

G6.4.6 This clause should rarely be applicable, but it protects the Principal from additional Cost resulting from the unreasonable notification that work is ready for inspection or testing when clearly it is not. It is not sufficient that the work does not pass inspection or test, but the circumstances must be such that the Contractor has acted unreasonably in giving the notification.

Section G7 – Indemnity

G7 The Contractor's obligations for the care of the Contract Works are as set out in 5.6.

Section G8 – Insurance

G8 Section 8 provides the extent of the cover which the party responsible for insuring is required by the contract to arrange. A prudent Contractor and a prudent Principal will consider whether any additional insurance is desirable in the particular case. It is noted that the provision of insurance is merely one of the means available for managing some of the risks involved in contract work.

G8.1 Contractor to insure Contract Works and Materials

G8.1.2 It should be borne in mind that the words "Contract Price" are defined in 1.2. They refer not to the original tender price, but to the Contract Price as adjusted from time to time, e.g. for Variations. Paragraph (d) covers not only increases in the construction Cost of uncompleted work, but also of the reinstatement of work which may be damaged or destroyed.

G8.1.3 The Contractor is required to insure the works against loss or damage from any cause other than the excepted risks in 5.6.6 and the other matters set out in 8.1.4. The amount of the cover is to be the Contract Price and the additional matters in 8.1.2. Note that the Contract Price is defined to include any adjustments such as for Variations. The cover will need to be increased where there are Variations which increase the Contract Price. It may be convenient to include an allowance in anticipation of future Variations, but the Contractor must still monitor the situation to ensure that the cover is adequate to meet 8.1.2. A prudent Contractor will also consider the need to insure the Contractor's own design work, for example in respect of falsework or ground support.

A prudent Principal will consider insuring those insurable risks it is exposed to under 5.6.6 and 7.1.2.

G8.1.4 Insurance will not cover the making good of faulty Materials or workmanship. It should cover the consequential losses or damage flowing from faulty Materials or workmanship.

G8.1.5 A Contract Works annual cut-off policy is a Contract Works policy which is arranged on an annual basis to cover some, or all, of a Contractor's or Principal's construction projects commenced during that annual period, but for which all cover ceases with the particular underwriter on the policy expiry date, if it is not renewed with that underwriter.

This is in contrast to either a specific project Contract Works policy, or a Contract Works annual run-off policy. For a Contract Works run-off policy cover continues with the underwriter for all qualifying projects commenced before the expiry date of the annual policy through to completion of that project, even if the policy is not renewed with that underwriter from the expiry date.

Both forms of Contract Works annual policy will usually have qualifying criteria concerning scope of work undertaken, project values and project duration.

G8.4 Professional indemnity insurance for Contractor's design

G8.4.1 In a large number of cases where a Contractor is not responsible for significant design it is unlikely that insurance of the type described in 8.4 will be required.

A Contract Works insurance is likely only to cover consequential damage to the Contract Works from faulty design, with any lost or damaged work which is faultily designed being uninsured. Where the Contractor is required to provide design of temporary or permanent works, loss or damage of which would involve very substantial reinstatement Cost or liability to others, it may be prudent for a Principal to require the Contractor to provide a professional indemnity insurance to cover this risk.

Some Contractors may have such insurance. A professional designer providing design for a Contractor is likely to have similar insurance, but this is unlikely to cover the risk of any design input by the Contractor; and this policy may be relatively modest in the sum insured. Frequently either insurance will be in the form of an annual policy which covers a number of other projects and does not provide for reinstatement of cover in accordance with 8.4.3(a), so that coverage may be lost if there is damage to works on any of the projects covered by the policy. As a result, in some special cases it may be appropriate to request a separate policy with cover exclusively for this contract.

The exclusion of Contractor's design from a Contract Works insurance policy is likely to exclude liability resulting from work which may be done by design personnel on investigation, feasibility studies, design calculations and checking, Drawings, Specifications, monitoring or testing of the Contract Works, preparation of as-built drawings, operation manuals and maintenance manuals. As a result, a professional indemnity policy should cover the liabilities which may result from the improper performance of such duties.

G8.4.2 At the time of publication, forward cover for professional indemnity is not generally available for a period of 6 years and such may need to be in the form of a series of annual or shorter term policies.

G8.5 Contractor's insurance – General

G8.5.1 Important exceptions to the insurance cover are set out in 8.1.4, 8.2.3, 8.3.4 and 8.6. There will commonly be other exceptions in particular cases in respect of risks which are not insurable or which are very difficult to insure, such as losses discovered on stocktaking, effects of asbestos, slow and gradual chemical contamination, computer problems, special water risks and the like. Clause 8.5.1 requires that the insurance be in terms approved by the Principal, such approval not to be unreasonably withheld. It would be unreasonable to make approval dependent on the Contractor supplying insurance with terms or conditions or coverage of risk which are not readily available to experienced contractors in a current New Zealand insurance market.

G8.5.2 A discretionary clause is an insurance policy clause under which the insurer can at any time terminate the insurance and refund a portion of premium. This policy clause will advise what period of notice is to be given.

G8.5.4 The insurance on construction machinery and vehicles will commonly be on an annual basis, and not specific to the particular contract. An insurer cannot in such case be expected to certify that the Contractor has complied with 8.2.1 and 8.3.2, but can certify that there is an annual policy either covering all construction

machinery and vehicles or named construction machinery and vehicles. The Principal will need to be satisfied that the items insured include all those which need to be covered for the protection of the contract. The Principal has power under 8.5.6 to require production at any time of policies, receipts or certificates of currency. The Principal can by this means ensure that a significant item brought onto the Site is covered, or that an annual policy has been renewed.

G8.6 Principal's option to insure Contract Works and Materials

The Principal should generally arrange the insurance in cases where additions, alterations, repairs or maintenance are required to an existing building or building complex or are in the vicinity of another structure which is in the care of the Principal. This is because the Principal is in the best position to know the amount and the scope of cover required. In many cases the Principal already has an insurance policy in place and can often arrange an extension of cover. The words "in the vicinity of an existing structure" are necessarily vague, but are intended to cover situations when existing structures could be affected. Whether the clause is to apply or not is to be stated in the Special Conditions, which should also contain a full detailed description of the existing structures to be covered.

G8.8 Principal's insurances – General

G8.8.2 The Principal must disclose in the Special Conditions any deductible, exclusion, condition or warranty provided under the policies.

Section G9 – Variations

G9.1 Variations permitted

G9.1.1 The Courts have held that the power to omit work can only be exercised where the work in question is no longer intended to be carried out. It cannot be used to take work out of the contract in order that it can be carried out by another contractor or by the Principal.

G9.1.3 The Engineer may not order additional work to be carried out after Practical Completion, even if the instruction is given before Practical Completion. If the additional work cannot be completed before the Due Date for Completion, and 10.3 applies, the Contractor will be entitled to an extension of time. The only work which can be left to be carried out after Practical Completion is work of the kind referred to in 10.4.1, unless the contract is varied by agreement as noted in the Guideline to that clause.

G9.3 Valuation of Variations

G9.3.1 – G9.3.3 The object of any method of valuation is to arrive at a figure which fairly compensates the Contractor, in a manner consistent with the Contract Price, for the extra work involved and for the impact of the Variation on the Contractor's Costs. The basic scheme of clause 9.3 is that where possible Variations should be valued by agreement between the Contractor and the Engineer (9.3.1). Where practicable they should be valued before the work is commenced (9.3.2). Where measurement is required it is to be carried out by the Engineer (9.3.3). The Engineer and the Contractor are to exchange their respective estimates of the value (9.3.3).

The intention of 9.3.1 is that in every case a genuine attempt should be made by the Contractor and the Engineer to agree the value of every Variation. In endeavouring to reach agreement both Contractor and Engineer can be expected to take account of the procedures in 9.3.4 to 9.3.14 for determining the value if agreement cannot be reached. If there is no agreement then the value must be determined by the

Engineer in accordance with these provisions, subject always to the right to put the issue in dispute and if necessary to proceed to arbitration. Where full agreement is not possible, the Contractor and the Engineer should still endeavour to agree as far as possible e.g. as to which Schedule rates are applicable, or whether derived rates are appropriate, and as to the appropriate rates for particular items.

Where measurement is required, the primary obligation is on the Engineer under 9.3.3. This clause provides also for the exchange of information between the Contractor and the Engineer and for an exchange of the respective estimates of the value of the Variations. It is not sufficient for one to wait until receipt of the other's estimate, and then to accept those parts of it which appear favourable either to the Principal or Contractor while attacking those items which appear unfavourable and vulnerable. The Contractor and Engineer are each expected to make a genuine estimate, and then to discuss both estimates after they have been exchanged with a view to arriving at what is in total a fair figure.

G9.3.4 – G9.3.6 Where there is an applicable rate in the Contract Documents that rate is to be used (9.3.4). In other cases it may be practicable to derive a rate from rates in the Schedule (9.3.5). Where this is not possible, then the valuation is to be based on Net Cost (9.3.6). An example of circumstances which may come within 9.3.5 or 9.3.6 is where the Variation gives rise to consequential Costs such as escalation, where the price is not subject to escalation or allows only a limited recovery of escalation. The Contractor must allow elsewhere in its price for the non-recoverable escalation on the original Contract Works, but will be unable to do so in respect of the effect of Variations in postponing the date of execution of original or additional work beyond the contract period.

Another example which may come within 9.3.5 or 9.3.6 is loss of productivity, where the flow of particular work is interrupted, and the workforce loses continuity and has to again build up to its maximum performance. A reduction in the volume of a particular kind of work may increase the unit Cost of overheads, or an increase in volume may reduce it. Delays not associated with a corresponding increase in volume of work may likewise increase total overheads and result in loss of profit through tying up the Contractor's organization for a longer period.

G9.3.7 Where Schedule rates or rates derived from them are used, these will be deemed to include all overheads and profit (other than additional time related Costs) unless the Schedule of Prices provides a separate item for overheads and profit (9.3.7). To the extent that schedule rates include time related Costs, this is taken into account under 9.3.10 and 9.3.13 in assessing any further payment which may be due.

G9.3.8 – G9.3.9 Where the Schedule of Prices provides a separate item or items for overheads and profit, then clearly the other items in the Schedule will be exclusive of overheads and profit. The Base Value must therefore be increased in order to allow for overheads and profit in valuing the Variation (9.3.8 and 9.3.9). Where a percentage is nominated either for On-Site Overheads or for Off-Site Overheads and Profit then the nominated percentage is to be used in valuing the Variation. Where there is no percentage nominated then reasonable percentages are to be used. Where a percentage is not nominated, or where it would be "clearly inequitable" to use the nominated percentage, then a reasonable percentage may be able to be obtained from the Schedule of Prices where there is one. This provision has been inserted as a backstop for the extreme case, which may arise for reasons such as those referred to above in reference to 9.3.6. ➤

The relevant On-Site Overheads may be expressed as a percentage of the Contract Price less On-Site Overheads, Off-Site Overheads and Profit, Provisional Sums, Prime Cost Sums and contingency sums. In the case of Off-Site Overheads and Profit, these may be expressed as a percentage of the balance of the Contract Price after deducting Off-Site Overheads and Profit, Provisional Sums, Prime Cost Sums and contingency sums. Where this method is not appropriate, some other approach must be used to arrive at reasonable percentages.

G9.3.10 Where the Variation involves an extension of time, 9.3.10 provides for additional time related Costs to be allowed for in the valuation. Where the Special Conditions provide for a rate per Working Day to be nominated in the tender, then the rate so nominated is to be used unless the nature of the Variation is such that it would be clearly inequitable. The nominated rate is to be multiplied by the number of Working Days extension of time determined for that Variation, to arrive at the gross value of time related Cost and profit.

In other cases reasonable compensation is to be assessed. This will involve, as a first step, identifying those items which are time related and those which are not. Some items, such as supervision and insurance, will be related both to quantum of work and to time. It will be necessary to consider them in relation to the impact on them of the particular Variation, and to classify them as appropriate. The answer may be different when considering different Variations.

Where the Base Value has been determined from schedule rates under 9.3.4 or 9.3.5, it will already include some allowance for time related Costs, if such Costs are included in the rates. Where the Base Value has a percentage added to it under 9.3.8 or 9.3.9, this may also include some time related Costs. In either case, any allowance so included must be taken into account in assessing any further compensation which may be payable under 9.3.10 or 9.3.13. The Contractor will be entitled to additional compensation to the extent that the gross value of the additional time related Cost and profit resulting from the Variation, as assessed, is in excess of the allowance for such time included in the Base Value under 9.3.4 or 9.3.5, or in the percentages added for overheads and profits under 9.3.8 and 9.3.9 for that Variation.

Clause 10.3.7 limits the grounds for compensation of time related Costs.

G9.3.12 Where the result of a Variation is a deduction from the Contract Price, then 9.3.12 provides that the amount to be deducted is not increased by any percentage for overheads or profit.

G9.3.13 Where the Variation results in time related Costs over a greater period than the delay to the Contract Works as a whole, the period of extension of the contract as a whole will not provide a full measure of the additional time related Cost. The Contractor is entitled under 9.3.13 to reasonable compensation in such a case.

G9.3.14 Processing Costs in respect of Variations are referred to in 9.3.14. These may be assessed either as a sum of money or as a percentage. If they are calculated as a percentage, it should be calculated on the aggregate value of the additions and deductions including any amounts allowed under 9.3.10 or 9.3.13 for time related Cost and profit.

G9.3.16 Where the Engineer fixes the value of a Variation at a figure different from that proposed by the Contractor, the Engineer is required by 9.3.16 to give reasons for the valuation.

G9.4 Daywork

G9.4.1 This clause limits the use of Daywork to those situations where it provides an appropriate method of Valuation. These are the areas where Daywork has traditionally been used. Where the Contract Documents do not contain Daywork rates, then the work is to be paid for on the basis of Net Cost plus percentages to allow for On-Site Overheads and Off-Site Overheads and Profit, as in 9.3.8 and 9.3.9.

Section G10 – Time for Completion

G10.3 Extension of time

G10.3.1 Delays can result in additional Costs to both Principal and Contractor. Delay Costs suffered by the Principal cannot be insured by the Contractor, but may be insurable by the Principal. The Contractor will be liable if the delay is due to breach by the Contractor, and may be required to pay liquidated damages. The Contractor may be able to insure against the delay Costs suffered by the Contractor otherwise than as a result of breach by late completion, but the Contractor is unlikely to obtain cover for liability for liquidated damages.

Late supply by the Principal is to be treated as a Variation under 5.16, and is therefore covered by 10.3.1(a). Where the Contractor is entitled to an extension of time under paragraph (a) of this clause, there will also be an entitlement to claim under 9.3.10 or 9.3.13 for any time related Costs which result from the Variation. Time related Costs are not recoverable by the Contractor where an extension of time is granted on any other grounds.

Examples of circumstances which in a particular case might fall under paragraph (f) of this clause are delays in the supply of Materials or Plant from overseas, delays arising from environmental objections or political decisions, delays caused by vandalism and breaches of contract or other acts or omissions of the Principal or of any Person for whose acts or omissions the Principal is responsible.

An extension of time under 10.3.1(b) to (e) does not provide any compensation to the Contractor for Costs of delay or reinstatement, but it deprives the Principal of liquidated damages or other compensation from the Contractor for loss caused by the delay. The latter loss may be insurable by the Principal. In every case the Contractor must show that it is fairly entitled to an extension by reason of the matters relied on. Questions can arise under (e) as to the effect of the words “not due to the fault of the Contractor”. These words will not necessarily apply in every case where there has been fault on the part of a Person employed by the Contractor or by a Subcontractor. The Contractor may have proper systems and may have provided the appropriate level of supervision and instruction. In each case a decision must be reached as to whether the circumstances can properly be described as “not due to the fault of the Contractor”, and whether the Contractor “is fairly entitled to an extension”.

G10.3.2 This clause deals with the situation where the Contractor fails to give adequate and timely notice of a claim for an extension of time. In such case the Engineer is not bound to grant an extension, although the Engineer may still do so. The purpose of requiring adequate and timely notice is to ensure that the circumstances can be adequately investigated and a reliable judgment made. The discretion vested in the Engineer to reject or allow a late claim recognizes that there may be valid reasons for delay and there may be cases where the lateness of the claims does not prevent a proper investigation. The Engineer should not refuse to grant an extension on the ground of late application unless the lateness is such as to cause real difficulty in the making of a proper assessment, and there are no special reasons such as might excuse the failure to give notice at the proper time.

G10.4 Certificate of Practical Completion

G10.4.1 Minor omissions and minor defects of the kind stated in this clause will not prevent Practical Completion. Circumstances may arise where the uncompleted work is more than “minor”, but the Principal may wish to take possession and there may be advantages to both parties in treating Practical Completion as having been achieved. This can always be done if the Principal and Contractor both agree to vary the contract by making the completed work and the outstanding work Separable Portions. The certificate of Practical Completion can then be issued for the completed works and the parties can agree as to such matters as possession of the whole or part of the Contract Works.

G10.4.2 In many cases the Contractor will notify the Engineer before the works are completed that they will be ready at a certain date, and the Engineer will act on this notice and arrange to inspect. This is a sensible practice and will facilitate early inspection.

Section G11 – Defects Liability

G11.1 Period of Defects Liability

G11.1.1 The three Month Period of Defects Liability is likely to be adequate for most contracts and should only be extended if there is a specific project requirement. For example, the Period of Defects Liability for building services is commonly set at twelve Months to allow operation through a full range of climatic conditions.

Unless there is a specific project requirement, the Period of Defects Liability should not be extended because:

- (a) It may unnecessarily increase the Contractor’s risk and liability;
- (b) It may unnecessarily postpone the submission of the Contractor’s final payment claim (and possibly delays the settlement of all contract claims);
- (c) It potentially increases the Cost of the contract due to extended liability and delayed final payment;
- (d) Insurance cover may be difficult or more expensive to obtain.

Section G12 – Payments

G12.1 Contractor’s payment claims

G12.1.2 Where the Contract Documents provide for advances to be made to the Contractor for Temporary Works or Plant or Materials, the conditions relating to such advances should be set out in the Special Conditions.

G12.1.3 In assessing and where necessary amending the Contractor’s payment claims, the Engineer should not make any deduction for liquidated damages. The power to deduct liquidated damages is vested by 10.5.3 in the Principal. The Engineer may, of course, draw the Principal’s attention to any amount which the Principal is entitled to deduct for liquidated damages.

G12.12 Goods and services tax

G12.12.2 The Commissioner of Inland Revenue has granted approval to Contract Works for which the Conditions of Contract are NZS 3910:2003 as an approved class of taxable supplies under section 24(2) of the Goods and Services Tax Act 1985 so as to allow recipient created invoices. To ensure that the Payment Schedule is in the form required to constitute a tax invoice under the Act, it must be endorsed with the words "Buyer created invoice, IRD approved". The Contractor must not issue a tax invoice or subsequent adjustment note in respect of the supply of the goods and services covered by the Payment Schedule. If the Contractor is furnishing returns to the Inland Revenue Department on the invoice basis of accounting, it must account for the GST content of the payment made pursuant to the Payment Schedule in the taxable period in which the Payment Schedule is issued.

Section G13 – Disputes

G13.1 General

G13.1.3 Either party may refer a dispute to Adjudication under the Construction Contracts Act 2002 whether or not the dispute resolution procedure under Section 13 of the contract has been initiated.

In some circumstances it may be preferable to refer the dispute to the Engineer under 13.2 and only refer the dispute to Adjudication if either the Principal or the Contractor is dissatisfied with the Engineer's decision under 13.2.4, or no decision is given by the Engineer within the time prescribed by 13.2.4.

Neither party is entitled to suspend or delay any dispute resolution under Section 13 due to any Adjudication proceedings. Adjudication proceedings and the contractual dispute resolution procedure can take place concurrently, but in some circumstances the parties may agree to suspend the contractual dispute resolution procedure pending completion of the Adjudication proceedings.

However, it should also be noted that only the latter stages of the contractual dispute resolution process (i.e. mediation under 13.3 or Arbitration under 13.4) can produce outcomes which may take precedence over any Adjudicator's Determination, so it may be in either or both of the Principal's and/or Contractor's interests to continue to progress the contractual dispute resolution process notwithstanding any Adjudication proceedings.

Conditions of Tendering

G106 Acceptance of tender

G106.3 This clause has been included to satisfy the requirements of section 11 of the Arbitration Act 1996. The section applies to consumer agreements where one party, the "consumer", enters into the contract "otherwise than in trade", and the other party enters into the contract "in trade". An example would be the building of a residence for the occupation of the Principal. If tenders are called, the contract comes into existence upon acceptance of tender. The Principal would not be bound by the arbitration provisions unless the Principal signed a separate agreement. If the Principal declined to do this, the Contractor would be bound, but the arbitration clause would be unenforceable against the Principal. This clause is intended to avoid this problem, by making the building contract conditional on the Principal signing the necessary separate agreement.

GENERAL AID TO VALUATION OF VARIATIONS

WORKED EXAMPLES AND FLOW CHART

The Worked Examples and Flow Chart have been provided as a general aid to understanding the method of valuation of Variations in terms of 9.3 and 9.4. They are not intended to have contractual significance.

The Worked Examples are not exhaustive but merely show the application of the provisions in the particular cases chosen as illustrations.

Note that a particular Variation may include some work which can be valued by prices and rates, and other work which may be sufficiently distinct to require valuation on the basis of Net Cost. If this is the case, then initially separate paths should be used, one based on prices and rates and one based on Net Cost, with the two amounts added together with Boxes B and D of the Flow Chart before proceeding further.

VALUATION OF VARIATIONS – WORKED EXAMPLES

Example 1

- The Contract Documents include a Schedule of Prices containing prices and rates applicable to the circumstances and nature of the work, or it is reasonable for new prices or rates to be derived.
- Percentages and Working Day rates are nominated in the Tender as follows:

9.3.8	On-Site Overheads	7.5 %
9.3.9	Off-Site Overheads and Profit	10 %
9.3.10	Working Day Rate	\$100 / Working Day
- The Schedule of Prices provides separately for On-Site Overheads for Off-Site Overheads and Profit.
- 9.3.10 As a result of the Variation there have been 5 Working Days extension of time to the Due Date for Completion of the Contract Works.
- 9.3.14 It has been agreed to take 5 % of the aggregate value of additions and deductions as the reasonable Cost of processing Variations.

Refer to the Flow Chart

Box A: Applies. Applicable prices and rates are available in, or can reasonably be derived from, the (9.3.4) Schedule.
(9.3.5)

Box B: Base Value is determined from the prices and rates obtained or derived from the Schedule of Prices, as follows:

	Unit	Quantity	Rate \$	Deduct \$	Add \$	\$
Excavation	m ³	10	15.00	150.00		
Concrete	m ³	6	175.00	1,050.00		
Formwork	m ²	20	50.00	1,000.00		
Reinforcing steel	kg	150	2.00	300.00		
Excavation	m ³	15	15.00		225.00	
Concrete	m ³	12	175.00		2,100.00	
Formwork	m ²	35	50.00		1,750.00	
Reinforcing steel	kg	300	2.00		600.00	
				<u>\$2,500.00</u>	<u>\$4,675.00</u>	
Total value of additions						4,675.00
Total value of deductions						<u>2,500.00</u>
Base Value equals						\$2,175.00
Aggregate value of additions and deductions						7,175.00
Difference between Base Value and aggregate value						<u>\$5,000.00</u>

Box E:	Add nominated percentage for On-Site Overheads to Base Value of	2,175.00
(9.3.8)	7.5 % x \$2,175.00 =	163.13
	Subtotal	<u>\$2,338.13</u>

Box G:	Add nominated percentage for Off-Site Overheads and Profit	
(9.3.9)	10 % x \$2,338.13 =	233.81
	Subtotal	<u>\$2,571.94</u>

	\$	\$
Subtotal from previous page		2,571.94
Box I: The Variation results in 5 Working Days extension of time to the Due Date for Completion of the Contract Works		
Box K: Working Day rate multiplied by 5 Working Days		
5 Working Days x \$100 =	500.00	
(9.3.10) Total On-Site and Off-Site Overheads and Profit from Boxes E and G		
	\$163.13 + \$233.81 =	396.94
	Difference \$500.00 – \$396.94 =	\$103.06
	As difference is positive, add	103.06
	Subtotal	\$2,675.00
Box N: Add processing Costs, taking into account the aggregate value of additions and deductions		
	Subtotal from Box K	2,675.00
Take account of difference between Base Value and aggregate value from Box B		5,000.00
		\$7,675.00
Processing Costs	Add 5 % x \$7,675.00 =	383.75
Box O: Total value of Variation		<u>\$3,058.75</u>

Example 2

- The Contract Documents include a Schedule of Prices.
- Prices and rates in the Schedule of Prices are applicable to the circumstances and nature of part of the work included in the Variation, or it is reasonable for new prices or rates to be derived for this part.
- The Schedule of Prices provides separately for On-Site Overheads and for Off-Site Overheads and Profit.
- The balance of the work included in the Variation is to be determined on the basis of Net Cost.
- Percentages and Working Day rates are nominated in the Tender as follows:
 - 9.3.8 On-Site Overheads 8 %
 - 9.3.9 Off-Site Overheads and Profit 12.5 %
 - 9.3.10 Working Day Rate \$95 / Working Day
 - 9.3.10 As a result of the Variation there have been 5 Working Days extension of time to the Due Date for Completion of the Contract Works.
 - 9.3.14 No overall percentage for processing Costs has been agreed and these Costs are to be valued individually for each Variation.

Refer to the Flow Chart

- Box A: Applies to part of work. Applicable prices and rates are available
- (9.3.4) in, or can reasonably be derived from, the Schedule for this part
- (9.3.5) of the work.

Box B: Part of the Base Value is determined from the prices and rates obtained or derived from the Schedule of Prices, as follows:

	Unit	Quantity	Rate \$	Deduct \$	Add \$	\$
Excavation	m ³	10	15.00	150.00		
Concrete	m ³	6	175.00	1,050.00		
Formwork	m ²	20	50.00	1,000.00		
Reinforcing steel	kg	150	2.00	300.00		
Excavation	m ³	15	15.00		225.00	
Concrete	m ³	12	175.00		2,100.00	
Formwork	m ²	35	50.00		1,750.00	
Reinforcing Steel	kg	300	2.00		600.00	
				<u>\$2,500.00</u>	<u>\$4,675.00</u>	
Total Value of Additions						4,675.00
Total Value of Deductions						<u>2,500.00</u>
Part of Base Value determined from Schedule of Prices						<u>\$2,175.00</u>

Box C: Determine balance of Base Value from Net Costs
(9.3.6)

Box D: Net Costs	Materials	2,850.00
	Plant	600.00
	Labour	<u>1,640.00</u>
		\$5,090.00

Add Boxes B and D to determine the Base Value
for the two parts of the works.

i.e. Add: Box B	2,175.00
Box D	<u>5,090.00</u>
Base Value	\$7,265.00

Box E: Add nominated percentage for On-Site Overheads

(9.3.8) to Base Value	8 % x \$7,265.00 =	<u>581.20</u>
	Subtotal	\$7,846.20

Box G: Add nominated percentage for Off-Site

(9.3.9) Overheads and Profit	12.5 % x \$7,846.20 =	<u>980.78</u>
	Subtotal	\$8,826.98

Box I: The Variation results in 5 Working Days extension of time
(9.3.10) to the Due Date for Completion of the Contract Works.

Box K: Add Working Day rate multiplied by 5 Working Days

	5 Working Days x \$95 =	475.00
Total On-Site and Off-Site Overheads and Profit from Boxes E and G		
	\$581.20 + \$980.78 =	<u>1,561.98</u>
	Difference	– \$1,086.98
As difference is negative, add zero		<u>0.00</u>
	Subtotal	\$8,826.98

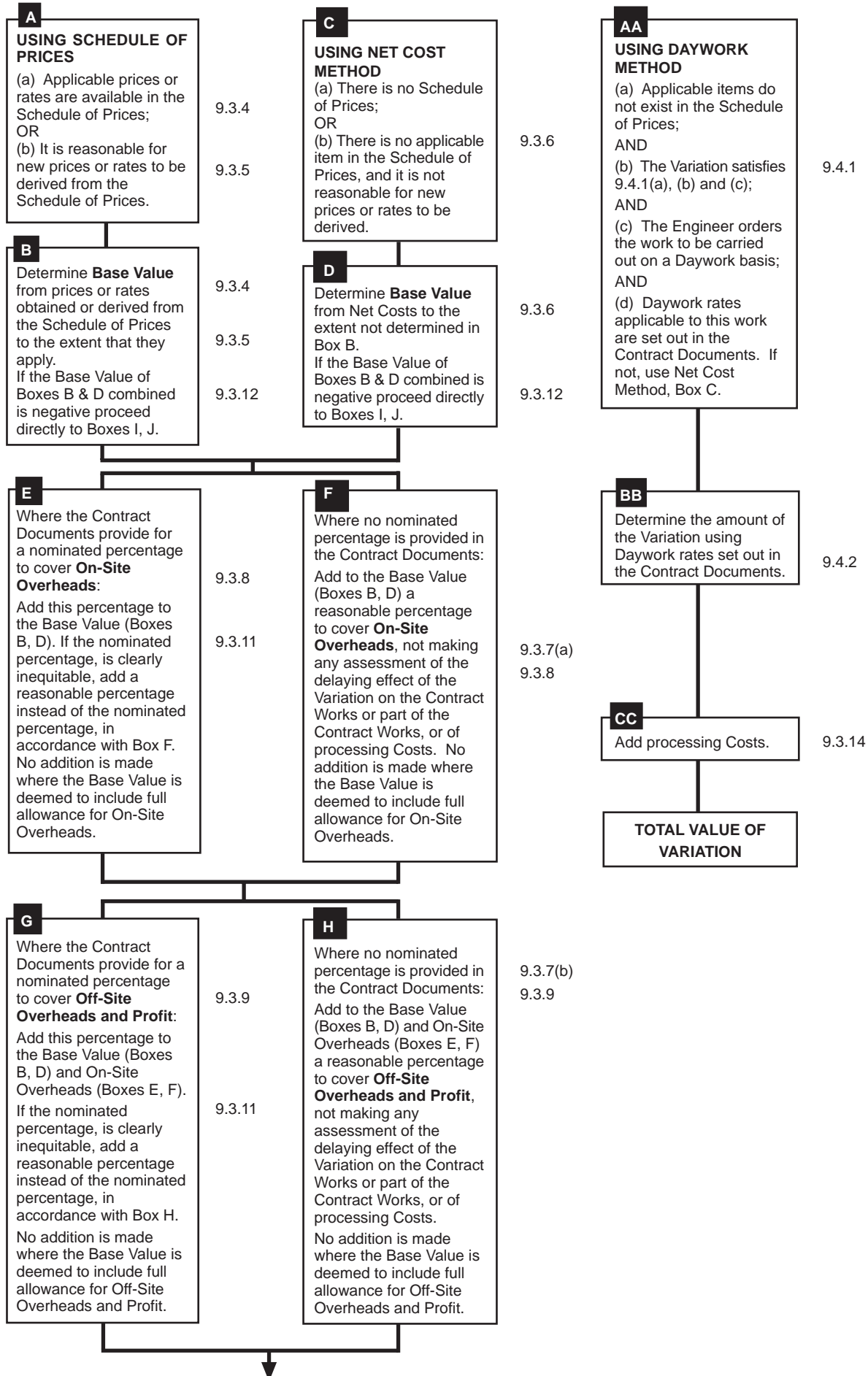
Box N: Add processing Costs, for time spent

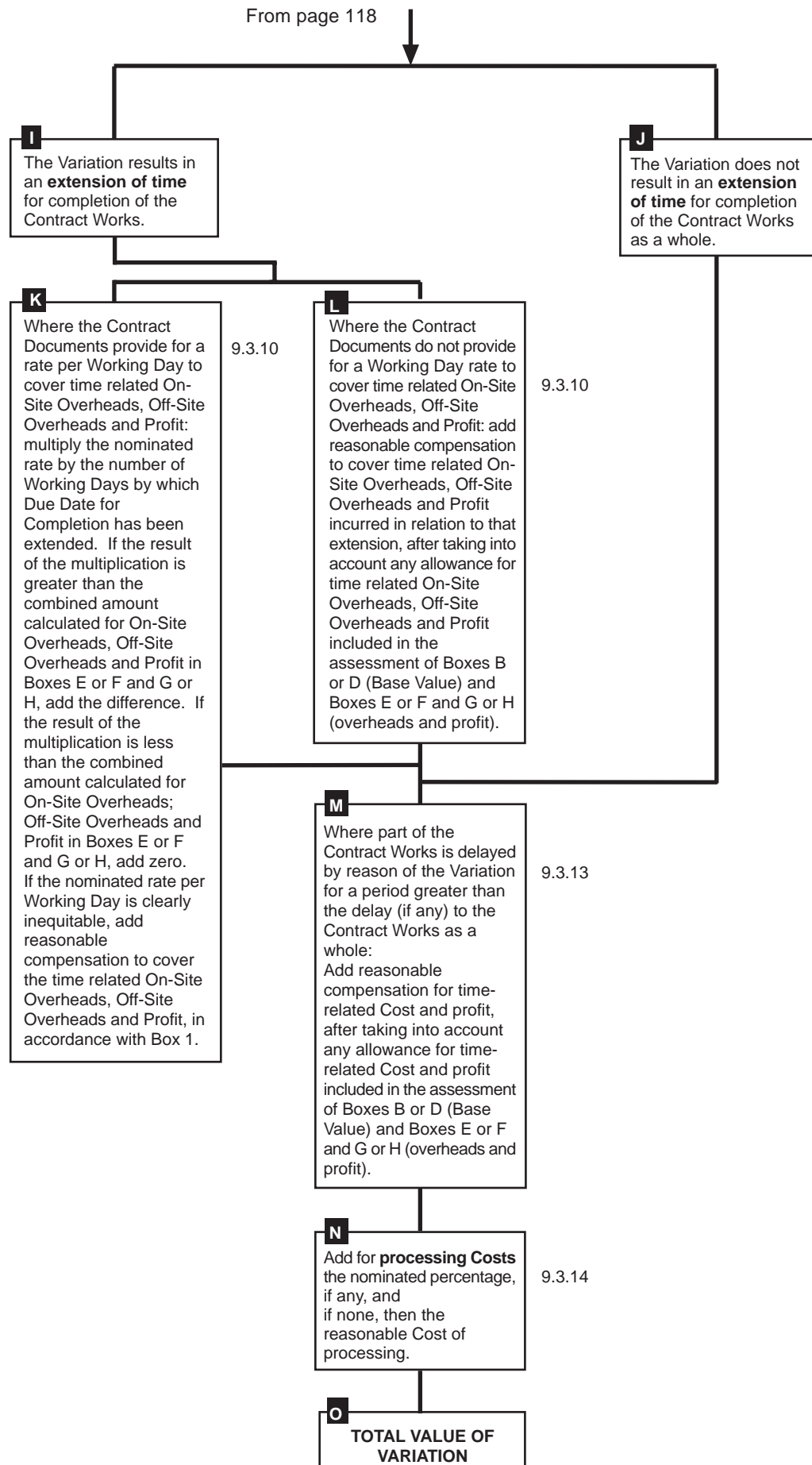
(9.3.14) by Contractor's staff processing this Variation.

6 hours x \$60 =	360.00
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Box O: Total value of Variation

\$9,186.98





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NOTE – This index is included for the convenience of users of NZS 3910. It does not form a part of either the General Conditions of Contract or the Conditions of Tendering.

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NOTES

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LINKS



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