

Australian Standard™

**General conditions of contract for
design and construct**



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

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Australian Procurement and Construction Council
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Construction Industry Engineering Services Group
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General conditions of contract for design and construct

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PREFACE

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

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

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

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

This Standard covers the following types of project procurement methods:

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

If the project procurement method chosen by the Principal is:

- (a) **design and construct**—the Principal would provide the Principal's project requirements, would not normally provide a detailed preliminary design and would not require novation;
- (b) **design development and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design and accordingly would complete Annexure Part A Items 10 and 11;
- (c) **design, novate and construct**—the Principal would provide the Principal's project requirements, would always provide a preliminary design, would complete Annexure Part A Items 10 and 11 and would complete Annexure Part A Item 20 stating which subcontract (including consultant's agreement) or selected subcontract is to be novated to the Contractor.

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

WARNINGS

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

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

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

- (2) Principals should ensure that their specific requirements are fully and completely incorporated in the Principal's project requirements obtaining specialist advice if necessary. Where a Contractor provides a proposed design as part of its tender, the parties should consider whether that design should form part of the preliminary design.

- (3) The risk allocation, drafting, interpretation and construction of this Standard are interrelated. Users who alter the Standard do so at their own risk and should obtain specialist advice as to whether it is suitable for a particular project.**
- (4) Contractors should ensure that they satisfy the requirements of payment for unfixed plant and materials.**
- (5) Legislation has come into force in some jurisdictions dealing with security of payments. Parties intending to use this Standard should seek expert advice as to their rights and obligations under such legislation.**

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STANDARDS AUSTRALIA

Australian Standard

General conditions of contract for design and construct

1 Interpretation and construction of Contract

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

- Item*** means an *Item* in Annexure Part A;
- certificate of practical completion*** has the meaning in subclause 34.6;
- compensable cause*** means:
- (a) any act, default or omission of the *Superintendent*, the *Principal* or its consultants, agents or other contractors (not being employed by the *Contractor*); or
 - (b) those listed in *Item* 31;
- construction plant*** means appliances and things used in the carrying out of *WUC* but not forming part of *the Works*;
- consultant*** means any person engaged by the *Contractor* to perform consultancy services in connection with *WUC* and includes any *Principal's* consultant whose prior contract is novated to the *Contractor* under subclause 9.4;
- Contract*** has the meaning in clause 6;
- contract sum*** means:
- (a) where the *Principal* accepted a lump sum, the lump sum;
 - (b) where the *Principal* accepted rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the *schedule of rates*; or
 - (c) where the *Principal* accepted a lump sum and rates, the aggregate of the sums referred to in paragraphs (a) and (b),
- including *provisional sums* but excluding any additions or deductions which may be required to be made under the *Contract*;
- Contractor*** means the person bound to carry out and complete *WUC*;
- Contractor's design obligations*** means all tasks necessary to design and specify *the Works* required by the *Contract*, including preparation of the *design documents* and, if the documents stated in *Item* 10 as describing the *Principal's project requirements* include a *preliminary design*, developing the *preliminary design*;

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| <i>date for practical completion</i> | means: <ul style="list-style-type: none"> (a) where <i>Item 7(a)</i> provides a date for <i>practical completion</i>, the date; (b) where <i>Item 7(b)</i> provides a period of time for <i>practical completion</i>, the last day of the period, but if any <i>EOT</i> for <i>practical completion</i> is directed by the <i>Superintendent</i> or allowed in any arbitration or litigation, it means the date resulting therefrom; |
| <i>date of acceptance of tender</i> | means the date which appears on the written notice of acceptance of the tender; |
| <i>date of practical completion</i> | means: <ul style="list-style-type: none"> (a) the date evidenced in a <i>certificate of practical completion</i> as the date upon which <i>practical completion</i> was reached; or (b) where another date is determined in any arbitration or litigation as the date upon which <i>practical completion</i> was reached, that other date; |
| <i>deed of guarantee, undertaking and substitution</i> | has the meaning in subclause 5.6; |
| <i>defects</i> | has the meaning in clause 35 and includes omissions; |
| <i>defects liability period</i> | has the meaning in clause 35; |
| <i>design documents</i> | means the drawings, specifications and other information, samples, models, patterns and the like required by the <i>Contract</i> and created (and including, where the context so requires, those to be created by the <i>Contractor</i>) for the construction of <i>the Works</i> ; |
| <i>direction</i> | includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement; |
| <i>dispute</i> | has the meaning in clause 42; |
| <i>EOT (from 'extension of time')</i> | has the meaning in subclause 34.3; |
| <i>excepted risk</i> | has the meaning in subclause 14.3; |
| <i>final certificate</i> | has the meaning in subclause 37.4; |
| <i>final payment</i> | has the meaning in clause 37; |
| <i>final payment claim</i> | means the final payment claim referred to in subclause 37.4; |
| <i>intellectual property right</i> | means any patent, registered design, trademark or name, copyright or other protected right; |
| <i>latent condition</i> | has the meaning in subclause 25.1; |