

## Changes to work and time

### 47 Valuation of changes

- .1 If the Contractor submits a *Claim* complying with clause 68.3 and the Principal agrees that the Contractor is entitled to an adjustment to the *Contract Price*, then the parties must endeavour to reach agreement on the adjustments. If agreement cannot be reached then within 28 days after the Contractor has provided the information specified in clause 68.3, the Principal is to assess the value of the adjustments in accordance with clause 47 and advise the Contractor in writing. The Contractor may dispute the assessment under clause 69.
- .2 The Principal is not required to assess a *Claim* until the Contractor provides all the information specified in clause 68.3.
- .3 Not used.
- .4 If the Principal does not agree that any entitlement exists, the Principal must advise the Contractor in writing and clauses 69 to 71 apply.

#### Valuation principles

- .5 When the Contract requires an adjustment to the *Contract Price* to be valued in accordance with clause 47, the valuation of any adjustment to the *Contract Price* will be agreed between the parties or, failing agreement within 10 *Business Days*, be determined by the *Principal's Authorised Person* in accordance with clause 47.6.
- .6 Where the Contract provides that a valuation is to be made under clause 47, the adjustment to the *Contract Price* will, subject to clause 47.7, be determined by the *Principal's Authorised Person* as follows:
  - .1 to the extent that the Contract prescribes specific rates or prices to be applied in determining the value, using those rates and prices;
  - .2 to the extent that clause 47.6.1 does not apply, using reasonable rates and prices;
  - .3 if the rates and prices referred to in clauses 47.6.1 and 47.6.2 do not include an amount for profit and on-Site and off-Site overhead, an additional amount for the *Contractor's Margin*, calculated as the percentage stated in Contract Information item 44 will be added for the Contractor's profit and overhead;
  - .4 for work or services which are omitted from the Contract, or for a Variation which results in a saving to the Contractor, the deduction must include a reasonable deduction for an amount for on-Site and off-Site overheads and profit; and
  - .5 if the valuation relates to extra costs incurred by the Contractor for delay and disruption, the valuation shall include a reasonable amount for on-Site overheads but shall not include off-Site overheads or profit.
- .7 A valuation under clause 47.6 must not include:
  - .1 any costs, losses or expenses attributable to any default, negligence or failure to minimise additional costs of the Contractor, Subcontractors or Consultants;
  - .2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract; or
  - .3 any amount that the Contractor is not entitled to claim under clause 27A.8, 49.6 or 68.2.
- .8 A valuation under clause 46 must take into account the specific matters required by that clause.

#### Application of adjustments

- .9 The *Contract Price* must be adjusted as agreed, assessed or determined under clause 47.

### 48 Variations

#### Instructing and commencing Variations

- .1 The Principal may instruct a *Variation* in writing at any time before *Completion* of the whole of the Works (and after *Completion* in accordance with clause 67.1.3) by issuing a

- notice identified as a “Variation Order” (**Variation Order**). The Contractor must comply with all *Variation Orders*.
- .2 The Contractor must not carry out a *Variation* unless directed by the Principal by a *Variation Order*.
  - .3 The Principal may instruct the Contractor to carry out any *Variation* as *Daywork*, in which case the requirements of Schedule 8 (Daywork) apply.
  - .4 Without limiting clause 48.1, the Principal may request the Contractor to provide a proposal with respect to a proposed *Variation* (**Variation Request**).
  - .5 Within 10 Business Days after receipt of a *Variation Request*, the Contractor must provide the Principal with a written proposal (**Variation Proposal**) setting out:
    - .1 the proposed increase or decrease in the Contract Price to carry out the proposed *Variation*, including details of how such amounts have been calculated;
    - .2 the anticipated effect of the proposed *Variation* on the *Contract Program* and the Contractor achieving *Completion*, including any proposed extension of time claim the Contractor would make to carry out the proposed *Variation*; and
    - .3 a statement that the proposed *Variation*:
      - .1 does not conflict with or change the requirements of the *Project Brief* or the *Concept Design* or involve changes other than those described in the *Variation Request*; or
      - .2 changes the requirements of the *Project Brief* or the *Concept Design* or involves changes other than those described in the *Variation Request*, in which case the Contractor must explain all the changes and effects, including providing information on the:
        - .1 scope and limits of the work changes;
        - .2 design criteria and how they are to be addressed;
        - .3 effect on relevant reports, drawings and studies;
        - .4 assumptions;
        - .5 any required changes to *Approvals* and any *Third Party Agreements* affected; and
        - .6 any impact on the *Environment* or the community; and
    - .4 the effect of the proposed *Variation* on any other matter specified by the Principal.
  - .6 The Principal is under no obligation to issue a *Variation Order* after receiving a *Variation Proposal* from the Contractor.
  - .7 If the parties have agreed in writing on the effects of a proposed *Variation*, and the Principal instructs the Contractor to carry out the *Variation*, any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
  - .8 If the Principal has issued a *Variation Order* and the parties have not agreed in writing on the effects of a proposed *Variation*, the Contractor must carry out the *Variation* in accordance with the *Variation Order* and may make a *Claim* for:
    - .1 an extension of time under clause 50, or the Principal may assess a reduction in time in accordance with clause 50; and
    - .2 an adjustment to the *Contract Price* to be valued in accordance with clause 47, or the Principal may assess a deduction from the *Contract Price* to be valued in accordance with clause 47.
  - .9 A *Variation* may involve the omission of any part or parts of the Works. The Principal may engage others to perform that or parts of the Works which have been omitted.
  - .10 No omission will constitute a basis to allege that the Principal has repudiated the Contract regardless of the subject matter, the extent or timing of the omission.

#### **Variations proposed by the Contractor**

- .11 The Contractor may make a written proposal for a *Variation* for the Contractor’s convenience (“**Contractor’s Variation Proposal**”).
- .12 A *Contractor’s Variation Proposal* must set out:
  - .1 a full description of the proposed *Variation*;



- .2 the matters required by clause 48.5;
  - .3 a full description of the proposed *Variation*;
  - .4 the proposal for sharing any cost savings or increases with the Principal, including the amount;
  - .5 any benefits that would flow to the Principal; and
  - .6 the expected effect upon the future cost of operating and maintaining the Works.
- .13 The Principal may accept or reject the *Contractor's Variation Proposal* in its absolute discretion. The Principal's acceptance may be subject to conditions, including that the *Variation* is at the Contractor's risk. If the Principal accepts the *Contractor's Variation Proposal*, the Principal must instruct a *Variation* by way of *Variation Order*, stating any conditions, and make any agreed adjustments to the affected *Contractual Completion Dates* and the *Contract Price*.
- .14 If the Contractor considers that the Principal has issued a direction which constitutes a *Variation* but has not been instructed by way of a *Variation Order*, the Contractor must notify the Principal within 2 days after the Contractor receives such direction, and in any event before the Contractor complies with the direction, that the Contractor considers the direction to be a *Variation*.
- .15 Within five *Business Days* after receipt of the Contractor's notice pursuant to clause 48.14, the *Principal's Authorised Person* must advise whether the direction is in its view a *Variation* and:
- .1 if the *Principal's Authorised Person* agrees with the Contractor, the *Principal's Authorised Person* may:
    - .1 issue a *Variation Order*;
    - .2 issue a *Variation Request*; or
    - .3 withdraw the direction; or
  - .2 if the *Principal's Authorised Person* does not agree with the Contractor, the Principal will notify the Contractor and the Contractor must comply with the direction. The Contractor may dispute the decision of the *Principal's Authorised Person* in accordance with clause 69.
- .16 The Contractor must not carry out any work in relation to the direction notified to the Principal under clause 48.14 until the earlier of:
- .1 a *Variation Order* is issued by the *Principal's Authorised Person*; or notification under clause 48.15.2.
- .17 The Contractor is not entitled to any *Claim* in respect of such direction unless the Contractor has provided the notice required by clause 48.14 within the required time period and:
- .1 the *Principal's Authorised Person* has issued a *Variation Order*; or
  - .2 it has been determined pursuant to clause 69 that such direction amounts to a *Variation*.
- .18 The Contractor acknowledges that development of the design by the Contractor does not constitute a *Variation*.

#### **48A Pre-Agreed Variations**

- .1 The *Principal's Authorised Person* may, in its absolute discretion and without being under any obligation to do so, direct by way of *Variation* any *Pre-Agreed Variation* by giving written notice to the Contractor.
- .2 The Principal and the Contractor agree that if a notice pursuant to clause 48A.1 is given in respect of a *Pre-Agreed Variation* by the relevant date specified in the table in Schedule 10, this Contract, including any relevant components of the *Contract Price*, will be deemed to be amended in accordance with the relevant amendments set out in Schedule 10 from the date the Contractor receives such notice.
- .3 Where *Principal's Authorised Person* directs a *Pre-Agreed Variation* by giving written notice to the Contractor by the relevant date referred to in clause 48A.2, the Contractor, in respect of that *Pre-Agreed Variation*:

- .1 must carry out its obligations under this Contract as amended by clause 48A.2.1; and
- .2 acknowledges and agrees that:
  - .1 any adjustment of the components of the *Contract Price* made pursuant to clause 48A.2 will be full compensation for all costs and any damage, expense, loss, liability or delay it suffers or incurs arising out of or in connection with the issue of such a notice and no further adjustment will be made to the components of the *Contract Price* under clause 47 or this clause 48A; and
  - .2 the Contractor is not entitled to make any *Claim* for:
    - .1 any acceleration to the carrying out of the work in connection with the Contract which the Contractor must perform at any time in order to achieve *Completion* by the *Contractual Completion Date*; or
    - .2 any extension of time for any delay to the carrying out of the work in connection with the Contract,
 in connection with the issue of such a notice or the amendment of this Contract pursuant to clause 48A.2.
- .4 Nothing in this clauses 48A.1 to 48A.3 prevents the *Principal's Authorised Person* from instructing a Variation pursuant to clause 48.1 that involves the same (or similar) changes to the Works as a *Pre-Agreed Variation* after the relevant date for giving notice of the *Pre-Agreed Variation* specified in Schedule 10.
- .5 If the *Principal's Authorised Person* issues a *Variation Order* pursuant to clause 48.1 which involves the same or similar changes to the Works as are required by a *Pre-Agreed Variation* and which is issued or directed after the relevant date in Schedule 10 for that *Pre-Agreed Variation*, the Principal and the Contractor agree that clause 47 and 48 will apply to such *Variation*.

#### 49 Changes to Statutory Requirements

- .1 If the Contractor becomes aware of a *Change in Statutory Requirements* that requires a change to the Works, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of the *Change in Statutory Requirements*. The notification must include details of:
  - .1 the *Change in Statutory Requirements*;
  - .2 why the *Change in Statutory Requirements* should not reasonably have been expected by the Contractor at the Date of Contract;
  - .3 the changes to the Works that the Contractor considers necessary to comply with the *Change in Statutory Requirements*;
  - .4 any delays in achieving *Completion* as a result of the change to the Works;
  - .5 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price* as a result of the change to the Works; and
  - .6 any other matters the Contractor considers relevant.
- .2 The Principal may request the Contractor to provide further information about the matters notified under clause 49.1.
- .3 After considering the Contractor's notification under clause 49.1, the Principal must notify the Contractor whether it agrees that there has been a *Change in Statutory Requirements* that requires a change to the Works.
- .4 If the Principal agrees that there has been a *Change in Statutory Requirements* that requires a change to the Works and if the Contractor has given the notice required by clause 49.1 then:
  - .1 the parties may agree in writing on the effects of the *Change in Statutory Requirements* (including any *Variation* instructed by the Principal), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; and



- .2 if the parties have not agreed in writing as to the effects of the *Change in Statutory Requirements* within 10 Business Days after receipt of the Contractor's notice under clause 49.1:
  - .1 if the Principal instructs a *Variation*, in connection with the *Change in Statutory Requirements*, in addition to the entitlements the Contractor has under clause 48, the Contractor may also make a *Claim* for:
    - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, for any delay incurred by it as a result of the *Change in Statutory Requirements* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
    - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for unavoidable additional costs incurred by the Contractor as a result of the *Change in Statutory Requirements*, but excluding any additional or increased work included in the *Variation*; or
  - .2 if no *Variation* in connection with the *Change in Statutory Requirements* is instructed, the Contractor may make a *Claim* for:
    - .1 an extension of time in accordance with clause 50 and delay costs in accordance with clause 51, subject to the requirements of those clauses; and
    - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the *Change in Statutory Requirements*.
- .5 If the Principal does not agree that there has been a *Change in Statutory Requirements* that requires a change to the Works, the Contractor may notify an *Issue* under clause 69.
- .6 Costs and delay incurred by the Contractor as a result of a *Change in Statutory Requirements* before it gave the notice required by clause 49.1 must not be counted in any valuation or extension of time.

## 50 Changes to Contractual Completion Dates

### Extensions of time

- .1 The Contractor is entitled to an extension of time for *Completion* and an adjustment to the related *Contractual Completion Date* if:
  - .1 the Contractor is or will be delayed in achieving *Completion* by an *Excusable Delay Event*;
  - .2 the delay is to an activity or activities on the critical path of the then current *Contract Program* and at the time of the *Excusable Delay Event*, the sequence of critical path activities being performed by the Contractor remains the same as depicted on this *Contract Program*;
  - .3 the Contractor has given the Principal an initial notice in writing within 7 days after the first occurrence of the *Excusable Delay Event*, setting out the *Excusable Delay Event*, any relevant facts and including a copy of the *Contract Program*, current at the start of the delay, which demonstrates how the delay affects the critical path and shows the expected effects of the delay; and
  - .4 the Contractor has given the Principal a *Claim* for an extension of time which includes the other information required by clauses 50.3 and 50.4.
- .2 The Contractor must take all reasonable steps to avoid delay and its effects.
- .3 If the Contractor is delayed in achieving *Completion*, it may make a *Claim* for an extension of time in accordance with clause 50. The *Claim* must:
  - .1 identify the extension of time claimed and include other information sufficient for the Principal to assess the *Claim*; and
  - .2 be submitted within 14 days after the first occurrence of the *Excusable Delay Event*; and
  - .3 be updated every subsequent 14 days while the delay continues.

- .4 With every *Claim* made under clause 50.3 the Contractor must submit a copy of the then current *Contract Program* which shows the effects of the delay on the critical path and to the time required to achieve *Completion*.
- .5 The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work for the Contract.
- .6 Where there is any overlap between a delay to *Completion* caused by an *Excusable Delay Event*, and a delay to *Completion* caused by any other event then, to the extent of such overlap, the Contractor is not entitled to an extension of time regardless of the order in which those events or delays occurred.
- .7 The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 27A.8 or 49.6.
- .8 The Principal may, in its absolute discretion but without any obligation to do so, extend any *Contractual Completion Date* at any time and for any reason, whether or not the Contractor has claimed an extension of time. The Principal is not obliged to exercise this discretion for the benefit of the Contractor.
- .9 It is a condition precedent to the Contractor's entitlement to an extension of time to the *Contractual Completion Date* that:
  - .1 the Contractor has been, or will be, delayed by an *Excusable Delay Event*;
  - .2 the delay is demonstrable on the critical path for the work in connection with the Contract of the current *Contract Program*;
  - .3 the *Excusable Delay Event* was not directly or indirectly caused by an act or omission of, or a breach of the Contract by, the Contractor or the *Contractor's Personnel*;
  - .4 the Contractor has taken all reasonable steps mitigate the effects of the delay on the progress of the work in connection with the Contract;
  - .5 the Contractor has submitted the notices strictly as required under this clause 50; and
  - .6 the *Excusable Delay Event* has delayed the Contractor in achieving *Completion*.
- .10 If any of the conditions precedent set out in clause 50.9 are not met, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant *Excusable Delay Event* or period of delay.
- .11 A delay by the *Principal's Authorised Person* or a failure by the *Principal's Authorised Person* to grant a reasonable extension of time in accordance with this clause 50 shall not cause the *Contractual Completion Date* to be set at large.

#### **Reductions in time**

- .12 If a *Variation* leads to less time being required for *Completion*, the Principal may assess a reasonable adjustment to the affected *Contractual Completion Date*.

#### **Adjustment to Contractual Completion Dates**

- .13 If the conditions precedent in clause 50.9 have been satisfied, the *Principal's Authorised Person* must, within a reasonable time and in any event not later than 20 *Business Days* of the receipt of the Contractor's claim under clause 50.3 issue a written notice advising the Contractor of its determination as to the period, if any, by which the *Contractual Completion Dates* are to be extended.

### **51 Delay costs and liquidated damages**

#### **Delay costs**

- .1 The Contractor is entitled to delay costs only for delay or disruption caused by:
  - .1 a *Variation* (other than a *Variation* for the Contractor's convenience);
  - .2 failure to give the Contractor access to the Site within the time stated in Contract Information item 13;
  - .3 the discovery of *Cultural Heritage Artefacts* on the Site;
  - .4 a *Change in Statutory Requirements* that necessitates a change to the Works (subject to clause 49.6);



- .5 a *Change in TPA* that necessitates a change to the Works;
  - .6 a suspension instruction under clause 53 for the convenience of the Principal, except to the extent the need for the suspension arises from an act or omission of the Contractor or the *Contractor's Personnel*;
  - .7 a breach of the Contract by the Principal; or
  - .8 any other event or circumstance in respect of which this Contract expressly entitles the Contractor to make a claim for delay costs.
- .2 Any *Claim* for delay costs must be submitted to the Principal at the same time as the Contractor's *Claim* for an extension of time under clause 50. The Principal will provide its determination of the delay costs payable to the Contractor at the same time as it provides its notice under clause 50.13.
  - .3 Delay costs are calculated at the applicable rate in Contract Information item 49A for the number of days by which the time for achieving *Completion* is extended because of a cause listed in clause 51.1, subject to the limitations in clause 27A.8 and 49.6.
  - .4 The rate or rates stated in Contract Information item 49A1 apply where the delay is caused by the Principal's failure to give the Contractor access to sufficient of the Site to allow the Contractor to start work, in accordance with clause 34. The rate or rates stated in Contract Information Item 49A2 apply for any other delays for which the Contractor is entitled to delay costs.
  - .5 Notwithstanding clause 51.2, the Contractor is not entitled to delay costs for any days on which it would have been delayed anyway by a cause for which it has no entitlement to delay costs.
  - .6 The applicable rate of delay costs will be reduced where any part of the Works is being used or occupied prior to *Completion* under clause 64. The reduced rate of delay costs will be in the same proportion to the original rate as the value of the remaining work is to the *Contract Price* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.
  - .7 The Contractor has no remedy or entitlement connected with delay or disruption to the work in connection with the Contract (including any delay or disruption caused by a breach of Contract by the Principal) other than:
    - .1 the amounts to be paid in accordance with clause 51; or
    - .2 an extension of time to the *Contractual Completion Date* to which it is entitled under clause 50.

### **Liquidated damages**

- .8 If Contract Information item 49B states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion Date*.
- .9 If Contract Information item 49B states that liquidated damages apply and the Contractor fails to achieve *Completion* of the Works by the *Contractual Completion Date* to which liquidated damages apply, the Contractor will be liable to pay the Principal liquidated damages at the rate stated in Contract Information item 49B, for every day after the *Contractual Completion Date*, up to and including the *Actual Completion Date*.
- .10 If, however, the Contract is terminated before the Contractor achieves *Completion*, any liquidated damages will apply only up to the date of termination of the Contract.
- .11 Liquidated damages for which the Contractor is liable are a debt due and immediately payable from the Contractor to the Principal. The Principal may, at any time, give the Contractor a written demand for any liquidated damages payable by the Contractor, whether or not *Completion* has been achieved. A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, the Principal's rights and entitlements.
- .12 The Contractor's liability for liquidated damages shall not exceed the amount set out in Contract Information item 20.
- .13 If any *Contractual Completion Date* is extended after the Contractor has paid or the Principal has deducted liquidated damages, the Principal must re-pay any excess liquidated damages to the Contractor, subject to any right of set-off.

- .14 The Contractor and the Principal acknowledge that the rates for liquidated damages in Contract Information item 49B are a genuine pre-estimate of the Principal's loss (including in respect of liability to tenants and other users of the Works in connection with any failure by the Contractor to achieve *Completion* of the Works by the *Contractual Completion Date*) and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty.
- .15 If it is determined that the Contractor's liability to pay the liquidated damages is deemed to be or becomes, void, invalid or unenforceable for any reason (including because such liquidated damages are a penalty), the Principal may claim general damages for the Contractor's failure to achieve *Completion* by the *Contractual Completion Date*.
- .16 The payment by the Contractor of liquidated damages does not in any way relieve the Contractor from any of its obligations to achieve *Completion* or from any other obligations and liabilities under the Contract.

## 52 Acceleration

- .1 The Principal may issue an *Acceleration Notice* instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.
- .2 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
  - .1 its price (excluding all costs of delay or disruption) for a proposed acceleration; and
  - .2 the effect of a proposed acceleration on any other matter specified by the Principal.
- .3 Whenever possible, the parties must agree on the steps to be taken, and the basis for reimbursing the Contractor's costs for acceleration, before the Contractor takes those steps.
- .4 If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the *Contract Price* must be adjusted as agreed, or if not agreed, by a valuation made in accordance with clause 47 for any unavoidable costs incurred by the Contractor additional to what it would have incurred if the Principal had not given the instruction.

## 53 Principal's suspension

- .1 The Principal may instruct the Contractor to suspend progress of the Works, and the Contractor must comply with that instruction.
- .2 The Contractor must resume carrying out the Works when instructed by the Principal.
- .3 Other than a *Claim* for:
  - .1 an extension of time in accordance with clause 50; and
  - .2 delay costs in accordance with clause 51,
 the Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

## 54 Contractor's suspension

- .1 If the Contractor suspends work at any time in accordance with the *Building and Construction Industry Security of Payment Act 1999* (NSW), it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay or disruption.
- .2 Clause 54 is not intended to limit any rights of the Contractor under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

# Payment

## 55 The Contract Price

- .1 The *Contract Price* (at the Date of Contract) and the basis for payment are stated in Contract Information item 40.



- .2 The *Contract Price* is not subject to any adjustment for rise or fall in costs.
- .3 Except where expressly provided in the Contract, the Contractor acknowledges that it shall not be entitled to any adjustment to the *Contract Price*.
- .4 The *Contract Price* includes all labour, *Materials*, construction equipment, *Temporary Work*, consumables, fees, *Taxes* (other than GST) and anything else necessary to carry out and complete the work in connection with the Contract and the performance of the Contractor's obligations under the Contract.
- .5 The *Contract Price* is payable in Australian Dollars. The Contractor is not entitled to:
  - .1 receive payment in a currency other than Australian Dollars; or
  - .2 any adjustment to the *Contract Price* for any foreign exchange fluctuations or the Contractor making any expenditure in a currency other than Australian Dollars.

### **Provisional Sums**

- .6 If Contract Information item 42 states that the *Contract Price* includes a *Provisional Sum*, then:
  - .1 the Contractor must not carry out the work specified against that *Provisional Sum* unless instructed by the Principal;
  - .2 if the Principal does not instruct the Contractor to carry out the work, the *Provisional Sum* for that work must be deducted from the *Contract Price*; and
  - .3 if the Principal instructs the Contractor to carry out the work:
    - .1 the Contractor must comply with the instruction; and
    - .2 the *Contract Price* must be adjusted by deducting the *Provisional Sum* and adding:
      - .1 the additional reasonable cost to the Contractor of the work specified against the *Provisional Sum*, being the direct costs of labour, *Materials* and plant plus the costs of Subcontractor and Consultant work (excluding any amount payable due to default or negligence on their part or that of the Contractor) but excluding profit and overheads specified by Contract Information item 43 as included in the *Provisional Sum* margin; and
      - .2 the *Provisional Sum* margin calculated by applying the percentage stated in Contract Information item 43 to the cost specified in clause 55.6.3.2.1.

## **56 Goods and Services Tax (GST)**

- .1 Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable in accordance with the Contract include an amount for GST.
- .2 The Principal will issue a tax invoice for each taxable supply it makes to the Contractor.
- .3 The Principal will issue to the Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
- .4 The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than for an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor makes a *Payment Claim* or otherwise invoices the Principal for that supply.
- .5 Each party must be registered for GST and must notify the other party if it ceases to be registered for GST or to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

### **Reimbursable expenses**

- .6 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
  - .1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and

- .2 to the extent that the other party's recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

## 57 Not used

## 58 Payment Claims

- .1 Subject to clause 58.2, the Contractor must submit a *Payment Claim* each month, on the date in the month specified in Contract Information item 46A, for work carried out up to that date.
- .2 The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.
- .3 *Payment Claims* must be in the form of, and include all of the information required by, Schedule 3 (Payment Claim Worksheet) or in another form agreed by the Principal.
- .4 Every *Payment Claim* must:
  - .1 identify the work and *Materials* to which the *Payment Claim* relates;
  - .2 state the value of that work and those *Materials*;
  - .3 identify and state the amount the Contractor claims for any other *Claim* that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;
  - .4 state the amount of interest, if any, that the Contractor claims under clause 62; and
  - .5 state the *Claimed Amount*, after allowing for retention of the *Completion Amount* specified in clause 60 and for payments already made.
- .5 Every *Payment Claim* must be accompanied by:
  - .1 a completed and true Subcontractor's Statement and Supporting Statement, executed on the date of the *Payment Claim*;
  - .2 all relevant calculations;
  - .3 sufficient evidence to enable the *Principal's Authorised Person* to value any work and *Materials* for which payment has been claimed in the relevant *Payment Claim*;
  - .4 all relevant *Conformance Records*; and
  - .5 any other information specified in the Contract.

### Unfixed Materials

- .6 *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
  - .1 the Principal has agreed in writing to pay the Contractor for the unincorporated *Materials*;
  - .2 where the value of the unincorporated *Materials* is greater than [REDACTED] the Contractor provides before or with the *Payment Claim*:
    - .1 an *Undertaking* equal to the value of the unincorporated *Materials* (to be returned when the *Materials* are incorporated into the Works); and
    - .2 a statement in the terms in Schedule 11 (Statement regarding Materials);
  - .3 the Contractor provides evidence before or with the *Payment Claim* that:
    - .1 the unincorporated *Materials* are, or upon payment will become, the property of the Principal free of any *Encumbrance*; and
    - .2 the unincorporated *Materials* are clearly identified as the property of the Principal and are insured for their full value; and
  - .4 for any unincorporated *Materials* imported or to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a Customs invoice.
- .7 The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.



- .8 Upon the *Materials* becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care.
- .9 If the Contract or the Contractor's employment under the Contract is terminated by the Principal, the Contractor must ensure that, in respect of any unincorporated *Materials* for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.

## 59 Payments

- .1 Within 10 *Business Days* after being served a *Payment Claim* by the Contractor, the Principal must provide a *Payment Schedule* to the Contractor that:
  - .1 identifies the *Payment Claim* to which it relates;
  - .2 indicates the amount the Principal proposes to pay, as the *Scheduled Amount*; and
  - .3 if the *Scheduled Amount* is less than the *Claimed Amount*, provides reasons explaining why it is less and why any money is being withheld.
  - .4
- .2 The Principal must pay the Contractor the *Scheduled Amount* within 15 *Business Days* after being served with the *Payment Claim*.
- .3 Unless stated otherwise in the Contract, all payments to the Contractor must be made by electronic funds transfer to the Contractor's account notified to the Principal for that purpose. Changes to the Contractor's account details must be notified in accordance with protocols established by the Principal.
- .4 Payment by the Principal is payment on account only and is not evidence that the Principal accepts the value, quantity or quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement.

## 60 Not used

## 61 Final payment

- .1 The Contractor must submit a *Final Payment Claim* within 13 weeks after achieving *Completion* of the whole of the Works. The *Final Payment Claim* must include any *Claim* not previously included in a *Payment Claim*. Any *Claim* not submitted before or with the *Final Payment Claim* is barred, however this clause does not prevent the Contractor from:
  - .1 raising a defence, or any cross-claim or counter-claim by way of a defence, to any claim brought against the Contractor by the Principal; or
  - .2 making any claim against the Principal arising solely from a third party claim first brought against or communicated to the Contractor after the date by which a *Final Payment Claim* is due under this clause.
- .2 Within 10 *Business Days* after receiving the *Final Payment Claim* or, if the Contractor has not submitted a *Final Payment Claim*, within 15 weeks after the whole of the Works reaches *Completion*, the Principal must provide a *Final Payment Schedule* to the Contractor.
- .3 If the Principal proposes to make no payment to the Contractor and claims that the Contractor must pay the Principal money, the *Final Payment Schedule* must state the amount that the Principal claims the Contractor must pay, and include reasons and particulars supporting that claim.
- .4 Payments identified in the *Final Payment Schedule* as due from the Contractor to the Principal must be made within 14 days after the *Final Payment Schedule* is provided. Payments due from the Principal to the Contractor must be made in accordance with clause 59.
- .5 The issue of the *Final Payment Schedule* is conclusive evidence that all necessary adjustments to the *Contract Price* have been made and all entitlements of the Contractor have been met, except for those required by:
  - .1 arithmetical error; or
  - .2 resolution of:

- .1 any *Claim* made in accordance with clause 61.1;
  - .2 any *Issue* properly notified under clause 69 prior to the *Final Payment Claim*; or
  - .3 any *Issue* arising out of the *Final Payment Schedule*, but only if it is notified to the Principal within 28 days after the date of the *Final Payment Schedule*.
- .6 The Contractor's liability under the Contract or otherwise is not affected by the issue of the *Final Payment Schedule*. The Contractor's liability continues until any limitation period under statute expires.

## 62 Interest on late payments

- .1 A party which fails to make a payment within the time specified in the Contract must pay interest to the other party on the unpaid amount, at the rate stated in Contract Information item 48, for the period the payment is late.

## 63 Set-off

- .1 If the Principal claims a sum, including a debt due, in connection with the Contract, the Principal may:
  - .1 withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and
  - .2 make a demand against the *Undertakings* provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

# Completion

## 64 Early use

- .1 Before the Contractor achieves *Completion*, the Principal, or anyone authorised by the Principal, may use or occupy all or any part of the Works which is sufficiently complete and then:
  - .1 the Contractor's responsibilities are not affected, except if they are reduced under clauses 26.3 or 26.7 or if the Principal, or anyone authorised by the Principal to use or occupy any part of the Works, causes the Contractor's work to be hindered; and
  - .2 the Principal becomes responsible for any additional insurance required.
- .2 If the Principal requires use or occupation of any part of the Works before the Contractor achieves *Completion*, the Principal must give not less than 21 days' notice in writing to the Contractor and must specify the date on which use or occupation is required and those parts to be used or occupied.
- .3 The Contractor must assist and cooperate with those using or occupying the Works.
- .4 No later than 21 days after receipt of a notice under clause 64.2, the Contractor must provide to the Principal all the documents and other things listed in the definition of *Completion* that are relevant to the parts of the Works to be used or occupied.

## 65 Completion

- .1 The Contractor must achieve *Completion* by the *Contractual Completion Date*.
- .2 The Contractor must give the *Principal's Authorised Person* not less than 20 *Business Days*' written notice of the date upon which the Contractor anticipates that the Works will achieve *Completion*.
- .3 When the Contractor is of the opinion that the Works have achieved *Completion*, the Contractor must give a written notice to the *Principal's Authorised Person* stating that the Works have, in the Contractor's opinion, reached *Completion*.
- .4 The parties must, within a reasonable time, and in any event within 10 *Business Days*, after receipt of the Contractor's notice under clause 65.3, carry out a joint inspection of the Works.



- .5 Within 10 *Business Days* after the joint inspection, the *Principal's Authorised Person* must either:
  - .1 if *Completion* has been achieved, issue a *Certificate of Completion* in the form set out in Part B of Schedule 34:
    - .1 stating that the Works have achieved *Completion*; and
    - .2 stating the *Actual Completion Date*; or
  - .2 if *Completion* has not been achieved, notify the Contractor in writing that it considers that the Works has not achieved *Completion* and identifying any *Defects* or outstanding works that prevent the Works from achieving *Completion*.
- .6 If the *Principal's Authorised Person* provides a notice to the Contractor pursuant to clause 65.5.2, the Contractor must then diligently remedy those *Defects* or outstanding works at its own expense and the procedures described in clauses 65.3, 65.4 and 65.5 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Completion*.
- .7 Notwithstanding that all the requirements of *Completion* have not been met, the *Principal's Authorised Person* may at any time, in its sole and absolute discretion, issue a *Certificate of Completion*.
- .8 The issue of a *Certificate of Completion* will not:
  - .1 operate as approval by the Principal of the Contractor's performance of its obligations in connection with the Contract;
  - .2 be taken as an admission that the Works comply with the Contract; or
  - .3 prejudice any of the Principal's rights against the Contractor.

## 66 Close-out workshop

- .1 The Principal must convene a close-out workshop within 21 days after *Completion* of the whole of the Works.
- .2 The parties must attend the close-out workshop and must jointly decide who else will attend. Each party must bear its own costs associated with attending the workshop.

## 67 Defects after Completion

- .1 At any time prior to the expiry of the *Defects Liability Period*:
  - .1 the Principal may instruct the Contractor to make good any *Defect* within the time specified in a *Defect Notice*;
  - .2 if the Contractor fails to make good the *Defect* in the time specified in the *Defect Notice*, the provisions of clauses 45.3 and 45.4 will apply; and
  - .3 the Principal may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 67.1.1.
- .2 In respect of any *Defect* rectified during a *Defect Liability Period*, a new *Defect Liability Period* for the rectified works will commence from the date of completion of the rectification of the *Defect* and continue for the longer of:
  - .1 the remainder of the original *Defects Liability Period*; or
  - .2 a period of 12 months,
 provided that the maximum duration of the *Defects Liability Period* as extended under this clause shall be 36 months from the *Actual Completion Date*.
- .3 The Principal must give the Contractor reasonable access (having regard to the operation of the Works) to the Works and the Site to enable the Contractor to perform its obligations under this clause 67.
- .4 In carrying out any rectification work pursuant to this clause 67, the Contractor must:
  - .1 do so diligently and promptly;
  - .2 do so in accordance with any directions given by the *Principal's Authorised Person*; and
  - .3 do so at the times directed by the Principal and in the manner which causes minimum interruption to the Principal or the operation of the Works.
- .5 If:

- .1 the Principal or the operator of the Works considers that a *Defect* requires urgent rectification; and
  - .2 it is not practical or possible to provide the Contractor with an opportunity to rectify the *Defect*,
- then:
- .3 the Principal or the operator of the Works may have the *Defects* made good by others and:
    - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
    - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
  - .6 Nothing in clause 67 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.
  - .7 Clause 67 does not affect the Principal's rights under clause 46.

#### **67A Final Completion Certificate**

- .1 As soon as the Works, in the opinion of the Contractor, reaches the stage of *Final Completion*, the Contractor must give a written notice to the *Principal's Authorised Person*.
- .2 The Contractor must provide a *Deed of Release* with its notice under clause 67A.1.
- .3 The *Principal's Authorised Person* must, within a reasonable time after the later of:
  - .1 receipt of the Contractor's notice under clause 67A.1; or
  - .2 receipt of the *Deed of Release*, duly executed by the Contractor,either:
  - .3 issue a *Certificate of Final Completion* in the form set out in Part C of Schedule 34 stating that *Final Completion* has been achieved; or
  - .4 notify the Contractor in writing that the Works have not achieved *Final Completion* and of any *Defects* that must be remedied before *Final Completion* can be achieved.
- .4 If the *Principal's Authorised Person* notifies the Contractor of any outstanding *Defects*, the Contractor must then remedy those *Defects* and the procedures described in clauses 67A.1 and 67A.2 must be repeated until the *Principal's Authorised Person* issues a *Certificate of Final Completion*.



## Claim and Issue resolution

### Claim resolution

#### 68 Contractor's Claims

- .1 If the Contractor makes:
  - .1 a *Claim* under a provision of the Contract that does not specify a time for making the *Claim*; or
  - .2 a *Claim* in connection with the Contract or the Works, but not under a provision of the Contract,

the *Claim* must be submitted within 28 days after the later of the start of the event giving rise to the *Claim*; and the time the event should have become known to the Contractor, with reasonable diligence on its part.
- .2 If the Contractor fails to make a *Claim* within the time specified in clause 68.1, the Contractor will be absolutely barred from making, and will be deemed to have irrevocably waived any right to make, any *Claim* arising out of or in connection with the relevant event giving rise to the *Claim*.
- .3 Each *Claim* must include information sufficient for the Principal to assess the *Claim*, including the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1.1 and 1.1.2 of Schedule 5 (Expert Determination Procedure). The *Claim* must also include the effect of the event giving rise to the *Claim* on both the *Contract Price* and *Contractual Completion Date(s)*.
- .4 If a *Claim* does not comply with clause 68.3, the Principal may, but is not obliged to, give the Contractor an opportunity to make the *Claim* compliant. Clause 68.7 applies to a *Claim* that does not comply with clause 68.3.
- .5 If a *Claim* complies with clause 68.3 and the Principal agrees that the Contractor is entitled to a money adjustment it must be valued in accordance with clause 47.
- .6 If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim*.
- .7 If a *Claim* is rejected or not agreed within 28 days after the Contractor has provided the information specified in clause 68.3 it will become an *Unresolved Claim*, and the Contractor may notify the Principal of an *Issue* under clause 69.1.
- .8 The provisions of clauses 68.2 to 68.7 apply generally to all *Claims*, whether made under clause 68 or under another provision of the Contract, unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation.

### Issue resolution

#### 69 Notification of Issue

- .1 The Contractor may dispute an assessment or instruction of the Principal, or seek resolution of an *Unresolved Claim*, by giving notice to the Principal (with a copy to the Principal's senior executive named in Contract Information item 7) of an *Issue* within 28 days after notification of the assessment or instruction, or within 28 days after it becomes an *Unresolved Claim*.
- .2 Either party may give notice to the other (with a copy to that party's senior executive) of an *Issue* (excluding an *Issue* referred to in clause 69.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 28 days after becoming aware of the *Issue*.
- .3 Subject to clause 69.6, the parties must follow the *Issue* resolution procedures in clauses 69, 70 and 71 before either commences litigation or takes similar action.
- .4 If notice of an *Issue* under clause 69.1 or 69.2 is given outside the time prescribed by those clauses, the party giving the notice is not entitled to claim or recover interest for the period before the notice was given. This clause does not affect the absolute time bar in clause 61.

- .5 The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment or instruction.
- .6 The *Issue* resolution procedure in clauses 69, 70 and 71 does not prevent a party from seeking an urgent declaration or injunction from a court.

## **70 Resolution by senior executives**

- .1 If a party gives notice of an *Issue* under clause 69, the senior executives named in Contract Information items 7 and 11 must promptly confer to try to resolve the *Issue*.
- .2 A party is not entitled to refer an *Issue* to *Expert Determination* until 28 days after giving notice of an *Issue*.
- .3 A party may only refer an *Issue* to *Expert Determination* by giving a notice specifying the *Issue* to the other party (with a copy to that party's senior executive) within the time stated in Contract Information item 51.
- .4 Subject to clause 69.6, an *Issue* for which notice has not been given in accordance with clause 70.3 is barred from *Expert Determination* or litigation or similar action.

## **71 Expert Determination**

- .1 The representative of the Principal for the purposes of clause 71 is the person named in Contract Information item 52. This person may differ from the *Principal's Authorised Person*.
- .2 If an *Issue* is to be referred to *Expert Determination* under clause 70, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days after receipt of a notice under clause 70.3, the *Expert* will be nominated (on the application of either party) by the person named in Contract Information item 53. That person must not nominate:
  - .1 an employee of the Principal or the Contractor;
  - .2 a person who has been connected with the Works or the Contract; or
  - .3 a person who the Principal and the Contractor have already considered and not been able to agree on.
- .3 When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by a letter of engagement (with a copy to the Contractor) that sets out:
  - .1 the *Issues* referred to the *Expert* for determination;
  - .2 the *Expert's* fees;
  - .3 the procedure for *Expert Determination* in Schedule 5 (Expert Determination Procedure); and
  - .4 any other matters which are relevant to the engagement.
- .4 The Principal and the Contractor must share equally the *Expert's* fees and out-of-pocket expenses for the determination, and bear their own costs.
- .5 The procedure for *Expert Determination* is set out in Schedule 5 (Expert Determination Procedure).
- .6 In response to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim.
- .7 Subject to clauses 71.8 and 71.9, the parties must treat each determination of an *Expert* as final and binding and a party that owes money to the other pursuant to the determination must pay that amount to the other party within 28 days after receiving the determination.
- .8 Neither party may commence litigation in respect of the matters determined by the *Expert* unless the determination:
  - .1 does not involve paying a sum of money; or
  - .2 requires one party to pay the other an amount in excess of the amount stated in Contract Information item 54, calculated without having regard to:
    - .1 any interest that may be payable; and



- .2 any amount that has been paid pursuant to the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- .9 Neither party may commence litigation in respect of the matters determined by the *Expert* unless they do so within 56 days after receiving the determination.

## **72 Parties to perform the Contract**

- .1 The parties must continue to perform their obligations under the Contract at all times, regardless of any *Claim* or *Issue* or the conduct of any *Issue* resolution procedures under clauses 69 to 71.

# Termination

## 72A Step-in

### Right of step-in

- .1 If:
  - .1 a *Contractor Default Event* occurs;
  - .2 a *Contractor Termination Event* occurs;
  - .3 an incident occurs which poses a serious risk to the health and safety of any person or damage to any property of the *Environment*, and such incident arises in connection with an act or omission of the Contractor or the *Contractor's Personnel*,

("Step-In Event"), the Principal may elect to do any or all of the following:

  - .4 assume total or partial management and control of the whole or any part of the Works or the work in connection with the Contract;
  - .5 access those parts of the Site or any premises the Contractor has access or is entitled to occupy; and
  - .6 take such other steps as are necessary in the reasonable opinion of the Principal for it to carry out the work in connection with the Contract and minimise the effect of the relevant *Step-In Event*.
- .2 The Principal must not exercise its rights under clause 72A.1 on the occurrence of a *Contractor Default Event* for so long as the Contractor is complying with its obligations under clauses 73.2 to 73.5 in respect of that *Contractor Default Event*.

### Notice

- .3 The Principal may exercise its rights under clause 72A.1 without prior notice to the Contractor but the Principal must, if it is reasonably practicable to do so, give prior notice and in any event must, as soon as practicable, provide notice to the Contractor that it is exercising those rights.

### Consequences of the Principal exercising its rights

- .4 During the exercise of the Principal's rights under clause 72A.1, the Contractor's rights and obligations under this Contract are suspended to the extent necessary to permit the Principal to exercise those rights.
- .5 Except to the extent that the Contractor's obligations are suspended under clause 72A.4, the exercise by the Principal of its rights under clause 72A.1 will not affect any other obligation of the Contractor under this Contract.
- .6 The exercise by the Principal of its rights under clause 72A.1 (or the cessation of such exercise) will not affect any other right of the Principal under this Contract.

### Contractor to assist Principal

- .7 The Contractor must:
  - .1 grant such access rights as are necessary and take all action that is necessarily required by the Principal to assist the Principal in exercising its rights under clause 72A.1;
  - .2 provide sufficient resources, including *Contractor's Personnel*, to assist the Principal in exercising its rights under clause 72A.1; and
  - .3 not do anything to hinder, disrupt or prevent the Principal in exercising its rights under clause 72A.1.

### Limits on liability during step-in

- .8 When exercising its rights under clause 72A.1, the Principal must use its reasonable endeavours to carry out the work in connection with the Contract in a manner which is consistent with the Contract, but taking into account the circumstances that prompted the Principal to exercise those rights.



- .9 Where the Principal has exercised its rights under clause 72A.1 then any *Loss* suffered or incurred by the Principal in connection with the exercise by the Principal of its step-in rights will be a debt due and payable by the Contractor to the Principal.
- .10 Subject to the express terms of this Contract, the Contractor acknowledges and agrees that:
  - .1 the Principal, when exercising its rights under clause 72A.1, is not obliged to remedy any breach, or to overcome or mitigate any risk or risk consequences, in connection with which the Principal exercises its rights under clause 72A.1; and
  - .2 the Contractor will not be entitled to make any *Claim* against the Principal, arising in connection with the exercise by the Principal of its rights under clause 72A.1 except to the extent caused by:
    - .1 a breach by the Principal of the Contract;
    - .2 a negligent act of the Principal in the course of it exercising its rights under clause 72A.1;
    - .3 a fraudulent or reckless act or omission of the Principal in the course of it exercising its rights under clause 72A.1.

### **Cessation of step-in rights**

- .11 The Principal may, at any time, cease to exercise its rights in accordance with this clause 72A upon giving 5 *Business Days*' notice to the Contractor.
- .12 The Principal must cease to exercise its rights in accordance with this clause 72A where:
  - .1 the *Contractor Default Event* or *Contractor Termination Event* (as the case may be) has been cured;
  - .2 where the step-in rights are exercised in respect of the event set out in clause 72A.1.3, the relevant event ceases and its consequences have been remedied.
- .13 If the Principal ceases to exercise its rights under clause 72A.1, the Contractor must immediately recommence carrying out any obligations suspended due to the exercise by the Principal of those rights and the Principal must, give reasonable assistance to the Contractor to ensure that this process of transition is effected as smoothly as possible. The assistance given by the Principal in respect of the process of transition will be at the Contractor's expense, which amount shall be a debt due and payable by the Contractor to the Principal on demand.

## **73 Contractor Default and Termination**

### **Principal may issue Default Notice**

- .1 If the *Contractor Default Event* occurs, the Principal may give a written notice to the Contractor ("**Default Notice**"):
  - .1 stating that it is a notice under this clause 73.1;
  - .2 specifying the nature of the *Contractor Default Event*; and
  - .3 specifying the time period by which the Principal requires the Contractor to remedy the *Contractor Default Event* ("**Cure Period**").

### **Cure Plan**

- .2 If:
  - .1 a *Default Notice* has been given; and
  - .2 the *Contractor Default Event* is capable of being remedied,
 the Contractor must:
  - .3 remedy the *Contractor Default Event* within the *Cure Period*; or
  - .4 if the *Cure Period* is more than 15 *Business Days*, within five *Business Days* after receipt of the *Default Notice*, prepare and submit a draft cure plan to the Principal describing the actions and measures which the Contractor will diligently pursue to remedy the *Contractor Default Event* and its impacts within the *Cure Period* ("**Draft Cure Plan**"). The *Cure Period* for breaches referred to in paragraphs 1.4 and 2 of the definition of *Contractor Default Event* must be more than 15 *Business Days*.

- .3 Within 10 *Business Days* after receipt of the *Draft Cure Plan*, the Principal shall either:
  - .1 approve the *Draft Cure Plan* by notifying the Contractor; or
  - .2 reject the *Draft Cure Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.
- .4 If the Principal approves a *Draft Cure Plan* pursuant to clause 73.3.1 (“**Approved Cure Plan**”) the Contractor shall comply with and implement the *Approved Cure Plan* and remedy the *Contractor Default Event* within the *Cure Period*.
- .5 If the Principal rejects a *Draft Cure Plan* pursuant to clause 73.3.2, the Contractor, in consultation with the Principal, shall amend the *Draft Cure Plan* to meet the Principal’s requirements and submit the amended *Draft Cure Plan* to the Principal for approval within five *Business Days* after receipt of the Principal’s notice issued under clause 73.3.2. Clauses 73.3, 73.4 and 73.5 will apply to the amended *Draft Cure Plan*. This clause 73.5 does not extend the *Cure Period*.
- .6 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Cure Plan*.

### **Mitigation Plan**

- .7 If:
  - .1 a *Default Notice* has been given; and
  - .2 the *Contractor Default Event* is not capable of being remedied,
 the Contractor shall, within five *Business Days* after receipt of the *Default Notice*, prepare and submit to the Principal a draft plan describing the actions and measures which the Contractor will diligently pursue to mitigate or overcome the effects of the *Contractor Default Event* and prevent the *Contractor Default Event* from re-occurring (“**Draft Mitigation Plan**”).
- .8 Within 10 *Business Days* after receipt of the *Draft Mitigation Plan*, the Principal shall either:
  - .1 approve the *Draft Mitigation Plan* by notifying the Contractor; or
  - .2 reject the *Draft Mitigation Plan* by notifying the Contractor and providing reasons to the Contractor for its rejection.
- .9 If the Principal approves a *Draft Mitigation Plan* pursuant to clause 73.8.1 (“**Approved Mitigation Plan**”), the Contractor shall comply with and implement the *Approved Mitigation Plan*.
- .10 If the Principal rejects a *Draft Mitigation Plan* pursuant to clause 73.8.2, the Contractor, in consultation with the Principal, shall amend the *Draft Mitigation Plan* to meet the Principal’s requirements and submit the amended *Draft Mitigation Plan* to the Principal for approval within five *Business Days* after receipt of the Principal’s notice issued under clause 73.8.2. Clauses 73.8, 73.9 and 73.10 will apply to the amended *Draft Mitigation Plan*.
- .11 The Principal is not obliged to give the Contractor more than one opportunity to amend a *Draft Mitigation Plan*.

### **Termination for Contractor Termination Event**

- .12 If a *Contractor Termination Event* occurs, the Principal may, by written notice to the Contractor, immediately terminate the Contractor’s employment under the Contract.
- .13 If the Principal terminates the Contractor’s employment under clause 73 it may, at its sole discretion, employ others to complete the Works and all the following will then apply:
  - .1 The Contractor must leave the Site as soon as reasonably practicable and remove all *Temporary Work* and *Materials* it has brought onto the Site, apart from any *Temporary Work* and *Materials* identified by the Principal as being necessary to have the Works completed.
  - .2 The Contractor must assign to the Principal the Contractor’s rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional undertakings, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract.



- .3 The Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the Principal. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any *Undertakings* given on the Contractor's behalf.
- .4 The Contractor must do everything and sign all documents necessary to give effect to clause 73, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
- .5 If, on *Completion*, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor to complete the Works, then the difference will be a debt due from the Contractor to the Principal.
- .6 The Principal may make provisional assessments of the amounts payable to the Principal under clause 73.13.5 and may, without limiting any other right of recourse, demand them against the *Undertakings*.
- .14 If the Principal terminates the Contractor's employment under clause 73, the rights of the Principal will be the same as they would have been at law had the Contractor repudiated the Contract and the Principal had elected to treat the Contract as at an end and recover damages.
- .15 Termination of this Contract does not affect the rights and obligations of the parties under the Contract which accrued prior to the date of termination.

#### **74 Termination for Principal's convenience**

- .1 The Principal may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.
- .2 The Contractor must comply with any instructions of the Principal to wind down and stop work.
- .3 The Contractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work*, *Materials* and other unfixed things it has brought onto the Site apart from *Materials* for which payment has been made or is due under clause 59 and any other items identified in the termination notice as to be retained on the Site.
- .4 After termination under clause 74.1, subject to its rights under the Contract (including clause 63), the Principal must pay the Contractor:
  - .1 the amount due to the Contractor for all work carried out (as determined under clauses 58 and 59) to the date the termination notice takes effect, after taking into account previous payments including any *Prepayments* and any deductions, retentions or set-offs under clauses 59, 60 and 63;
  - .2 the cost of *Materials* reasonably ordered by the Contractor for the Works which the Contractor is legally liable to accept, but only if on payment these unincorporated *Materials* become the property of the Principal, free of any *Encumbrance*;
  - .3 the reasonable, direct costs incurred by the Contractor for the removal of the *Temporary Work* and other things from the Site in accordance with clause 74.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs;
  - .4 an amount of [REDACTED] of the unpaid portion of the *Contract Price*, less the amounts payable under clauses 74.4.1 and 74.4.2; and
  - .5 the costs reasonably incurred by the Contractor prior to receiving notice of termination in the expectation of completing the Works, where those costs have not been recovered through any other payment by the Principal, but only to the extent that the Contractor complies with a strict duty to mitigate costs.
- .5 Within 10 *Business Days* after the date of termination under this clause 74, the Principal must return the *Undertakings*, subject to its rights under the Contract.
- .6 The payments referred to in clause 74.4 are full compensation for termination under clause 74 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

**75 Termination for Principal's default**

- .1 If the Principal fails to pay the Contractor any amount in accordance with the Contract which is not in dispute, the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.
- .2 If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 74.3 to 74.6 will then apply. The Contractor's sole remedy for the Principal's breach will be the applicable amounts referred to in clause 74.4 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

**76 Termination notices**

- .1 Notices under clauses 73, 74 and 75 must be in writing and be delivered by hand, registered post or equivalent,

**77 Survival**

- .1 Without limiting the survival of any clause by operation of law, clauses 23, 24 and 25 and all indemnities in the Contract survive termination.

## Meanings

**78 Interpretation**

- .1 Words in the singular include the plural, and vice versa.
- .2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.
- .3 "Including" and similar words are not words of limitation.
- .4 The word "day", unless qualified, for example as "Working Day" or "Business Day", has its common English meaning according to context, namely a period of 24 hours or a calendar day.
- .5 Headings and notes are provided to guide the parties and form part of the Contract.

**79 Definitions**

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- |                        |  |
|------------------------|--|
| • Contract             | • Site                                 |
| • Contract Information | • Subcontract                          |
| • Contractor           | • Subcontractor                        |
| • Consultant           | • Supplier                             |
| • Date of Contract     | • work in connection with the Contract |
| • Principal            | • Works                                |

- .1 Wherever the following words and phrases are used in this Contract with initial capitals, they have the special meanings set out in clause 79.

**Acceleration Notice**

A written instruction under clause 52.1, from the Principal to the Contractor, to accelerate progress of the Works, identified as an "*Acceleration Notice*".

**Actual Completion Date**

The date stated in the *Certificate of Completion* as the date on which *Completion* of the Works was achieved.

**Approvals**

Any authorisation, approval, authority, permit, licence, certificate, consent, direction, notice, permission, privilege or exemption, granted by the State, the Commonwealth or any other authority relating to the Works, the Site, the *Environment*, the Contract or the performance of the Contractor's obligations under the Contract, including the *Planning Approval (Stage 1)* and the *Planning Approval (Stage 2)*.



**Approved Cure Plan**

The cure plan approved by the Principal pursuant to clause 73.3.1.

**Approved Mitigation Plan**

The mitigation plan approved by the Principal pursuant to clause 73.8.1.

**Approved Subcontractors**

Those Subcontractors, Suppliers and Consultants set out in Contract Information item 12A.

**Artefacts**

Any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical, archaeological or aboriginal interest or value (including valuable minerals).

**Asbestos Management Plan**

The asbestos management plan submitted by the Contactor pursuant to clause 26A.

**Business Day**

Any day other than a Saturday, Sunday, public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

**Certificate of Completion**

A certificate issued by the *Principal's Authorised Person* under clause 65.4.

**Certificate of Final Completion**

A certificate issued by the *Principal's Authorised Person* under clause 67A.2.

**Change in Control**

A change in control occurs in respect of a party if, at any time, any person or party alone or together with any Related Body Corporate (as defined in the *Corporations Act 2001* (Cth)), ceases to or commences to, directly or indirectly have *Control* of that party.

**Change in Statutory Requirements**

Means:

- .1 the enactment of any new *Statutory Requirement*;
- .2 the repeal, modification or re-enactment of any existing *Statutory Requirement*; or
- .3 a change to any of the items specified in Item 14B arising from the requirements of any relevant authority,

that:

- .4 is applicable in Australia;
- .5 comes into effect after the Date of Contract; and
- .6 could not reasonably have been anticipated at the Date of Contract by a competent and experienced contractor in the position of the Contractor; and
- .7 in respect of any new or changed *Statutory Requirement* that relates to planning or the *Environment*, is directly related to the Site,

but excludes:

- .8 a change in *Taxes* or any *Statutory Requirement* that relates to *Taxes*;
- .9 except as provided for in paragraph .3 of this definition, the conditions or requirements contained in, or associated with, any *Approval* that is issued or comes into effect after the Date of Contract; or
- .10 except as provided for in paragraph .3 of this definition, a change in any *Approval* that the Contractor is required to obtain and maintain in accordance with this Contract.

**Claim**

A claimed entitlement of the Contractor in connection with the Contract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or the payment of additional monies, or for breach of contract by the Principal.

**Claimed Amount**

The amount claimed by the Contractor in a *Payment Claim*.

**Completion**

The stage in the execution of the work in connection with the Contract, when:

- .1 the Works are complete with no *Defects* or omissions, except for *Defects* not known;
- .2 the Contractor has provided to the Principal:
  - .1 all *Subcontractor's* warranties and any Consultant's deeds of covenant required by clause 31.3;
  - .2 all operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;
  - .3 all certificates, authorisations, approvals and consents (including *Approvals*) from statutory authorities and service providers;
  - .4 those certificates required for the occupation, use and maintenance of the Works;
  - .5 a *Site Audit Statement* that has been prepared and certified in accordance with all applicable Statutory Requirements;
  - .6 each Consultant certificate required under clause 39.10;
  - .7 where clause 37F.3 applies, a properly executed release which complies with clause 37F.3.1 or a statement signed by the Contractor which complies with clause 37F.3.2 (as applicable); and
  - .8 all other documents required by the Contract to be provided as a condition to *Completion*;
- .3 the Contractor has carried out and successfully completed all *Testing* required by the Contract;
- .4 the Contractor has provided all of the "work as executed" drawings as required by section 2.3 of the *Preliminaries*;
- .5 the Contractor has provided all training required by the Contract;
- .6 all debris, rubbish, building materials, temporary works and construction equipment has been removed from the Site and the Site has been cleaned; and
- .7 all other pre-conditions to achieving *Completion* set out in the Contract have been satisfied.

**Completion Undertaking**

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 33.

**Concept Design**

The concept design provided by the Contractor and set out in Schedule 15.

**Confidential Information**

Any of the following:

- .1 the terms of this Contract;
- .2 all *Data*; and
- .3 all other documents and information in any form whatsoever in the possession or knowledge of a party which:
  - .1 is disclosed to the other party; and
  - .2 is identified at the time of such disclosure as being confidential or proprietary (or which the other party should reasonably have considered as being confidential or proprietary),

whether such disclosure is made on, prior to or after the Date of Contract.