

# MW21 General Conditions of Contract

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# Preface

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## The MW21 General Conditions of Contract

The MW21 General Conditions of Contract is the major component of the MW21 Standard Form documents, which also includes the Conditions of Tendering, Tender Schedules and Preliminaries.

The MW21 suite of documents provides a holistic approach to construction procurement of non-complex projects in line with the NSW Government Action Plan: a ten point commitment to the construction sector. In particular, the documents have been designed to:

- provide an easily understood standardised form of contract for building and civil construction works up to \$2m (ex GST) in value;
- suit a broad range of design from a minimal concept design to full design, thus accommodating fully documented; developed design (construct only) and design and construct options; and
- incorporate Lump Sum and Schedule of Rates forms of pricing as well as the pricing of options and alternatives.

The MW21 can be used for greater than \$2m contracts that incorporate works that are repetitive in nature. For complex and high-risk contracts, the GC21 Edition 2 Standard Form should be considered.

## **MW21 General Conditions of Contract**

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**[THERE ARE 37 PAGES IN THIS SECTION](#)**

### **1. Definitions and interpretations**

#### **1.1 Authorised Person**

The person stated in Contract Information - **Item 1** who is appointed by the Principal to act with its full authority in all matters relating to the Contract.

#### **1.2 Business Day**

Any day other than a Saturday, Sunday, Public Holiday in NSW or 27, 28, 29, 30 or 31 December. When counting Business Days, the first day of any stated time frame is the first Business Day after a Contract event occurs.

#### **1.3 Completion**

The state of the work under the Contract or any Milestone when:

- (a) it is capable of use for the purpose stated in the Contract Information;
- (b) it has passed all required tests and is free from any known Defects or omissions;
- (c) the Contractor has provided all the required documents; and
- (d) the Contractor has made good the Site and surroundings.

#### **1.4 Contract**

The agreement between the Parties for the carrying out of the work under the Contract, as set out in the Contract Documents and accepted in writing by the Principal.

#### **1.5 Contract Documents**

- (a) the documents prepared by the Principal for the Contract and provided to the Contractor;
- (b) the tender submitted by the Contractor as accepted by the Principal; and
- (c) any variations to the documents in (a) and (b) agreed to by the Parties in writing or made under the Contract.

#### **1.6 Contract Price**

- (a) where the Principal accepted only a lump sum, the lump sum; or
- (b) where the Principal accepted rates, the sum of the products of the quantity and the relevant rate for each item in the Schedule of Rates, plus any lump sums in the Schedule of Rates.

as adjusted in accordance with the Contract.

#### **1.7 Contractor**

The entity that is to carry out the work under the Contract.

#### **1.8 Day**

A period of 24 hours or a calendar day. A calendar day commences at twelve o'clock midnight and ends at twelve o'clock on the following midnight. A week is a period of 7 days. When counting days, the first day of any stated time frame is the first day after a Contract event occurs.

#### **1.9 Defect**

Any aspect of the work under the Contract that does not conform with the Contract.

#### **1.10 Direct Costs**

Costs incurred by the Contractor excluding costs of supervision, site establishment, general tools, administration, overheads, fees, delay, disruption and profit.

### **1.11 Final Payment Summary**

A payment summary given by the Principal to the Contractor under **clause 13.10** stating the amount payable by one party to the other.

### **1.12 Margin**

Subject to any specified conditions, an amount to allow for:

- (a) the applicable costs of supervision (including any required additional supervision), site establishment, general tools, administration, overheads, fees, delay, disruption and profit where additional costs are incurred under **Clauses 2.2, 7.5, 9.4, 9.11, 10.3 and 13.8**; and
- (b) profit and applicable overheads applying to a deduction under **Clauses 9.4 and 9.11**.

Overheads include an allowance for the utilisation of personnel, plant and services, either on-Site or off-Site, that are normally engaged in the Works.

The Margin is calculated as the specified percentage applied to the Direct Costs as calculated under the relevant clause.

The Margin applies irrespective of whether the applicable additional work or unavoidable circumstances causes a delay.

### **1.13 Milestone**

A part of the work under the Contract that is specified as a Milestone in Contract Information - **Item 3**.

### **1.14 Parties**

The Principal and the Contractor.

### **1.15 Post Completion Period(s)**

The period(s) stated in Contract Information - **Item 4**.

### **1.16 Principal**

The entity stated in Contract Information - **Item 5**.

### **1.17 Provisional Rate Amount**

An amount included in the Contract Price, based on a rate tendered for a provisional item of work and the associated estimated quantity included in the Schedule of Provisional Rate Amounts. The item may be referred to as a 'provisional rate item'.

### **1.18 Provisional Sum**

An amount included in the Contract Price, which is identified as a provision for the work specified in the Contract against that Provisional Sum.

### **1.19 Senior Executive**

The person stated in Contract Information - **Item 6**.

### **1.20 Site**

The lands and other places made available to the Contractor by the Principal for the purpose of the Contract.

### **1.21 Site Conditions**

The physical conditions on, about or below the Site, excluding conditions resulting from weather.

### **1.22 SoPA**

The version of the Building and Construction Industry Security of Payment Act 1999 (NSW) current at the date the Contract commenced, except where otherwise required by the relevant Regulations.

### **1.23 Statutory Requirements**

Requirements which are applicable to the Works, the Site, the Contract and those connected with the Contract by virtue of the law or the lawful requirements of any authority having applicable jurisdiction.

**1.24 Variation**

Any change to the character, form, quality and extent of the work under the Contract instructed or accepted in writing by the Principal. A Variation will not invalidate the Contract.

**1.25 Works**

The works to be designed and constructed under the Contract, including the supply of all items (incorporated or otherwise) necessary to meet the requirements of the Contract.

## 2. The Contract

**2.1** The Contract Documents are mutually explanatory, and anything contained in one document but not in another will be treated as if contained in all.

Headings, arrows and **guidance notes** are for convenience only and do not affect interpretation.

**2.2** The Contractor must check the Contract Documents, notify the Principal of any inconsistency, discrepancy, or ambiguity at least 5 Business Days before commencing the affected work and follow any instructions given by the Principal.

Notwithstanding **Clause 12.4**, the Contractor is not entitled to the cost of delay or any aborted work resulting from a failure to provide the notice within the time required under this Clause.

**Clause 9** applies to any required Variation. In particular, if:

- (a) the Contractor failed to provide the notice within the time required under this Clause, then
- (b) **Clause 9.11** (c) applies to any entitlement.

**Clause 12** applies to any entitlement to an extension of time.

**2.3** If the Contractor finds any error in the Contract Documents, then the Contractor is to inform the Principal before commencing the affected work and follow any instructions given by the Principal.

**2.4** The Principal may give an instruction in relation to the Contract. The Contractor is to comply with the instruction within the time stated in the instruction or, if no time is stated, within a reasonable time.

All instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable.

**2.5** All notices must be in writing. Notices are to be sent to the nominated representative of the relevant Party or as otherwise specified.

A copy of a notice sent to a postal address must be emailed to the addressee.

**2.6** The Contractor is solely responsible for all subcontractors and for their acts and omissions.

**2.7** The Contractor must not:

- (a) subcontract all the work under the Contract; or
- (b) enter into a single subcontract for the majority of the work under the Contract without first obtaining the Principal's written consent.

**2.8** If the Contractor becomes aware of unexpected changes in Statutory Requirements that require a change to work in connection with the Contract, the Contractor must promptly inform the Principal in writing with details of the changes and their effects. The Contractor must follow any instructions given by the Principal.

**2.9** During claim and dispute resolution procedures undertaken under **Clauses 15** and **16**, the Parties must continue to perform their obligations under the Contract.

**2.10** The Contract contains various time limits. The Parties may change these limits by agreement in writing.

**2.11** Unless otherwise stated, the Contract commences on the date of acceptance of the Contractor's tender.

This Contract is governed by the laws of New South Wales.

Refer to *Preliminaries clauses*:

- *Work Health and Safety Management including engagement as the Principal Contractor;*
  - *Appointment of Contractor Representatives;*
  - *Quality Management;*
  - *Environmental Management;*
  - *Dealing with Modern Slavery;*
  - *NSW Supplier Code of Conduct and*
  - *Industrial Relations Guidelines,*
- for other contract conditions.

### 3. Design and Construction

**3.1** The Contractor is to complete the Principal's design to the extent stated in Contract Information - **Item 7**.

**3.2** The Contractor is not to depart from the Principal's design unless instructed by the Principal. The Principal retains responsibility for the design carried out by the Principal.

**3.3** The Contractor has sole responsibility for the Contractor's design. The Principal relies on the Contractor's care, knowledge and skill in carrying out this responsibility.

**3.4** The completed design is to conform with the Contract and be fit for the purpose of the Works stated in Contract Information - **Item 2**.

**3.5** The Contractor is to progressively submit the completed design, comprising drawings, specifications, calculations and any statutory certificates required, to the Principal in accordance with Contract Information - **Item 8**.

**3.6** The Principal is not bound to check the completed design for errors, omissions or non-conformance with the Contract.

Nothing the Principal does or omits to do in connection with the completed design relieves the Contractor of the Contractor's obligations and liabilities under the Contract.

The Principal is not liable to the Contractor for any claim whatsoever that relates to the Principal not detecting or notifying the Contractor of any error, omission or non-conformance with the Contract in the completed design.

**3.7** All intellectual property and moral rights in any design created specifically for the Contract will vest in the Principal upon their creation.

The Contractor grants to the Principal an unconditional and irrevocable licence to use any other design provided by or for the Contractor, to the extent necessary for the Works, including any subsequent repairs, maintenance or servicing (including the supply of replacement parts) or additions or alterations to the Works.

**3.8** The Contractor is to construct the Works in accordance with the completed design and make good the Site and surroundings.

**3.9** The Contractor is to provide items not included in the completed design that are needed to satisfactorily complete the Works.

**3.10** The Contractor is to carry out work that is the subject of a Provisional Sum or a Provisional Rate Amount only as instructed by the Principal and under the terms specified in the instruction.

If the Principal requests the Contractor to submit a price for work that is the subject of a Provisional Sum, then the Contractor is to comply within 10 Business Days after the request.

Refer to Preliminaries clauses:

- *Use of Qualified Designers, Engineers and Specialists;*
- *Contractor's Documents;* and
- *Work Method,*

for other contract conditions.

#### 4. Care of People, Property and the Environment

**4.1** From the time access to any part of the Site is given to the Contractor until the date of Completion of the Works, the Contractor is responsible for the care of, and is to make good, at the Contractor's expense, any loss or damage which occurs to:

- (a) the Works;
- (b) construction plant; and
- (c) items, including materials, equipment and other goods and things, entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract.

In carrying out the work under the Contract, the Contractor is to minimise inconvenience to others.

The Contractor is liable for any loss or damage caused by the Contractor whilst making good Defects.

**4.2** The Contractor indemnifies the Principal against any:

- (a) legal liability for injury, death or harm to the environment;
- (b) breach of intellectual property rights in relation to material provided by or for the Contractor; and
- (c) loss of, or damage to, property of the Principal, or others,

arising out of the carrying out of the work under the Contract.

The Contractor's liability to indemnify the Principal is reduced to the extent that an act or omission of the Principal has contributed to the injury, loss or damage.

**4.3** The Contractor is to set reasonable standards of conduct and ensure they are met by persons engaged in carrying out the work under the Contract.

**4.4** The Principal may instruct the Contractor to remove a person from the Site and surroundings for failing to meet reasonable standards of conduct.

**4.5** Nothing in **Clause 4** relieves the Principal of liability for acts and omissions of the Principal.

**4.6** If:

- (a) action is required to avoid injury, death, harm to the environment or loss of, or damage to, property, and the Contractor does not take the necessary action when instructed by the Principal; or
- (b) urgent action is required,

then the Principal may take the action, without relieving the Contractor of its obligations or liabilities.

The Principal's costs in relation to any such action, as certified by the Principal, are a debt due and payable by the Contractor to the Principal.

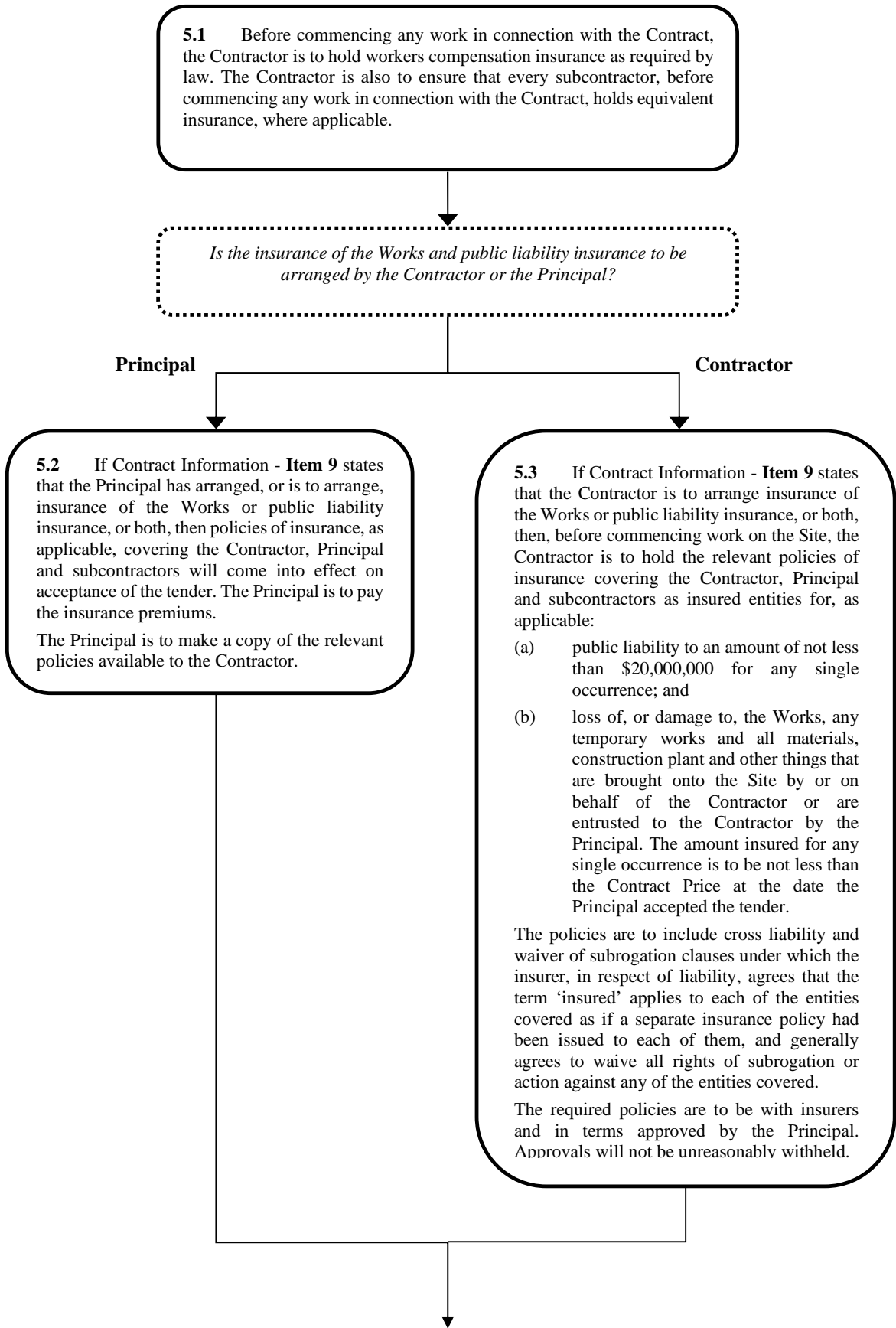
Refer to *Preliminaries clauses* (as applicable):

- *Passing of Property and Risk;*
- *Existing Services; and*
- *Protection of Children and Other Vulnerable People.*

for other contract conditions



**5. Insurance**



**5. Insurance (Continued)**



**5.4** Unless otherwise advised by the Principal, the Contractor or relevant subcontractor is to hold the following additional insurance policies:

- (a) marine liability insurance, if the work under the Contract involves the use of water-borne craft in excess of 8 metres in length; and
- (b) professional indemnity insurance, if stated in Contract Information - **Item 10**.

The policies are to be in place before commencing the relevant work.

The policy under (a) is to be:

- (i) in the name of the party responsible for procuring the insurance and cover the Contractor, Principal and subcontractors, as insured entities, for their respective rights, interests and liabilities to third parties; and
- (ii) for an amount not less than \$5,000,000 for any single occurrence and include cross-liability and waiver of subrogation clauses under which the insurer, in respect of liability, agrees that the term 'insured' applies to each of the entities covered as if a separate insurance policy had been issued to each of them, and generally agrees to waive all rights of subrogation or action against any of the entities covered.

The policy under (b) is to cover the Contractor for liability to the Principal for an amount not less than \$500,000 for loss (whether economic loss or any other loss) for any single occurrence arising from errors or omissions in the design of the Works carried out by or on behalf of the Contractor. The insurance is to be held for a period of at least one year after the work under the Contract reaches Completion.

**5.5** For any insurance the Contractor is required to hold under the Contract, the Contractor is:

- (a) responsible for the payment of premiums;
- (b) to maintain all the policies, other than professional indemnity insurance, until the work under the Contract reaches Completion or the end of the Post Completion Period, whichever is later; and
- (c) to provide evidence of the currency of the policies and copies of the Works, public liability and marine liability insurance policies to the Principal before commencing the relevant work.

**5.6** If the Contractor fails, within 5 Business Days after a written request from the Principal, to provide satisfactory evidence of having paid insurance premiums and compliance with other insurance obligations under the Contract, then the Principal may effect or maintain the insurance and pay any premiums. The Contractor is to pay the Principal the amount of any premiums or deductibles paid by the Principal plus, in each and every case, \$500 to cover the Principal's costs. These amounts, once notified, are a debt due and payable by the Contractor to the Principal.

**5.7** The Contractor is responsible for making and managing any claims and meeting the costs of all excesses and any deductibles.

## 6. Site Access

**6.1** The Principal is to give the Contractor access to sufficient of the Site to allow the Contractor to start the work under the Contract, by the time(s) stated in Contract Information - **Item 11**.

**6.2** The Principal is to act reasonably for the purposes of **Clause 6.1** but is not required to give the Contractor sole or uninterrupted possession of, or access, to the Site.

**6.3** The Contractor is to start work on the Site as soon as practicable after being given access to sufficient of the Site, but not before satisfying all necessary requirements.

**6.4** The Contractor is to give the Principal, and any third party authorised by the Principal, reasonable access to the Site for any purpose.

Refer to *Preliminaries* clause - *Site* for other contract conditions.

## 7. Site Conditions

**7.1** With regard to the work under the Contract, the Contractor warrants that, before the close of tenders, it has:

- (a) examined the Site and surrounds;
- (b) made enquiries concerning the Site; and
- (c) not relied on the completeness of information provided by the Principal.

**7.2** If the Contractor encounters Site Conditions that differ materially and adversely from what should reasonably have been expected at close of tenders, then the Contractor is to promptly notify the Principal in writing and in any event within 3 Business Days after encountering them.

The notification is to include details of the materially adverse Site Conditions and the additional time and cost the Contractor estimates will be required to deal with them.

**7.3** The Principal is to consider the Contractor's notification, taking into account the warranty in **Clause 7.1**.

The Principal is to notify the Contractor if it agrees, or otherwise, with the Contractor's contentions in its notification.

**7.4** The Contractor is solely responsible for dealing with Site Conditions and is to minimise any additional time and cost.

The Contractor must inform the Principal prior to taking any action to deal with the Site Conditions.

If the Principal instructs the Contractor to cease or not take any action until it decides how to deal with the Site Conditions, **Clause 10** applies.

**7.5** If the Principal agrees with the Contractor's contentions in its notification, then from the time the Principal receives the notification complying with **Clause 7.2**, the Contractor is entitled to:

- (a) payment of the Contractor's reasonable additional Direct Costs plus a Margin of 15%; and
- (b) an extension of time for delays in reaching Completion,

where the additional cost or delay are necessarily incurred because of the materially adverse Site Conditions.

This entitlement is reduced to the extent that the Contractor has not minimised additional time and costs.

The Contractor has no entitlement for costs and delays incurred before it gave the notification complying with **Clause 7.2**.

The Contractor has no other entitlements due to materially adverse site conditions except under **Clause 7.7**.

**7.6** The Contractor is to claim any additional Direct Costs and extensions of time to which it is entitled under **Clause 7.5** within 10 Business Days after completing the relevant work.

The claim is to be made in accordance with **Clause 15.2**.

**7.7** If a Variation is instructed because of materially adverse Site Conditions, the Contractor's entitlements under **Clause 7.5** cease from the time of the instruction and **Clause 9** applies to the Variation.

Refer to *Preliminaries* clauses:

- *Existing Services*; and
- *Hazardous Substances discovered unexpectedly on Site*.

for other contract conditions.

## 8. Materials and Work

**8.1** The Contractor is to:

- (a) supply materials which are new (unless otherwise specified), free from defects and fit for purpose; and
- (b) use standards of workmanship (including design) and work methods, which conform with the Contract, the National Construction Code, relevant Australian Standards and codes of practice, and the lawful requirements of any authority.

Where the Contract requires compliance with a standard or code, unless otherwise specified that standard or code will be the one current at close of tenders, except for the National Construction Code, which will be the one current at Completion.

Where the Contract refers to an Australian Standard it does not preclude the adoption of a relevant international standard.

**8.2** When instructed by the Principal, the Contractor is to:

- (a) uncover and re-cover work; and/or
- (b) carry out additional testing.

**8.3** The Contractor is not entitled to additional payment or an extension of time in respect of an instruction under **Clause 8.2** unless the work uncovered or tested conforms with the Contract, in which case the instruction will be dealt with as an instruction under **Clause 9**.

**8.4** The Contractor is to make good any Defect when it becomes apparent.

The Principal may, in its absolute discretion, propose to accept work under the Contract with any specified Defect not made good, on specified terms.

If the Contractor does not accept the Principal's proposal, then the Contractor is to make good the Defect.

**8.5** Nothing in **Clause 8** relieves the Contractor of any obligations or liabilities under the Contract.

Refer to Preliminaries clauses in section – *Materials and Workmanship* for other contract conditions.

**9. Variations**

**9.1** The Contractor is not to change the Works without an instruction from the Principal or written acceptance by the Principal of a proposal from the Contractor.

**9.2** The Contractor is to take all reasonable steps to carry out any Variation concurrently with other work and to otherwise minimise any delays.

**9.3** If the Contractor proposes a Variation for the Contractor's convenience the Principal may, in its absolute discretion, accept the proposal on specified terms.

**9.4** If, in respect of a possible Variation, the Principal requests the Contractor to submit a proposal, including the effect on the Contract Price, the time required to reach Completion and any other implications for the Contract, the Contractor is to comply with the request within 10 Business Days. The proposal should:

- (a) comply with the valuation principles set out in **Clause 9.11**;
- (b) include the Margins specified in **Clause 9.11**, unless the Contractor considers margins more favourable to the Principal should apply; and
- (c) utilize any provisional rate items that reasonably apply.

*Does the Principal accept the Contractor's proposal?*

Yes

No

**9.5** If the Principal accepts a proposal submitted under **Clause 9.4**, then within 10 Business Days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is accepted as a Variation.

**9.6** If the Principal does not accept a proposal submitted under **Clause 9.4**, then within 10 Business Days after receiving the proposal, the Principal is to notify the Contractor in writing that the proposal is not accepted.

**9.7** Nothing in **Clause 9.4** or **Clause 9.6** prevents the Principal from instructing a Variation under **Clause 9.8**.

**9.8** If the Principal instructs the Contractor to carry out a Variation, the Contractor is to comply in accordance with **Clause 2.4** and within 5 Business Days after completing the Variation, notify the Principal in writing of the price for the Variation (including for any delay), how the amount is calculated and any effect on the time required to reach Completion. The Parties must attempt to reach agreement on any adjustments to the Contract Price and the time for Completion.

**9. Variations (Continued)**

Have the Parties reached agreement on the price and the effect on the time required to reach Completion?

Yes

No

**9.9** If the Parties have reached agreement on the price and effect on the time required to reach Completion, if any, notified under **Clause 9.8**, then within 10 Business Days after receiving the notification, the Principal is to advise the Contractor in writing of the agreed adjustments.

**9.10** If the Parties have not reached agreement on the price or effect on the time required to reach Completion, if any, notified under **Clause 9.8** then, within 10 Business Days after receiving the notification, the Principal is to assess the Contractor's entitlements and other effects arising from the Variation and notify the Contractor in writing of the assessment.

**9.11** Subject to other applicable conditions of Contract, the following valuation principles apply to an assessment of the Contractor's entitlements and other effects arising from a Variation:

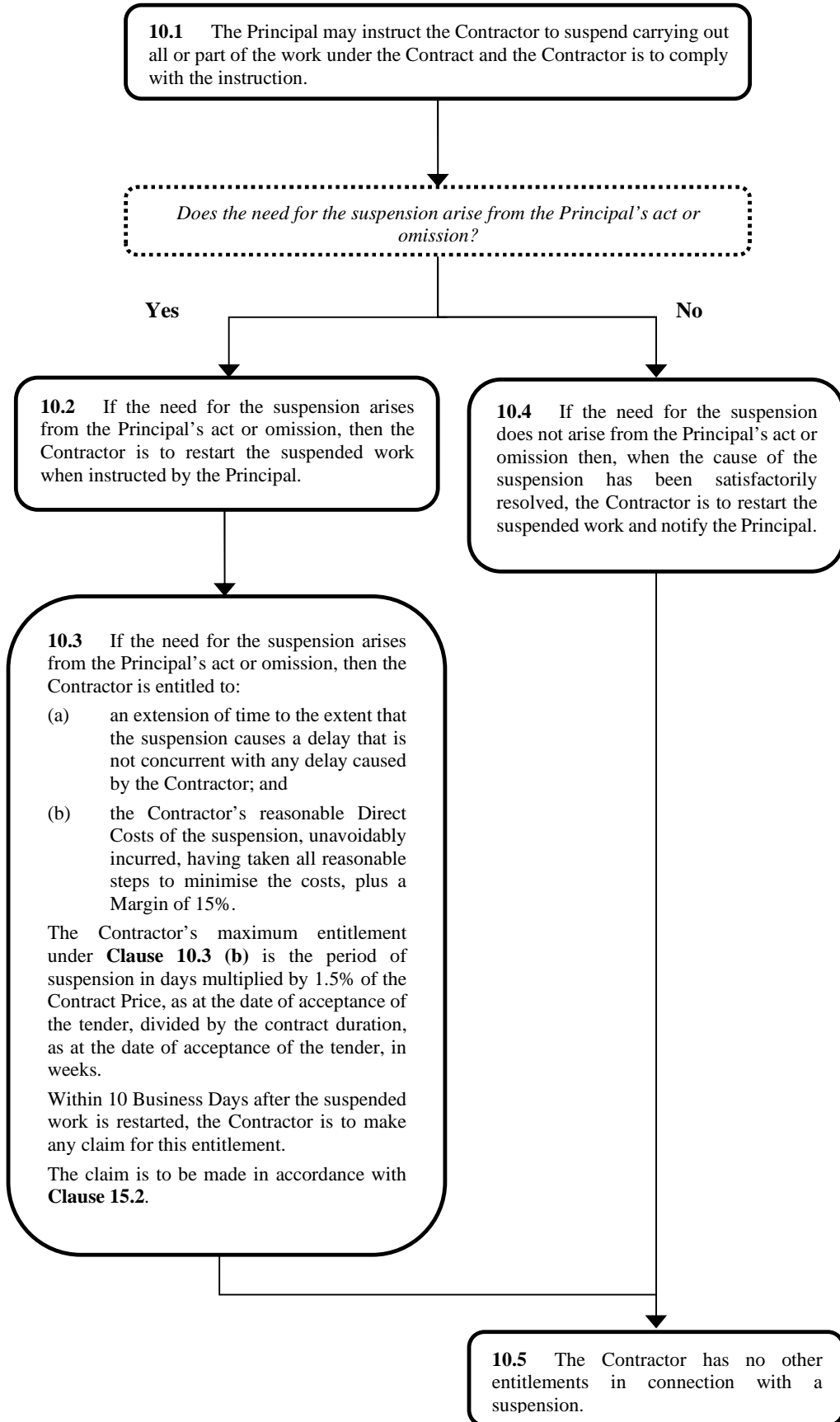
- (a) if the Variation delays the Contractor in reaching Completion, then, to the extent that the delay is not concurrent with a delay caused by the Contractor, an entitlement to an extension of time for Completion;
- (b) where the Variation is for additional work and **Clause 2.2 (a)** does not apply, an entitlement to:
  - (i) the amounts calculated from any provisional rate items that reasonably apply to the additional work plus a Margin of 5% on these amounts; and
  - (ii) the reasonable Direct Costs of the part of the additional work not included in the assessment under (b)(i) above, plus a Margin of 15% on these Direct Costs, irrespective of any entitlement to an extension of time;
- (c) where the Variation is for additional work and **Clause 2.2 (a)** does apply, an entitlement to:
  - (i) the amounts calculated from any provisional rate items that reasonably apply to the additional work (without any Margin); and
  - (ii) the reasonable Direct Costs of the part of the additional work not included in the assessment under (c)(i) above, plus a Margin of 10% on these Direct Costs, whether or not there is an entitlement to an extension of time;
- (d) where the Variation is for a reduction in work, a deduction comprising:
  - (i) the amounts calculated from any provisional rate items that reasonably apply to the deducted work (without any Margin); and
  - (ii) the Direct Costs of the part of the deducted work not included in the assessment under (d)(i) above plus a Margin of 5% on these Direct Costs.
- (e) where both additional and reduced work is included in the Variation, each type of work is considered separately.

**9.12** The Parties agree that the provisions of **Clause 9.11** fully compensate the Parties for all costs and losses arising from supervision, overheads, delay, disruption and interference resulting from the Variation.  
The Contractor has no other entitlements in relation to the Variation.

**9.13** If the Contractor does not accept the net Direct Cost or extension of time assessed under **Clause 9.11**, then the Contractor is to make a claim in accordance with **Clause 15.2**.

Refer to *Preliminaries* clause:  
*Application of Provisional Rate Amounts*  
for other contract conditions.

**10. Suspension**





## 11. Completion

**11.1** The Contractor is to bring the work under the Contract and any Milestones to Completion within the time(s) stated in Contract Information - **Item 12**, as extended under the Contract.

**11.2** The Contractor is to notify the Principal when, in the Contractor's opinion, the work under the Contract or any Milestone has reached Completion in the form of **Schedule 3** to these General Conditions.

When the Contract includes Milestones, the work under the Contract will have reached Completion when all Milestones have reached Completion.



**11.3** Upon receipt of notification under **Clause 11.2**, the Principal is to:

- (a) determine if the work under the Contract or Milestone has reached Completion and, if so, the date Completion was reached; and
- (b) promptly give the Contractor written notice of the determination.

**11.4** Before Completion, the Principal may use or occupy any part of the Works which is sufficiently complete, and then:

- (a) the Contractor's responsibilities are not affected, except to the extent that the Principal causes the Contractor's work to be hindered; and
- (b) the Principal becomes responsible for any additional insurance required.

The Principal is to give the Contractor not less than 5 Business Days written notice that the Principal (or a third party authorised by the Principal) will be using or occupying a part of the Works and is to specify the part(s) to be used or occupied.

The Contractor is to provide to the Principal, no more than 10 Business Days after receiving the Principal's notice, all documents and other things relevant to the part(s) of the Works specified in the notice. The Contractor is to provide full assistance and cooperation to the Principal in the use and occupation of the parts specified in the notice.

**11.5** The Principal may, in its absolute discretion, notify the Contractor that the work under the Contract or any Milestone has reached Completion.

Refer to *Preliminaries* clauses:

- *Work as Executed Drawings;*
- *Operations and Maintenance Manuals;*
- *Work Health and Safety Management – Electrical Work; and*
- *Waste Management – Monitoring,*

for other contract conditions.

## 12. Delay to Completion

**12.1** If the Contractor anticipates being delayed in reaching Completion, the Contractor is to promptly notify the Principal. This notification may allow the Principal to take action to reduce the delay, where feasible.

**12.2** If the Contractor is delayed in reaching Completion, the Contractor is to immediately notify the Principal and, within 5 Business Days after the delay starts, advise the Principal in writing of the cause, relevant facts and actual or expected delay.

**12.3** If a delay in reaching Completion is not concurrent with delay caused by the Contractor, and is caused by:

- (a) an instruction given by the Principal,
- (b) a breach of the Contract by the Principal; or
- (c) any event beyond the control of the Contractor to the extent the Contractor has not contributed to the delay,

then, subject to any applicable conditions under **Clauses 7, 8, 9 or 10** and the Contractor's obligation to minimize any delay to Completion, the Contractor is entitled to an extension of the time for Completion, to the extent that the instruction, breach or event caused delay.

**12.4** **Clauses 7, 8, 9 and 10** include allowances for the costs of delay subject to applicable conditions.

Where **Clause 7, 8, 9 or 10** does not apply to the relevant event and:

- (a) an entitlement to an extension of the time for Completion arises under **Clause 12.3 (a) or (b)**; and
- (b) the Contractor is delayed in reaching Completion of the work under the Contract,

then the Contractor is entitled to delay costs at the rate per day stated in Contract Information - **Item 13**.

The Contractor has no entitlement to costs arising from delays due to causes that are beyond the control of the Principal.

The Contractor has no other entitlement for costs in relation to delays.

**12.5** Within 10 Business Days after a delay ends, the Contractor is to make a claim providing the information referenced in **Clause 15.2** that applies to its claim.

Subject to sufficient information being provided, the Principal is to assess the Contractor's entitlements in accordance with **Clause 15.3** and notify the Contractor in writing of the assessment and the adjusted time for Completion.

Notwithstanding **Clause 15.3**, if the Principal does not notify the Contractor of the assessed entitlements within 15 Business Days after a complying claim is received, then the assessed entitlements for delay will be nil.

**12.6** If the Contractor does not accept the assessed entitlements, the Contractor is to proceed in accordance with **Clause 15.3** and the Parties are to initially confer and endeavour to reach agreement.

**12.7** If the Contractor does not complete a Milestone or the work under the Contract in accordance with **Clause 11.1**, then:

- (a) if a rate is stated in Contract Information - **Item 14**, the Contractor is to pay to the Principal liquidated damages at that rate from, and including, the day immediately after the date for Completion to, and including, the date Completion is reached; or
- (b) if no rate is stated in Contract Information - **Item 14**, then common law damages will apply.

The damages, once notified, are a debt due and payable by the Contractor to the Principal.

**12.8** The Principal may, for any reason and at any time, extend any time for Completion by written notice.

Refer to *Preliminaries* clause – *Contract Program*, where included, for other time management requirements.

### 13. Payment and Retention

**13.1** The Contractor is to give a written payment claim to the Principal at the times specified in Contract Information - **Item 15**.

The payment claim is to be provided to the Authorised Person at the address shown in Contract Information - **Item 1**.

The payment claim is to identify the work carried out, the amount claimed and how the amount is calculated.

The amount the Contractor is entitled to claim is the sum of:

- (a) for work for which the Principal accepted rates, an amount calculated by applying the rates to the relevant quantities of work carried out;
- (b) for work for which the Principal accepted a lump sum, the percentage of the lump sum that reflects the value of the work carried out;
- (c) for completed work for which the Contract Price includes a Provisional Sum or a Provisional Rate Amount, the amount calculated in accordance with **Clause 13.8**; and
- (d) for any extra entitlement claimed for which the Principal has agreed or assessed an amount in writing, or for which an amount has been finally determined by an expert under **Clause 16**, the percentage of that amount which reflects the value of the entitlement,

at the date of the payment claim (subject to the requirements of SoPA), less amounts previously paid, amounts payable by the Contractor to the Principal and any amounts the Principal is entitled to deduct, including retentions, set-offs and liquidated damages.

**13.2** With each payment claim, the Contractor is to give to the Principal:

- (a) the conformance records and other information required under the Contract; and
- (b) a completed and true Supporting Statement and a completed and true Subcontractor's Statement in the form of **Schedule 2** to these General Conditions; executed as at the date of the payment claim.

**13.3** Within 10 Business Days after receipt of the Contractor's payment claim, the Principal is to give to the Contractor a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making.

If the payment is to be less than the amount claimed, the payment schedule is to state the reasons why it is less.

**13.4** Payment by the Principal of the scheduled amount shown in the payment schedule is to be made within 15 Business Days after the Contractor's payment claim is served.

With reference to the relevant legislation identified in the Subcontractor's Statement (in **Schedule 2**), the Principal may reduce the progress payment due to the Contractor to account for its increased liability if the Subcontractor Statement is not provided or satisfactorily completed.

**13.5** Unless otherwise stated, all payments by the Principal to the Contractor are to be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Contractor.

The Principal requires a minimum of 5 Business Days written notice of any changes to the nominated account to avoid payments being made into a previously nominated account.

**13.6** Payment is not evidence of the value of work or that the work is satisfactory or an admission of liability but is payment on account only.

Refer to *Preliminaries* clause - *Goods and Services Tax* for other contract conditions, including responsibility for the issue of tax invoices.

### 13. Payment and Retention (Continued)

**13.7** The Principal is entitled to withhold, deduct or set-off from any payment due to the Contractor, under, or arising out of, the Contract or any other contract between the Parties, a sum equivalent to any debt due from the Contractor to the Principal.

**13.8** If the Principal instructs the Contractor to carry out work that is the subject of a Provisional Sum (PS work) or a Provisional Rate Amount (PRA work), then the Contract Price is to be adjusted as follows:

- (a) the amount of the applicable Provisional Sum or Provisional Rate Amount is to be deducted from the Contract Price;
- (b) for PS work; the reasonable Direct Costs to the Contractor for the relevant PS work, plus a Margin of 10%, is to be added to the Contract Price; and
- (c) for PRA work; the amount calculated by applying the tendered rate for the relevant provisional rate item to the measured quantity of work carried out, up to the limit specified, if any, plus any specified Margin, is to be added to, or deducted from, the Contract Price, as applicable.

If the Principal does not instruct the Contractor to carry out a PS work or a PRA work, then the applicable Provisional Sum or Provisional Rate Amount is to be deducted from the Contract Price.

**13.9** Unless the Principal specifies at Contract Information - **Item 16** that an undertaking is to be provided or other arrangements apply, the Principal is to retain 4% of the Contract Price when the amount the Contractor is entitled to be paid exceeds 50% of the Contract Price.

The Contractor may, instead of the retention, provide an undertaking in the amount of the retention in the form detailed in **Schedule 1 – Unconditional Undertaking**.

All undertakings are to be provided by a bank, building society, credit union or insurance company acceptable to the Principal.

The Principal may make a demand against an undertaking or retention in payment of any debt due from the Contractor to the Principal.

**13.10** Within 45 Business Days after:

- (a) the work under the Contract reaches Completion;
- (b) the rectification or resolution of all Defects identified prior to the end of the final Post Completion Period (if any);
- (c) the end of the final Post Completion Period (if any); or
- (d) the resolution of all claims made under **Clause 15**,

whichever is the later, the Principal is to issue a Final Payment Summary accounting for the payment of any retention held under **Clause 13.9** and any amounts the Principal demands from the Contractor, and stating the amount payable by one Party to the other. **Clause 13.11** then applies.

If the Contractor does not agree with the Final Payment Summary, the Parties are to confer and endeavour to reach agreement. If agreement is not reached within 20 Business Days after the issue of the Final Payment Summary, **Clause 16** applies.

**13.11** If payment is due to the Contractor, the Contractor must submit a payment claim, in accordance with **Clause 13.1**. The applicable payment clauses of **Clause 13** then apply. The Principal is to release the balance of any undertakings after payment is made.

Where the Contractor has not submitted a payment claim within 25 Business Days of the issue of the Final Payment Summary, the Principal is to pay the Contractor any money due and release the balance of any undertakings, subject to a deduction applying in accordance with **Clause 13.4** where:

- (a) the Contractor has carried out work under the Contract since the date of its last payment claim; and
- (b) no Subcontractor's Statement has been provided.

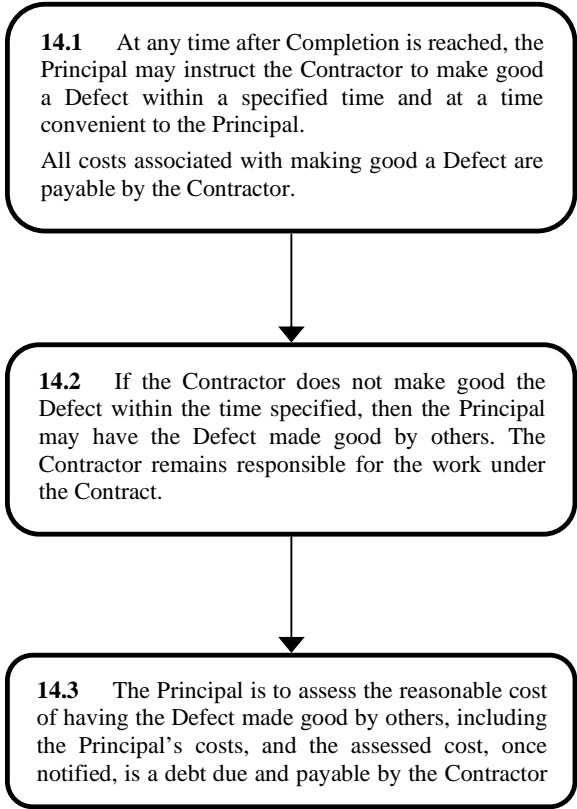
If payment is due to the Principal, then the payment is a debt due and payable by the Contractor to the Principal.

Within 20 Business Days after the date of issue of the Final Payment Summary, the Contractor is to pay the Principal any money due in accordance with the Final Payment Summary.

The Principal is to release the balance of any undertakings and retentions within 5 Business Days after receiving payment from the Contractor, subject to **Clause 13.11 (a) & (b)**.

If no payment is due from either party to the other then, within 20 Business Days after the date of issue of the Final Payment Summary, the Principal is to release the balance of any undertakings.

**14. After Completion**



## 15. Claims

**15.1** The Contractor may make a claim for an entitlement in connection with the Contract. Any claim, other than a claim made under **Clause 13**, i.e. a payment claim, is to be made in accordance with this **Clause 15**.

**15.2** A claim by the Contractor on the Principal is to be in writing and contain sufficient information for the Principal to assess the claim, including:

- (a) the legal and factual basis of the claim;
- (b) how the quantum of the claim is calculated; and
- (c) evidence supporting the claim, including applicable subcontractor documentation.

The claim must also include the effect of the event giving rise to the claim on both the Contract Price and time required to reach Completion.

**15.3** Within 10 Business Days after receiving a claim that meets the requirements of **Clause 15.2**, the Authorised Person is to assess both:

- (a) the validity of the claimed entitlement under the Contract; and then
- (b) the value, if any, of that entitlement, and notify the Contractor with reasons.

If the Contractor does not consider that the Authorised Person's assessment is reasonable and can provide additional information to support its claim, then the Contractor and Authorised Person are to confer and endeavour to reach agreement on the claimed entitlements.

If agreement is not reached within:

- (a) 20 Business Days after the Authorised Person's assessment; or
- (b) 35 Business Days after a complying claim was received,

whichever is the later, **Clause 16** will apply.

Notwithstanding the application of **Clause 16**, the Contractor may include the Authorised Person's assessment in its payment claim and **Clause 13** will then apply.

**15.4** Unless otherwise provided for in the Contract, any claim by the Contractor on the Principal, in relation to events that occurred before the work under the Contract reached Completion, is to be received by the Principal within 20 Business Days after the Contractor receives the Principal's written notice of Completion of the work under the Contract under **Clause 11.3**. Otherwise, to the extent permitted by law, the claim is barred.

If the Contract includes a Post Completion Period, then any claim by the Contractor on the Principal, in relation to events that occurred during a Post Completion Period, is to be made within 20 Business Days after the end of the final Post Completion Period. Otherwise, to the extent permitted by law, the claim is barred.

**16. Disputes**

**16.1** If the Contractor is dissatisfied with an act or omission of the Principal in connection with the Contract, including an instruction, assessment of a claim or failure to agree then, unless otherwise required by the Contract, within 10 Business Days after:

- (a) the act or omission; or
- (b) the expiry of a relevant period specified under **Clause 13.10** or **Clause 15.3**,

whichever is later, the Contractor is to notify the Authorised Person and the Senior Executive in writing of a dispute. The notification is to include the information required under **Clause 15.2**.

If the Contractor notifies a dispute, but not within the time provided by this **Clause 16.1**, then the Contractor is not entitled to interest, in respect of that matter, prior to notification.

**16.2** If the Principal is dissatisfied with an act or omission of the Contractor in connection with the Contract, including performance, compliance with an instruction or failure to agree, then within 10 Business Days after the act or omission, Principal may notify the Contractor in writing of a dispute. The notification is to include the legal and factual basis of the dispute.

**16.3** Within 15 Business Days after a complying notification is received under **Clause 16.1** or **16.2**, the Contractor and the Senior Executive are to confer to try to resolve the dispute.

**16.4** If the dispute is not resolved within 30 Business Days after notification is received under **Clause 16.1** or **16.2**, then, unless alternative arrangements are agreed, the Parties are to agree upon an independent expert to determine the dispute.

As per **Clause 2.10**, the Parties may agree, in writing, to extend the time for resolution.

**16.5** If the Parties fail to agree upon an expert within 20 Business Days, then either Party may request the Chief Executive Officer of the Australian Disputes Centre (tel. 02 9239 0700) to nominate an expert. The independent expert is not to be:

- (a) an employee of the Principal or the Contractor;
- (b) a person who has been connected with the Contract; or
- (c) a person upon whose appointment the Principal and the Contractor have previously failed to agree.

**16.6** Once the expert has been agreed under **Clause 16.4** or nominated under **Clause 16.5**, the Principal, on behalf of both Parties, is to appoint the expert in writing, with a copy to the Contractor, setting out:

- (a) the dispute being referred to the expert for determination;
- (b) the expert's fees;
- (c) the procedures detailed in this **Clause 16**;
- (d) the arrangements for each party to lodge \$15,000 as initial security for the expert's fees; and
- (e) any other matters relevant to the appointment.

**16.7** The Parties are to share equally the cost of appointing the expert, and the expert's fees and out-of-pocket expenses, including any security required for the expert's fees. Each party is to otherwise bear its own costs in relation to the determination process.

**16.8** If a party defaults in providing the initial security within 15 Business Days after the appointment of the expert, then the other party may, but is not obliged to, provide the security in full and the defaulting party's share is a debt due and payable to the paying party.

**16.9** Any dispute for which:

- (a) an expert has not been agreed upon under **Clause 16.4**, or nominated under **Clause 16.5** within 70 Business Days after notification is received under **Clause 16.1** or **16.2**; or
- (b) the initial security has not been lodged in full within 20 Business Days after the expert has been appointed,

is deemed to be abandoned.

**16. Disputes (Continued)**

**16.10** Each party is to make written submissions to the expert and provide a copy to the other party as follows:

- (a) Within 20 Business Days after the appointment of the expert, the notifying party is to make its submission on the matter in dispute.
- (b) Within 15 Business Days after receiving a copy of that submission, the other party is to make its submission in response, if any, which may include cross-claims.
- (c) If a cross-claim is made, the notifying party is to make its submission on the cross claim within 10 Business Days after receiving a copy of the submission from the other party.
- (d) The expert may request further information from either party and that party must respond within 10 Business Days after receiving the request.
- (e) The expert must ignore any submission not made within the times given in this **Clause 16.10** and make a determination on the submissions or information provided within time unless the Parties agree otherwise in writing.

**16.12** In making the determination, the expert acts as an expert and not as an arbitrator and is:

- (a) not liable for acts, omissions or negligence;
- (b) to make the determination on the basis of the Contract and written submissions from the Parties without formalities such as a hearing;
- (c) not to incur costs until the initial security has been lodged in full; and
- (d) required to give the determination in writing, with brief reasons, to each party within 20 Business Days after all the submissions from the Parties have been received or the initial security has been lodged in full, whichever is the later.

**16.13** If the expert determines that:

- (a) one party is to pay the other an amount exceeding \$500,000 (excluding interest and any amount that has been paid pursuant to SoPA); and
- (b) within 10 Business Days after receiving the determination, either Party gives written notice to the other that it is dissatisfied,

then either Party may commence litigation in respect of the matters determined by the expert.

**16.11** The expert must determine whether the claimed event, act or omission did occur and, if so:

- (a) when it occurred;
- (b) what term of the Contract or other obligation in law, if any, requires one party to pay the other money or otherwise act in respect of it; and
- (c) the merits in law of any defence or cross-claim raised by the other party.

The expert is then to determine the amount, if any, which one party is legally bound to pay the other on account of the event, act or omission.

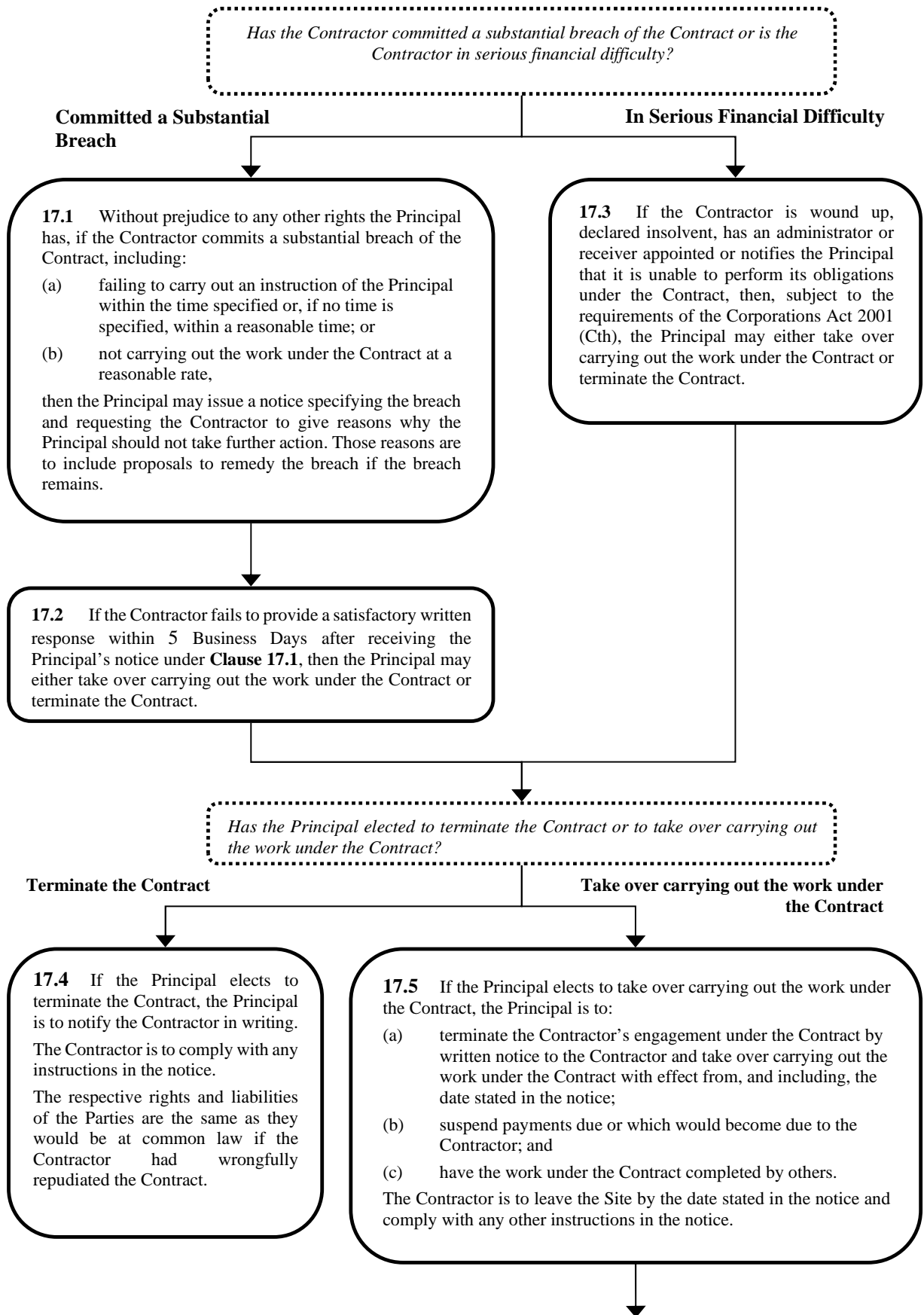
The expert must also determine any other question(s) referred by the Parties under **Clause 16.6**.

**16.14** Unless a party has a right to commence litigation under **Clause 16.13**:

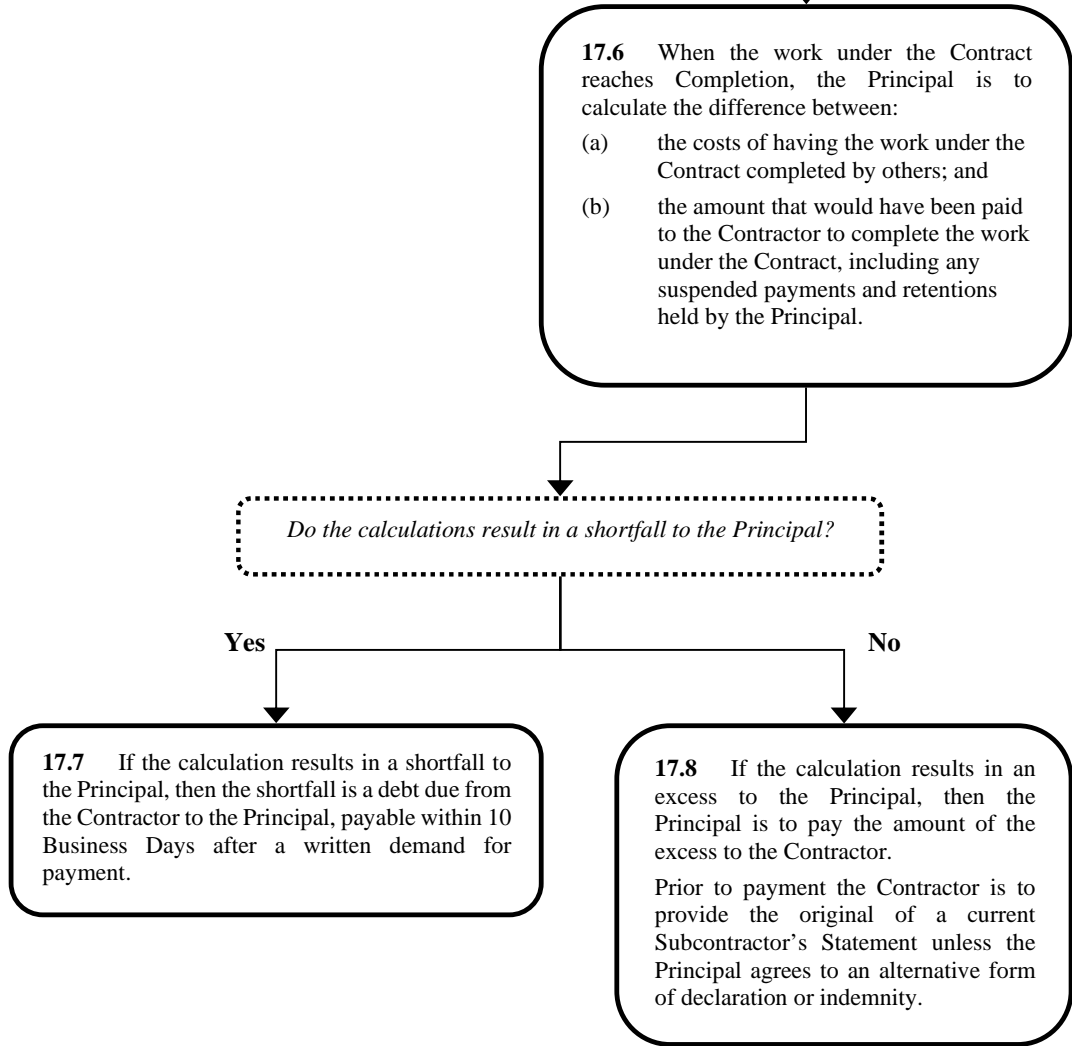
- (a) the Parties are to treat each determination of the expert as final and binding and give effect to it; and
- (b) if the expert determines that the Contractor owes money to the Principal, the amount determined is a debt due and payable by the Contractor to the Principal and the Contractor is to pay the money within 20 Business Days after receiving the determination; or
- (c) if the expert determines that the Principal owes money to the Contractor, the Principal is to pay the money within 20 Business Days after receiving the expert determination, or 5 Business Days after receiving the original of a current Subcontractor's Statement, whichever is the later.



**17. Contractor's Default and Insolvency**



**17. Contractor's Default and Insolvency (Continued)**



Refer to Preliminaries clause – *Passing of Property and Risk* for application of the Personal Property Securities Act (PPSA) to the Contract.

## 18. Termination for the Principal's Convenience

**18.1** The Principal may terminate the Contract for convenience and without giving reasons by giving written notice to the Contractor, with effect from, and including, the date stated in the notice. The Contractor is to leave the Site by the date stated and comply with any other instructions in the notice.

If the Contract is terminated for the Principal's convenience, then the Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the date stated in the notice, determined in accordance with **Clauses 13 and 16**; plus
- (b) 2% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 18.1** are full compensation for termination under **Clause 18**, and the Contractor has no claim for damages or other entitlement whether under the Contract or otherwise.

**18.2** Wherever possible, the Contractor is to include a provision equivalent to this **Clause 18** in all subcontracts, including supply agreements.

## 19. Suspension and Termination for the Principal's Default

**19.1** If the Principal fails to pay the Contractor any amount that is in accordance with the Contract and not in dispute, the Contractor may take action under SoPA, if applicable.

If the Contractor suspends work at any time in accordance with SoPA, it may be entitled to an extension of time under **Clause 12**, but despite **Clause 12.3**, it will not be entitled to any payment for delay or disruption.

**19.2** If the Principal fails to pay the Contractor a non-trivial amount that is in accordance with the Contract and not in dispute or where the Principal commits a fundamental breach of the Contract, then the Contractor may give written notice requiring the Principal to remedy the default within 20 Business Days after receiving the notice. The notice must state the amount that is due and the alleged breach.

**19.3** If, within 20 Business Days after receiving the Contractor's notice under **Clause 19.2**, the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a written notice terminating the Contract.

**19.4** Following termination under **Clause 19**, the Contractor's total entitlement in respect of the Contract is the sum of:

- (a) the value of all work carried out up to the date of the notice of termination, determined in accordance with **Clauses 13** and **16**; plus
- (b) 4% of the difference between the Contract Price and the total of all amounts paid and payable to the Contractor under (a).

The payments referred to in this **Clause 19.4** are full compensation for termination under **Clause 19**, and the Contractor has no claim for damages or other entitlements whether under the Contract or otherwise.

**19.5** The Contractor has no other right to terminate the Contract, under common law or otherwise.

**19.6** Wherever possible, the Contractor is to include a provision equivalent to this **Clause 19** in all subcontracts, including supply agreements.

## MW21 Contract Information

### 1. Authorised Person

*Mentioned in Clause 1.1*

The Authorised Person is:	Nathan Stubberfield
Title:	Department Leader – Innovation & Technology
Office address: (for delivery by hand)	99 - 101 Bank St Molong NSW 2866
Postal address: (for delivery by post)	PO Box 17 Molong NSW 2866
Telephone number:	(02) 6392 3200
e-mail address:	<a href="mailto:Nathan.Stubberfield@cabonne.nsw.gov.au">Nathan.Stubberfield@cabonne.nsw.gov.au</a>

If no name is stated, then the Principal is to name the person in writing within 5 Business Days after accepting the tender. The Principal may for any reason and at any time change the Authorised Person by giving notice in writing.

### 2. Description and Purpose of the Works

*Mentioned in Clause 3.4*

The Works are:	Construction of a 2.2MW solar array and BESS for Cabonne Shire Council (CSC) at the Eugowra STP, 255 Casuarina Drive Eugowra.
The purpose of the Works is:	Development of a dispatchable Renewable Energy power plant as a key initiative under the 2024 Electrify Cabonne strategy.

If no purpose is stated, then the purpose of the Works is as reasonably inferred from the Contract Documents.

### 3. Milestones

*Mentioned in Clause 1.13*

There are no Milestones.

### 4. Post Completion Period

*Mentioned in Clause 1.15*

The Post Completion Period, which starts on the day after the work under the Contract reaches Completion, is:	52 calendar weeks.
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If no time is stated, then no Post Completion Period applies.

### 5. Principal

*Mentioned in Clause 1.16*

The Principal is:	Cabonne Council (ABN 41 992 919 200)
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All correspondence to the Principal is to go to the address of the Authorised Person.

**6. Senior Executive**

*Mentioned in Clause 1.19*

The Senior Executive is:

Mr Bradley Byrnes  
General Manager

Where specified, documents must be copied to the Principal’s senior executive at the address or number shown here.

Office address:  
(for delivery by hand)

99 - 101 Bank St  
Molong  
NSW  
2866

Postal address:  
(for delivery by post)

PO Box 17  
Molong  
NSW  
2866

Telephone number:

(02) 6392 3200

e-mail address:

[council@cabonne.nsw.gov.au](mailto:council@cabonne.nsw.gov.au)

If no name is stated, then the Principal is to name the person in writing within 5 Business Days after accepting the tender. The Principal may for any reason and at any time change the Senior Executive by giving notice in writing.

**7. Extent of Design**

*Mentioned in Clause 3.1*

The Contractor is to complete the Principal’s design to the extent of:

design that is necessary to comply with **Clauses 3.4** and **3.9**, including the design of minor items and shop detailing.

**8. Design Documents**

*Mentioned in Clause 3.5*

The time to submit the completed design is:

not applicable. The Contractor need not submit the completed design.

**9. Works and Public Liability Insurance**

*Mentioned in Clauses 5.2 and 5.3*

Insurance of the Works is to be arranged by:

*(the Principal / the Contractor)*

(“the Contractor” applies if not filled in)

Public liability insurance is to be arranged by:

*(the Principal / the Contractor)*

(“the Contractor” applies if not filled in)

**10. Professional Indemnity Insurance**

*Mentioned in Clause 5.4*

Is a professional indemnity insurance policy to be held by the Contractor and/or relevant subcontractors?

(“No” applies if not filled in)

**11. Site Access**

*Mentioned in Clause 6.1*

The time to give access to the Site is: 10 Business Days after the date of acceptance of the tender.

If no time is stated, then it is 5 Business Days after the date of acceptance of the tender.

**12. Time for Completion**

*Mentioned in Clause 11.1*

The time for Completion is: 22 calendar weeks after the date of acceptance of the tender.

If no time is stated, then a reasonable time is to apply.

**13. Delay Costs**

*Mentioned in Clause 12.4*

The rate per day for delay costs is: \$1,275

**14. Liquidated Damages**

*Mentioned in Clause 12.7*

The rate per day for liquidated damages is: \$1275

If no rate or "Nil" or "0" or "N/A" is stated, then common law damages apply.

**15. Payment Claims**

*Mentioned in Clause 13.1*

Payment claims are to be made: monthly, on and after the last Business Day of each calendar month.

**16. Retention**

*Mentioned in Clause 13.9*

Is an undertaking in the form detailed in **Schedule 1** for an amount equal to 4% of the Contract Price to be provided within 10 Business Days after the date of acceptance of the tender? Yes  
("No" applies if not filled in)

## Schedule 1 – Unconditional Undertaking

Refer to Clause 13.9 of the MW21 General Conditions of Contract.

Name of Financial Institution: .....

The Principal: CABONNE COUNCIL

The Contractor: .....

ABN .....

Security Amount \$ .....

The Contract: The Contract between the Principal and the Contractor

Contract Name: Eugowra STP Solar Farm Construction

Contract Number: 1827678

Other words and phrases in this Undertaking have the meaning given in the MW21 General Conditions of Contract.

### Undertaking

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This Undertaking continues until one of the following occurs:
  - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
  - .2 this Undertaking is returned to the Financial Institution; or
  - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated ..... at .....

**Execution by the Financial Institution:**



## **Schedule 2 – Supporting Statement and Subcontractor’s Statement**

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Refer to clause 13.2 of the MW21 General Conditions of Contract.

The Contractor is required to complete these two statements and submit both statements with each payment claim. Do not alter the forms.

Relevant legislation includes Workers Compensation Act 1987 (NSW), s175B; Payroll Tax Act 2007 (NSW), Schedule 2 Part 5; Industrial Relations Act 1996 (NSW), s127 and Building and Construction Industry Security of Payment Act 1999 (NSW), ss13(7) and 13(9).

### **Supporting Statement**

The Contractor is the “head contractor” in terms of the Building and Construction Industry Security of Payment Act 1999 (NSW) and makes relevant statements below accordingly. The Contractor, as the “head contractor”, carries out the construction work for the Principal under the Contract.

The Supporting Statement must be signed by the Contractor, a director of the Contractor or a person authorised by the Contractor.

The included Supporting Statement is the MS Word version of the Supporting Statement provided by the Office of Fair Trading. Note there is an anomaly related to reporting subcontractor payments in the form. Section 13.9 of SoPA does not require the amounts of payments to subcontractors to be declared.

A pdf version with ‘fillable form fields’ allowing only the required information to be inserted is available from the Fair Trading website. The address is:

[fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0006/984993/Supporting-Statement\\_Constructions\\_Contract\\_Updated-V6.pdf](https://fairtrading.nsw.gov.au/_data/assets/pdf_file/0006/984993/Supporting-Statement_Constructions_Contract_Updated-V6.pdf).

### **Subcontractor’s Statement**

The Contractor is a “subcontractor” in terms of the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) and makes relevant statements below accordingly. The Contractor as the “subcontractor” carries out the construction work for the Principal under the Contract. The Principal is called the “principal contractor” in these Acts.

For clarity the Subcontractor’s Statement refers to the ‘Contractor’ and ‘Principal’ under the Contract rather than the “subcontractor” and “principal contractor” under the above Acts.

The Subcontractor’s Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, by the Contractor to sign the statement).

Information, including Notes, Statement Retention and Offences under various Acts, is included at the end of the Subcontractor’s Statement.

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# Supporting Statement

Refer to above notes for the Supporting Statement form in a fillable pdf format.

## Construction Contracts

Pursuant to section 13(7) of the *Building and Construction Industry Security of Payment Act 1999 (NSW)* (the Act) a supporting statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

This form should be used by a head contractor who has a construction contract that is not an owner-occupier construction contract. If the contract is an owner-occupier construction contract the 'Supporting Statement – Owner Occupier Construction Contracts' form should be used instead.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, “construction contract” and “owner-occupier construction contract” have the meanings given in section 4 of the Act.

Head contractor (business name of head contractor):	
<input type="checkbox"/> <b>1.</b> has entered into a contract with: (business name of subcontractor)	
ABN of subcontractor	
Contract number/identifier	
<b>or</b>	
<input type="checkbox"/> <b>2.</b> has entered into a contract with the subcontractors listed in Schedule 1	
This statement applies to work between (start date)	and (end date)
<b>or</b>	
This statement applies to work completed in Stage (number) of the construction contract	
Subject of the payment claim dated (date)	

## Declaration for Supporting Statement

I, (full name) .....

being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that to the best of my knowledge and belief all subcontractors, if any, have been paid all amounts that have become due and payable in relation to the construction work that is the subject of this payment claim.

These subcontractors and the amounts paid to them are identified in Schedule 1 on page 3 of this Supporting Statement.

**It is an offence under section 13(7) of the Act for a head contractor to serve a payment claim on the principal, if it is not accompanied by a supporting statement that indicates that it relates to that payment claim. The maximum penalty is \$110,000 for corporations, and \$22,000 for an individual.**

**It is also an offence under the Act for a head contractor to serve a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances. The maximum penalty is \$110,000 for corporations, and \$22,000 or 3 months imprisonment (or both) for individuals.**

Full Name of Individual	
Position/Title	
Signature	
Date	

**Schedule 1** (page 3 of Supporting Statement)

List all subcontractors that have been paid all amounts that have become due and payable in relation to the construction work that is the subject of the payment claim which this supporting statement accompanies.

Name of subcontractor	ABN	Contract number/ identifier	Date of works (period or stage)	Date of subcontractor's payment claim

Approved form under *Building and Construction Industry Security of Payment Act 1999* - Section 13(9)  
For more information visit Fair Trading website:, [www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment](http://www.fairtrading.nsw.gov.au/trades-and-businesses/construction-and-trade-essentials/security-of-payment).

# Subcontractor's Statement

**(REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION) (Note 1)**

Note, in the Subcontractor's Statement, the terms "Contractor" and "Principal", as per the Contract, mean the "subcontractor" and "principal contractor", respectively, under the relevant legislation.

## Main Contract

Contractor: ABN: **(Note 2)**

*(Business name of the Contractor)*

of

*(Address of the Contractor)*

has entered into a contract with ABN:

*(Business name of the Principal)*

Contract number/identifier: 1827678 **(Note 3)**

## Subcontracts

The Contractor has entered into a contract with the subcontractors listed in the attachment to this Statement.

**Period (Note 4)**

This Statement applies for work between: and inclusive,

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

I,..... a director or a person authorised by the Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this statement and declare that, to the best of my knowledge and belief:

(a) The abovementioned Contractor has either employed or engaged workers or subcontractors during the above period of this contract.

Tick  if true and comply with (b) to (g) below, as applicable. **(Note 6)**

If it is not the case that workers or subcontractors are involved, or you are an exempt employer for workers compensation purposes tick  and only complete (e) to (g) below. You must mark one box.

(b) All workers compensation insurance premiums payable by the Contractor in respect of the work done under the contract have been paid.

The Certificate of Currency for that insurance is attached and is dated..... **(Note 7)**

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

(d) Where the Contractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Contractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this statement. **(Note 9)**

(e) Where the Contractor is also a principal contractor to subcontracts in connection with the work, the Contractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

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

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

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

### Notes to the Subcontractor's Statement

These notes have been prepared using the terms in the referenced acts. Where this Statement is being completed for the purposes of this Contract, (unless the context otherwise requires) 'subcontractor' means the 'Contractor' and 'principal contractor' means the 'Principal'.

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 of the *Payroll Tax Act 2007*, section 127 of the *Industrial Relations Act 1996* and sections 13(7) and 13(9) of the *Building and Construction Industry Security of Payment Act 1999*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

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

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

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

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

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

### Statement Retention

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

### Offences in respect of a false Statement

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

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

In terms of s175B of the *Workers Compensation Act 1987* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

### Further Information

For more information visit SafeWork website <https://www.safework.nsw.gov.au/>, iCare (for Workers Compensation queries) via the [iCare website](http://www.icare.nsw.gov.au/) and NSW Industrial Relations website, <http://www.industrialrelations.nsw.gov.au>

Copies of relevant legislation can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## Schedule 3 – Contractor Notification of Completion

Refer to clause 11.2 of the MW21 General Conditions of Contract.

This notification is to be completed and sent to the Principal when, in the Contractor's opinion, the work under the Contract or any Milestone has reached Completion. The requirements of Completion are described below.

Note that the Principal may agree to amend the requirements of Completion for specific Milestones on request by the Contractor.

Completion is defined as the state of the work under the Contract or any Milestone when:

- (a) it is capable of use for the purpose stated in the Contract Information (*item 2*);
- (b) it has passed all required tests and is free from any known Defects (aspects of work that do not conform with the Contract) or omissions;
- (c) the Contractor has delivered all required training and provided all the required documents (*refer in particular to Preliminaries clauses 2.3, 2.4, 2.6, 4.1, 4.4, 5,7 (CCEW) & 6.3*); and
- (d) the Contractor has made good the Site and surroundings.

Where the Contract contains Milestones, a separate notice of Completion is required for every Milestone except the last. When the last Milestone reaches Completion, notice of Completion of 'the work under the Contract' is to be submitted.

The Principal may respond to the Contractor's notification using Sample letter 11A. Refer to Sample Letters at <https://buy.nsw.gov.au/resources/mw21>.

Date:

Contract Name: *Eugowra STP Solar Farm Construction*

Contract No: *1827678*

### Notification of Completion under Clause 11.2 of the General Conditions of Contract

This is notification that the work under (*insert 'the Contract' or 'Milestone No #', as applicable*) has reached Completion. I am authorised by the Contractor to issue this notice.

I confirm that all work required to be carried out under (*insert 'the Contract' or 'Milestone No #', as applicable*) has been completed and the completed Works:

- (a) are capable of use for the purpose stated in the Contract Information item 2;
- (b) have passed all tests required under the Contract; and
- (c) are free from any known Defects or omissions.

I also confirm that for the work that has reached Completion:

- (a) all documents required under the Contract to be provided have been supplied or are provided together with this notice; and
- (b) the Site and surroundings have been made good.

(*amend above points only where agreed with the Principal*)

I request notification of the Principal's determination that the notified work has reached Completion and the date Completion for (*insert 'the Contract' or 'Milestone No #', as applicable*) was reached;

Signature..... Full name:

Position/ Title:

on behalf of :

(*business name of Contractor*)

**END OF SECTION – MW21 GENERAL CONDITIONS OF CONTRACT AND CONTRACT INFORMATION**