

FIRST SCHEDULE

SPECIAL CONDITIONS OF CONTRACT

PART B: OTHER CONDITIONS OF CONTRACT

The General Conditions of Contract, NZS 3910: 2003 Conditions of Contract for Building and Civil Engineering Construction, are amended as set out herein.

Clause numbers refer to the General Conditions, or additional clause numbers.

2. THE CONTRACT

2.8 Documents prepared by the Engineer or Principal

2.8.3 Delete and replace with:

The Contract Documents shall be taken as mutually explanatory. Ambiguities or omissions shall not invalidate the contract. In the event of ambiguity or conflict between the Contract Documents, the order of precedence of the Contract Documents shall be as stated in the Contract Agreement.

Add new clause:

2.10 Assignment

2.10.1 The Contractor shall not assign the whole or any part of the contract without the prior written consent of the Principal. Such consent shall not be unreasonably withheld. For the purposes of this clause any change in ownership or controlling interest in the Contractor shall be deemed to be an assignment.

4. SUBCONTRACTS

4.1 General

4.1.3 Add to end of clause

and the Contractor shall be responsible for the acts, defaults and neglects of any Subcontractor or Subcontractor's agents, employees or consultants as fully as if they were the acts, defaults and neglects of the Contractor or the Contractor's agents, employees or consultants.

5. GENERAL OBLIGATIONS

5.11 Compliance with Laws

Add the following additional clauses

5.11.8 The Contractor warrants to the Principal that the Contractor shall not do anything or omit to do anything, or use materials, substances or processes which:

- (a) would or could discharge a contaminant into the environment that is not in compliance with resource consents held by the Principal; or would cause the total emission of noise from the Site to exceed prescribed boundary noise levels; or that would or could cause any adverse effect on the environment; or
- (b) is a breach of any duty or obligation of the Contractor under the Resource Management Act 1991 (RMA); or
- (c) does or is likely to give rise to the issue of an abatement notice; enforcement proceedings or an excessive noise direction under the RMA against the Principal, Contractor or Subcontractor.

5.11.9 The Contractor undertakes that before a Subcontractor commences work the Contractor shall obtain similar warranties and undertakings as those stated in 5.11.8 from that Subcontractor in relation to the subcontract works.

- 5.11.10** The Contractor shall comply with all the requirements of the Health and Safety in Employment Act 1992, including any regulations made pursuant to Section 21 of the Act. The Contractor warrants to the Principal that the Contractor shall take all practicable steps to ensure that no act or omission:
- (a) causes a hazard, significant hazard, harm or serious harm to any employee of the Contractor or any person at the place of work or in the vicinity of the place of work; or
 - (b) is a breach of duty or obligation of the Contractor under the Health and Safety in Employment Act 1992 (HSEA); or
 - (c) does or is likely to give rise to the issue of an improvement or prohibition notice, enforcement proceedings or a prosecution under the HSEA against the Principal, the Contractor, his Subcontractor or Separate Contractors.
- 5.11.11** The Contractor undertakes that before a Subcontractor commences work the Contractor shall obtain similar warranties as those stated in 5.11.10 from the Subcontractor in relation to the subcontract works.
- 5.11.12** The Contractor shall indemnify and keep indemnified the Principal from all costs damages, fines, penalties, loss and expense incurred or suffered by the Principal in respect of any breach of the RMA, directly or indirectly related to a breach by the Contractor of any of the warranties set out in 5.11.8 and 5.11.10.
- 5.11.13** If the Contractor becomes aware that it is or may be in breach, or is likely to be in breach of any of the warranties, in 5.11.8 and 5.11.10 or any Subcontractor is or may be in breach of or is likely to breach the matters set out in the agreement between the Contractor and Subcontractors pursuant to 5.11.9 and 5.11.11 then the Contractor shall immediately notify the Principal of such breach or anticipated breach in connection with the Contract Works, subcontract works or Separate contract works. The Contractor shall follow the directions, if any, of the Engineer to avoid, remedy or mitigate such breach or anticipated breach.
- 5.11.14** The Contractor shall have a written Health & Safety in Employment Policy which has been approved by the Principal and which satisfies both Department of Labour and/or occupational health and safety standards.
- 5.11.15** The words and phrases used in clause 5.11 shall have meaning as is ascribed to them in the HSEA.

5.18 As-built drawings, operation and maintenance manuals

5.18.2(b) Add to end of clause after “ ...Works)”

and to accurately update the Principal's records, including Geographical Information System (GIS) records. Such documentation to be submitted in the form and to the standard required by the Specifications.

5.18.3(a) Add to end of second sentence after “ ...Works)”

and to accurately update the Principal's records, including Geographical Information System (GIS) records. Such documentation to be submitted in the form and to the standard required by the Specifications.

6. ENGINEER'S POWERS AND RESPONSIBILITIES

6.4 Inspection, Recording, Measuring and Testing

6.4.8 Add new clause

Review, inspection, approval or permission to proceed by the Engineer or the Engineer's representative does not relieve the Contractor from full compliance with its contractual or legal obligations.

6.6 Certification

6.6.3 Delete and replace with:

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

9 VARIATIONS

9.1 Variations Permitted

9.1.1(b) Delete and replace with

Omit any work whether or not any such work omitted is subsequently carried out by a Separate Contractor or by the Principal itself.

9.3 Valuation of Variations

9.3.11 Delete and replace with:

Where a percentage has been nominated under 9.3.8 or 9.3.9, or a rate per Working Day under 9.3.10 and the nature of the Variation is such that it would be clearly inequitable to use the nominated percentage or rate a reasonable percentage or a reasonable rate per Working Day shall be used.

9.3.12 Delete and replace with

Where the Base Value is a negative figure then the Contractor shall not be entitled to retain any allowance in the Schedule of Prices for On-Site Overheads, or Off-Site Overheads and Profit relating to that figure.

9.3.14 Delete and replace with

The Contractor shall not be entitled to the Cost of processing Variations whether or not they proceed.

9.4 Daywork

9.4.3 Delete third sentence

10 TIME FOR COMPLETION

10.2 Due date for completion

10.2.3 Add new clause

If it becomes evident to the Contractor that anything including an act or omission of the Principal, the Engineer or the Principal's employees, consultants, other contractors or agents, may delay the Contract Works, the Contractor shall immediately notify the Engineer in writing with details of the possible delay and the cause.

10.3 Extension of Times

10.3.1 (c) Delete and replace with

Any strike, lockout or other industrial action except where caused or to the extent contributed to by the Contractor or its Subcontractors; or

10.3.1 (d) Delete and replace with

Loss or damage to the Contract Works or Materials caused by an excepted risk under 5.6.6.

10.3.1 Add to end of clause

No extension of time will be granted unless the delay has affected the critical path of the Contract Works such that Practical Completion cannot be achieved by the Due Date for Completion.

10.3.6 Delete first sentence and replace with

The Engineer may in lieu of granting an extension, require the Contractor to accelerate the rate of working to offset in part or in total any delay in respect of which the extension would otherwise be granted under this clause 10.3.

10.3.8 Add new clause

Where there has been a delay to the Contract works which does not entitle the Contractor to an extension of time pursuant to clause 10.3.1, the Contractor shall take all reasonable steps as the Engineer may require the Contractor to take to expedite progress by applying additional resources if necessary or working longer hours or in whatever other manner he may require.

10.4 Certificate of Practical Completion

10.4.6 Add new clause

Particular works which the Contractor must carry out prior to the issue of the certificate of Practical Completion are as stated in the Special Conditions.

11 DEFECTS LIABILITY

11.2 Defects Liability

11.2.1 Add

The Contractor shall remedy any defect within five Working Days of receipt of notice under this clause, or other such reasonable time as agreed by the Engineer in writing.

11.2.3 Delete

"within a reasonable time"

Replace with

"within the time required or otherwise agreed under 11.2.1"

11.5 Guarantees

11.5.2 Add to the end of clause

The supply of these Guarantees shall not relieve the Contractor of any of its obligations under the Contract Documents or at law.

12 PAYMENTS

12.1 Contractor's payment claims

12.1.2 (b)(iii) Add to the end of clause:

... for which payment is provided for in the Special Conditions.

12.2.6 Add to end of clause:

... or as otherwise provided in the Special Conditions.

12.5.8 Add to end of clause:

... or as otherwise provided in the Special Conditions.

12.6 Effect of Final Payment Schedule

12.6.2 Add new clause

Notwithstanding the issue of the Final Payment Schedule the Contractor shall remain liable for fulfilment of any obligation of the Contractor under the Contract Documents which then remains unperformed or not properly performed.

13 DISPUTES

13.1 General

13.1.1 Add the following sentence:

Every decision, valuation or certificate of the Engineer shall be final and binding if neither party has referred it to the Engineer under 13.2.1 or to Adjudication within three Months after it has been given, unless notice has been given to the Engineer within that time.

**13.2 Change heading to:
Engineer's review and Adjudication**

13.2.1 Add the following sentence:

Every Final Payment Schedule shall be final and binding if neither party has referred it to the Engineer under 13.2.1 or to Adjudication within one Month after it has been issued.