

## **RTA CONTRACT DOCUMENT C15**

### **CONDITIONS OF SINGLE INVITATION CONTRACT (CONSTRUCTION OF DEVELOPMENT WORKS)**

#### **NOTICE**

"This document is a copy of one of the Authority's model contract documents.

The model contract documents are policy documents within the meaning of the Freedom of Information Act 1989 (NSW) ("FOI Act") and this document is accordingly made available to you pursuant to Section 15(1) of the FOI Act.

The model contract documents were developed by the Authority for use with roadworks and bridgeworks contracts let by the Authority or local councils. The Authority only uses the contract documents in conjunction with its other standard form documents and under the supervision of professional civil engineers who are trained and experienced in roadworks and bridgeworks. The Authority does not use the contract documents for any other purpose and does not consider them suitable for use for any other purpose.

Consistent with the FOI Act, the purposes for which this document has been made available for inspection or purchase by you are:

- to satisfy the Authority's obligation under Section 15(1) of the FOI Act to make its policy documents available for inspection and purchase by members of the public
- to ensure that you, as a member of the public who may be affected by the operation of this document, have access to the document.

The price which you have paid for this document only covers the Authority's costs of printing and handling the document.

If you use this document for any purpose which is not consistent with the above (including, without limitation, for carrying out any construction, engineering, maintenance or other work), you do so at your own risk.

This document is current as at the date of this notice. However, you should be aware that the Authority regularly reviews and updates its contract documents. You will not be notified of any update.

Your comments and suggestions to improve any of the RTA contract documents may be sent to: Infrastructure Contracts Branch, RTA, , Locked Bag 928, North Sydney, NSW 2059 (Fax 02-8588 4170).

No advisory or support services will be provided by the Authority.

Copyright in this document belongs to the Roads and Traffic Authority of New South Wales."

## RTA CONTRACT DOCUMENT C15

### CONDITIONS OF SINGLE INVITATION CONTRACT (CONSTRUCTION OF DEVELOPMENT WORKS)

#### NOTICE - RTA SPECIFICATIONS AND GUIDES TO SPECIFICATIONS AND CONTRACT DOCUMENTS

RTA Specifications and contract documents are written specifically as models for adaptation and use on RTA projects and may not be suitable for other purposes. Copies of RTA specifications, guides and contract documents supplied to the general public do not require the Revision Register and the following guide notes (if provided) but must include the Notice before the Table of Contents. Paper copies may be purchased under the Freedom of Information Act on payment of the price listed in the document "QALIST".

Electronic copies of specifications and contract documents in MS Word format are not to be supplied outside the RTA unless loaned, by the appropriate RTA Project Manager, to professional services contractors for preparing RTA tender documents. In which case, the contractors are required to return them to the RTA Project Manager.

Electronic copies of specifications may be provided to other State Road or NSW Government Authorities by Infrastructure Contracts Branch for use on Government funded projects only.

RTA does not permit the possession or use of electronic copies of specifications, guides to specifications or model contract documents by non-RTA organisations or persons other than as stated above.

#### REVISION REGISTER

Ed/Rev Number	Clause Number	Description of Revision	Authorised By	Date
Ed 1/Rev 0		New document.	GM, RNIC	13.07.00
Ed 1/Rev 1	6.1	Principal contractor under OHS regulations included	GM, RNIC	13.06.02



## CONTRACT DOCUMENT C15

---

# CONDITIONS OF SINGLE INVITATION CONTRACT (CONSTRUCTION OF DEVELOPMENT WORKS)

Copyright - Roads and Traffic Authority of New South Wales, 2002  
RNIC-QA-C15

---

**Roads and Traffic Authority of New South Wales**

**and**

**[Invitee's name]**

VERSION FOR: DATE:
-----------------------



## CONTENTS

1	WHAT THE PARTIES HAVE AGREED.....	1
2	DEFINITIONS .....	1
3	MANAGEMENT AND QUALITY OF THE WORKS .....	2
3.1	Management System Requirements.....	2
4	TIMING OF THE WORKS .....	3
4.1	Commencement and performance .....	3
4.2	Extensions of time.....	4
4.3	Pay liquidated damages for delay in Ordered Work.....	4
4.4	Directions to suspend Works .....	4
5	PEOPLE AND RESOURCES .....	4
5.1	Warranty of capacity .....	4
5.2	Use competent people .....	5
5.3	Principal may direct removal of personnel .....	5
5.4	Subcontract only with approval .....	5
5.5	Payments to subcontractors and workers .....	5
6	PROTECTING PEOPLE, PROPERTY AND THE ENVIRONMENT.....	5
6.1	Comply with OHS&R requirements.....	5
6.2	Ensure safety and welfare of people .....	5
6.3	Comply with environmental requirements.....	6
6.4	Properly supervise Works .....	6
6.5	Avoid damage to property and the environment .....	6
6.6	Make good damage to property or the environment.....	6
6.7	Responsibility for Contractor's property .....	6
6.8	Prevent nuisance or inconvenience.....	6
6.9	Clean up work sites and premises.....	6
6.10	Working times.....	6
6.11	Principal may instruct urgent work.....	7
6.12	Latent conditions.....	7
7	DIRECTIONS .....	8
7.1	Comply with directions.....	8
7.2	Directions to be confirmed in writing.....	8
8	VARIATIONS.....	8
8.1	Variations.....	8
8.2	Valuation of variations.....	8
9	GENERAL REQUIREMENTS .....	9
9.1	Access to places .....	9
9.2	Comply with legal requirements.....	9
10	LIABILITIES, INSURANCES AND SECURITIES .....	9
10.1	Release .....	9
10.2	Indemnity .....	9

10.3	Principal's negligence .....	9
10.4	Insurances .....	10
11	PAYMENT .....	11
11.1	Payment claims.....	11
11.2	Payment Schedules.....	11
11.3	Time for payment .....	12
11.4	Valuation of Payment Claims.....	12
11.5	Set-off.....	13
11.6	Effect of payment .....	13
11.7	Rise and fall.....	13
11.8	Prices cover everything .....	13
11.9	Goods and Services Tax Adjustments.....	13
12	WARRANTY ON COMPLETED SERVICES .....	14
13	DISPUTES AND TERMINATION .....	14
13.1	Disagreement with determinations by the Principal's Representative.....	14
13.2	Resolving disputes.....	14
13.3	Default by the Contractor .....	15
14	GENERAL.....	15
14.1	No assignment .....	15
14.2	Delegates of the Principal's Representative.....	15
14.3	No waiver .....	15
14.4	Governing law .....	15
	CONTRACT SCHEDULE .....	16
	LAST PAGE OF C15 IS.....	16

**RTA CONTRACT DOCUMENT C15**  
**CONDITIONS OF SINGLE INVITATION CONTRACT**  
**(CONSTRUCTION OF DEVELOPMENT WORKS)**

**Date:**

**Parties:**

1. Roads and Traffic Authority of New South Wales of 260 Elizabeth Street, Surry Hills, New South Wales ('Principal'), and
2. [Name of Invited Contractor] of [address of Contractor] ('Contractor')

---

## **Terms of Contract**

### **1 WHAT THE PARTIES HAVE AGREED**

The Contractor must:

- .1 carry out and Complete the Works in accordance with the Contract within the Time for Completion, and
- .2 comply with all its other obligations under the Contract.

The Principal must:

- .1 pay the Contractor on the terms set out in the Contract, and
- .2 comply with all its other obligations under the Contract.

### **2 DEFINITIONS**

In the Contract:

**'Business Day'** means any day other than a Saturday, Sunday or public holiday or the 27, 28, 29, 30 or 31 December.

**'Completion'** means:

- .1 the Works are complete without known defects or omissions, and
- .2 the Contractor has supplied to the Principal all operating and maintenance manuals, as-built drawings and certificates from statutory authorities required for the

occupation, use and maintenance of the Works and all other documents, testing and other requirements set out in the Contract.

**‘Contract’** means these Conditions, the Contract Schedule, the annexures to these Conditions (whether described as annexures or not), the Principal’s letter of acceptance for the Works, any documents incorporated into the Contract by the letter of acceptance and any of the Principal’s technical or other specifications referred to in the Contract.

**‘Contract Schedule’** means the schedule to this document setting out the detailed information relevant to the Contract.

**‘Contractor’** means the organisation named in *item 1* of the Contract Schedule.

**‘Contractor’s Representative’** means a person appointed by the Contractor as its representative for the purposes of the Contract and any replacement person nominated in writing by the Contractor.

**‘Principal’s Representative’** means a person nominated by the Principal as the Principal’s Representative for the purposes of the Contract and any replacement notified to the Contractor by the Principal.

**‘Schedule of Prices’** means the Schedule of Prices (if any) included in the Contract.

**‘Schedule of Rates’** means the Schedule of Rates (if any) included in the Contract.

**‘Specifications’** means the specifications included in the Contract.

**‘Superintendent’** means the Principal’s Representative.

**‘Time for Completion’** means the period of time set out in *item 2* of the Contract Schedule, as extended under clause 4.2.

**‘Works’** means the works described in the Specifications and any variations to those works ordered under clause 8.1.

Other terms not defined have their apparent meaning including, where relevant, the meaning given elsewhere in the Contract.

## **3      MANAGEMENT AND QUALITY OF THE WORKS**

### **3.1      MANAGEMENT SYSTEM REQUIREMENTS**

#### **3.1.1      Systems and Plans**

The Contractor must maintain its Quality and OHS&R Systems and must establish and maintain a Quality Plan, an OHS&R Plan and an Environmental Management Plan in accordance with the Specifications.



### **3.1.2 Control the work**

The Contractor must control the quality and performance of the Works in accordance with the Quality Plan, the OHS&R Management Plan and the Environmental Management Plan. This includes doing all testing and other things necessary to demonstrate that the Works fully comply with the Contract.

### **3.1.3 Submit summary of product quality records**

The Contractor must submit a summary of product quality records with every payment claim. The summary must demonstrate that each relevant lot or component of the Works conforms with the Contract.

### **3.1.4 Retain records and produce them as required**

The Contractor must retain records produced in the implementation of its Quality Plan, OHS&R Management Plan and Environmental Management Plan and make them available to the Principal as required by the Contract.

### **3.1.5 Testing**

The Contractor must carry out testing in accordance with the Contract and the Inspection and Test Plans submitted by the Contractor.

The Contractor must provide test results for product verification within the time required by the Contract. If no specific time limit applies, the Contractor must provide the results to the Principal upon completion of the testing.

### **3.1.6 Principal's powers**

The Principal may conduct audits, surveillance and testing to verify that the Contractor's Systems and Plans are effective and may, as part of any audit, direct the Contractor to open up or pull down completed work and to reinstate it later.

### **3.1.7 Costs resulting from audit**

The Principal must reimburse the Contractor for all costs the Contractor reasonably incurs in pulling down or opening up and then reinstating any completed work for the purposes of an audit unless the Principal is able to demonstrate that the audited work was not carried out in compliance with the Contract.

## **4 TIMING OF THE WORKS**

### **4.1 COMMENCEMENT AND PERFORMANCE**

The Contractor must start the Works within 10 Business Days of the date of the Principal's letter of acceptance relating to the Works (or other period as agreed) and must continue expeditiously so as to Complete the Works within the Time for Completion.

## **4.2 EXTENSIONS OF TIME**

The Contractor may claim an extension of the Time for Completion if:

- .1 the Contractor is delayed in meeting the Time for Completion, and
- .2 the Contractor has given a written notice to the Principal's Representative advising of the delay within 14 days of the start of the delay, and
- .3 the notice advising of the delay sets out details of the delay, its causes and the amount of extra time claimed, and
- .4 the delay starts before the expiry of the Time for Completion, and
- .5 the delay is caused by circumstances beyond the Contractor's reasonable control and despite the Contractor's best efforts.

The Principal's Representative must consider the Contractor's claim in a timely manner and grant an extension of time if he or she reasonably considers that an extension of time is justified and for a period of time which he or she considers to be reasonable.

The Principal's Representative may also extend the Time for Completion at any time and for any reason.

## **4.3 PAY LIQUIDATED DAMAGES FOR DELAY**

If the Contractor does not Complete the Works within the Time for Completion, the Contractor must pay the Principal the amount set out in *item 3* of the Contract Schedule as pre-ascertained and agreed damages for the delay. That amount is payable each week during the period between the Time for Completion and the date that the Contractor actually Completes the Works and pro-rata for each part of a week.

## **4.4 DIRECTIONS TO SUSPEND WORKS**

The Principal's Representative may direct the Contractor to suspend progress of the Works for a period of time.

If the Principal directs a suspension because of a default or an act or omission by the Contractor, the Contractor's subcontractors, employees or agents, the Contractor is not entitled to make a claim against the Principal for losses, damages or expenses incurred or sustained by it in connection with the suspension.

# **5 PEOPLE AND RESOURCES**

## **5.1 WARRANTY OF CAPACITY**

The Contractor warrants to the Principal that it has the materials, people and resources to properly perform the Works.

## **5.2 USE COMPETENT PEOPLE**

The Contractor must provide people who are competent, experienced and qualified to carry out the Works.

## **5.3 PRINCIPAL MAY DIRECT REMOVAL OF PERSONNEL**

The Principal's Representative may direct the Contractor to remove a person from the Works if the Principal's Representative considers the person to be:

- .1 incompetent, negligent or guilty of misconduct, or
- .2 reckless or indifferent in relation to safety or the protection of the environment.

## **5.4 SUBCONTRACT ONLY WITH APPROVAL**

Unless notified otherwise by the Principal's Representative, the Contractor may subcontract any part of the Works without the need for the Principal's prior written approval.

An approval to subcontract, if given, does not relieve the Contractor of any liabilities or obligations under the Contract.

## **5.5 PAYMENTS TO SUBCONTRACTORS AND WORKERS**

The Contractor must ensure that all its subcontractors, suppliers and all workers employed in carrying out the Works are fully paid money properly due and payable to them in connection with the Works under relevant awards, contracts and enterprise agreements.

# **6 PROTECTING PEOPLE, PROPERTY AND THE ENVIRONMENT**

## **6.1 COMPLY WITH OHS&R REQUIREMENTS**

The Contractor must comply with all occupational health, safety and rehabilitation requirements of the Principal relating to the Works. . Unless the Contract expressly provides otherwise or the Principal's Representative directs otherwise, the Contractor is appointed and deemed to be the principal contractor for the purposes of Section 210 of the OHS Regulation 2001. The Contractor is thereby responsible for meeting the duties of the principal contractor as set out in OHS Regulation 2001, in particular, Section 213, 223, and 226-228.

## **6.2 ENSURE SAFETY AND WELFARE OF PEOPLE**

The Contractor must ensure the safety and welfare of all people including the Contractor's employees and subcontractors, members of the public and road users who may be affected by the Works or the Contractor's performance of the Contract.

This obligation is not limited by anything set out in the Contract and includes, without limitation, providing all safety devices, traffic control, barricades, signs and warnings which are necessary or desirable for the protection of people or property.

### **6.3 COMPLY WITH ENVIRONMENTAL REQUIREMENTS**

The Contractor must comply with all environmental protection requirements of the Principal relating to the Works.

### **6.4 PROPERLY SUPERVISE WORKS**

The Contractor must ensure that the Works are personally managed and supervised at all times by a competent representative of the Contractor. This representative must be a person acceptable to the Principal's Representative.

### **6.5 AVOID DAMAGE TO PROPERTY AND THE ENVIRONMENT**

The Contractor must not damage property or the environment while performing the Contract, except to the minimum extent necessary to properly comply with good engineering practice and the requirements of the Contract.

### **6.6 MAKE GOOD DAMAGE TO PROPERTY OR THE ENVIRONMENT**

The Contractor must, at its own cost, promptly make good any damage to property or the environment caused by it or any of its subcontractors, employees or agents while performing the Contract.

### **6.7 RESPONSIBILITY FOR CONTRACTOR'S PROPERTY**

The Contractor is solely responsible for looking after, protecting and, if necessary, replacing its own materials, tools, equipment, plant and things and those of its subcontractors or workers to ensure the continuing performance of the Contract.

### **6.8 PREVENT NUISANCE OR INCONVENIENCE**

The Contractor must prevent nuisance or inconvenience to anyone who may be affected by the Contractor's performance of the Contract.

### **6.9 CLEAN UP WORK SITES AND PREMISES**

The Contractor must clean up and keep clean and tidy all work sites and premises used for the Works. This includes ensuring that potential pollutants are prevented from being discharged from the site or premises.

### **6.10 WORKING TIMES**

The Contractor must comply with any working hour restrictions imposed by law or specifically required by the Principal.

## **6.11 PRINCIPAL MAY INSTRUCT URGENT WORK**

The Principal's Representative may instruct the Contractor to carry out urgent work if the Principal's Representative considers the work necessary to:

- .1 prevent, avoid or minimise loss or damage to any property or harm to the environment or personal injury to any person arising in connection with the Works, or
- .2 ensure or protect the safety, health or welfare of any person connected with, or who may be affected by, the Contractor's performance of the Works.

The Contractor must comply with instructions issued by the Principal's Representative under this clause immediately and, unless the Principal's Representative determines otherwise, at the Contractor's own cost.

## **6.12 LATENT CONDITIONS**

### **6.12.1 Notify conditions encountered**

This clause applies if the Contractor encounters on the site of the Works or its surroundings a physical condition (other than a climatic condition or a condition arising from climatic conditions) including an artificial obstruction ('Latent Condition'), which:

- .1 the Contractor considers differs materially from the conditions which it, as a competent and experienced contractor, could reasonably have anticipated at the time of pricing the Works, and
- .2 affects the Contractor's ability to, or costs of, carrying out the Works.

The Contractor must, as soon as practicable and no longer than 20 Business Days after encountering the Latent Condition and where possible before the Latent Condition is disturbed, give written notice of the Latent Condition to the Principal's Representative.

### **6.12.2 Provide details**

The Contractor's written notice of the Latent Condition must include details of the following:

- .1 the Latent Condition encountered, in what respects it differs materially and why it could not reasonably have been anticipated by the Contractor, and
- .2 the additional work and additional resources that the Contractor considers necessary to deal with the Latent Condition, and
- .3 the time the Contractor anticipates will be required to deal with the Latent Condition and any expected delay in Completion of the Works, and
- .4 the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition.

If the Principal's Representative reasonably requires other details, those details must be promptly provided by the Contractor.

### **6.12.3 Variations clause applies**

If, after receipt of a notice under clause 6.12.1, the Principal's Representative is satisfied that the physical conditions encountered are Latent Conditions to which clause 6.12.1 applies, the Principal's Representative must determine whether a variation to the Works is necessary to overcome the effects of the Latent Condition.

If the Principal's Representative determines that a variation to the Works is necessary, the Principal's Representative must, upon making the determination, order a variation under clause 8.1.

## **7 DIRECTIONS**

### **7.1 COMPLY WITH DIRECTIONS**

The Contractor must comply with all directions of the Principal's Representative in carrying out the Works and performing any of the Contractor's other obligations under the Contract.

### **7.2 DIRECTIONS TO BE CONFIRMED IN WRITING**

The Principal's Representative may issue directions verbally or in writing. Unless the Principal's Representative informs the Contractor that urgent compliance is required, the Contractor need not comply with a verbal direction until it is confirmed in writing.

## **8 VARIATIONS**

### **8.1 VARIATIONS**

The Principal's Representative may, by direction:

- .1 Increase, decrease or omit part of the Works, or
- .2 Change the character or quality of material or work used in the Works, or
- .3 Change the levels, lines, positions or dimensions of part of the Works.

The Contractor may not vary the Works without a written direction from the Principal's Representative stating that it is a variation direction.

### **8.2 VALUATION OF VARIATIONS**

The parties must attempt to agree the value of a variation having regard to applicable contract rates and prices, the impacts of the variation on the Contractor's other obligations under the Contract, the views of each party on the value of the variation and objective available evidence of relevant market prices.

If the parties cannot agree the value of the variation within a period of time which the Principal's Representative considers reasonable in the circumstances, the Principal's Representative will determine the appropriate value.

## **9 GENERAL REQUIREMENTS**

### **9.1 ACCESS TO PLACES**

The Contractor must make sure that the Principal has access at all reasonable times to places and premises where the Works are being carried out.

### **9.2 COMPLY WITH LEGAL REQUIREMENTS**

The Contractor must comply with all legal requirements, standards and codes of practice relating to performance of the Works and the conduct of its business.

If the Contractor considers there is a conflict between any legal requirement and an obligation imposed by the Contract, the Contractor must write to the Principal's Representative advising of the perceived conflict and seeking a direction as to the interpretation to be followed.

## **10 LIABILITIES, INSURANCES AND SECURITIES**

### **10.1 RELEASE**

The Contractor unconditionally releases all claims, suits, demands, actions or proceedings (whether at law, in equity or arising under any statute) which the Contractor has or may have against the Principal, its officers, employees or agents (other than the Contractor) arising out of or in connection with an act, default or omission of the Contractor or any of its officers, employees or agents. The Contractor agrees not to sue or make any claim or demand against the Principal, its officers, employees or agents in respect of matters covered by this release.

### **10.2 INDEMNITY**

The Contractor indemnifies, holds harmless and defends the Principal, its officers, employees and agents ('indemnified persons') against loss (including legal costs and expenses) or liability reasonably incurred or sustained by any of the indemnified persons arising from a claim, suit, demand, action or proceeding by any person against any of the indemnified persons where the loss or liability arises out of or in connection with an act, default or omission of the Contractor or any of its officers, employees or agents.

### **10.3 PRINCIPAL'S NEGLIGENCE**

The release in clause 10.1 and the indemnity in clause 10.2 do not extend to a claim, suit, demand, action or proceeding where the claim, suit, demand, action or proceeding is based upon errors, negligent omissions, negligence or work performed or advice given in a negligent

manner by the Principal or any of its officers, employees or agents not including the Contractor.

The indemnity in clause 10.2 is reduced proportionally to the extent that the negligence of the RTA or its officers, employees or agents (other than the Contractor) as contemplated in this clause 10.3 contributed to the loss or liability.

## **10.4 INSURANCES**

### **10.4.1 Required insurances**

The Contractor must hold the following insurance policies for the duration of the Contract (and in the case of professional indemnity insurance, if required, for at least 6 years after the end of the Contract):

- .1 Public liability insurance for an amount not less than \$20 million in respect of any single occurrence with any deductible not more than \$20,000 unless otherwise approved by the Principal. The insurance cover must note the interests of the Principal in respect of liability incurred by the Contractor as a result of work performed under the Contract and the policy must contain a cross liability clause in terms acceptable to the Principal.
- .2 Contract works insurance for an amount not less than the amount set out in *item 4* of the Contract Schedule and providing cover against loss or damage to work in progress under the Contract (including all equipment, plant, materials and things required for the purpose of completing the work in progress) caused by any risk in respect of which a prudent and responsible contractor would be expected to insure other than a risk which, by the terms of the Contract, is accepted by the Principal.
- .3 Motor vehicle insurance with an indemnity of not less than \$5 million covering liability for damage to property of third parties. The insurance cover must note the interests of the Principal in respect of liability incurred by the Contractor as a result of work performed under the Contract and the policy must contain cross liability and waiver of subrogation clauses in terms acceptable to the Principal.
- .4 Workers compensation insurance in accordance with statutory requirements.
- .5 Other insurances as set out in *item 5* of the Contract Schedule.

### **10.4.2 Policies must be with approved insurers**

Insurances must be either:

- .1 with insurers that are subject to the prudential supervision of the Australian Prudential Regulation Authority (APRA) or who are approved by the Principal, or
- .2 with one of the council self-insurance pools/schemes including Statewide Mutual, Westpool and Metropool.

The policies must be maintained by the Contractor for the duration of the Contract.



### **10.4.3 Evidence of insurance**

The Contractor must provide evidence of insurances at or prior to commencing the Works and whenever requested to do so. The evidence must be in a form acceptable to the Principal's Representative.

## **11 PAYMENT**

### **11.1 PAYMENT CLAIMS**

#### **11.1.1 Time for submission of claims**

The Contractor must submit a claim for payment within 5 Business Days after the end of each month (or other agreed period of claim) for Works provided during the preceding month (or agreed period).

#### **11.1.2 Place for lodgement of claims**

Payment claims must be lodged with the Principal's Representative either in person or by post.

A payment claim lodged with the Principal's Representative in accordance with this clause is taken to be properly served on the Principal for the purposes of section 13(1) of the Building and Construction Industry Security of Payment Act 1999 (NSW).

#### **11.1.3 Contents of claims**

A payment claim must:

- .1 identify the Works to which the claim relates, and
- .2 indicate the amount which the Contractor considers to be due under the Contract for the Works carried out within the period covered by the claim, and
- .3 include any details (such as conformance records) required by the Contract or reasonably requested by the Principal's Representative for the purpose of assessing the claim, and
- .4 if the Contractor wishes to take advantage of the protections given to contractors by the Building and Construction Industry Security of Payment Act 1999 (NSW), include a statement that it is made under that Act.

### **11.2 PAYMENT SCHEDULES**

The Principal's Representative will assess each payment claim and issue a payment schedule to the Contractor within 10 Business Days of receipt of the claim.

The payment schedule need not be titled 'payment schedule' but must:

- .1 comply with the requirements of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any Regulation made under that Act in relation to recipient created tax invoices,

- .2 identify the payment claim to which it relates, and
- .3 indicate the amount of the payment (if any) that the Principal's Representative proposes to make, and
- .4 include reasons for any difference between the amount claimed and the amount assessed to be payable on the claim.

The Principal confirms, for the purposes of section 14(1) of the Building and Construction Industry Security of Payment Act 1999 (NSW), that a payment schedule issued by the Principal's Representative is made and issued with the full authority of and on behalf of the Principal.

### **11.3 TIME FOR PAYMENT**

The Principal will pay the Contractor the amount due on any payment schedule within the following periods:

- .1 If the Contractor has complied with its obligations under clause 3.1.3 (product quality records), has supplied its ABN to the Principal for the purpose of inclusion in recipient created tax invoices and is not in breach of any of its OHS&R or environmental obligations as at the date of issue of the payment schedule – within 10 Business Days of the date of issue of the payment schedule.
- .2 If, at the date of issue of the payment schedule, the Contractor has not supplied its ABN or has outstanding obligations under clause 3.1.3 (product quality records) or under any clause of the Contract relating to OHS&R or environmental obligations of the Contractor – within 5 Business Days of the Contractor satisfying the last of those outstanding obligations.

### **11.4 VALUATION OF PAYMENT CLAIMS**

The Principal's Representative must value payment claims as follows:

- .1 For Works covered by a lump sum price

The amount due to the Contractor for each period of claim is the amount calculated by the Principal's Representative as being the value of the Works completed during the period of the claim, having regard to the prices and quantities set out in the Schedule of Prices.
- .2 For Works covered by a Schedule of Rates

The amount due to the Contractor for each period of claim is determined by multiplying the measured quantity of each section or item of work actually done in accordance with the Contract by the rate set out in the applicable Schedule of Rates for that section or item.
- .3 For defective or nonconforming work

If any of the work covered by a payment claim is defective or nonconforming or if conformance records are required and have not been provided, the Principal's Representative in valuing the claim may, at the Principal's Representative's sole discretion but without limiting any other specific provisions of the Contract:

- disregard the defective or nonconforming work or the work for which conformance records have not been provided, or
- reduce the amount of the claim by an amount equal to the estimated cost of rectifying the defective or nonconforming work.

#### **.4 Variations**

The amount due to the Contractor for each period of claim is the value of work actually done in that period as determined by the Principal's Representative applying the valuation made under clause 8.2.

#### **.5 Set-off**

If the Principal is entitled to make a deduction under clause 11.5, the Principal's Representative may also include the amount of the deduction in the valuation of any claim.

### **11.5 SET-OFF**

The Principal may deduct from an amount payable to the Contractor under the Contract any amount which is, or in the opinion of the Principal is likely to become, payable by the Contractor to the Principal.

### **11.6 EFFECT OF PAYMENT**

Payments by the RTA are on account only and do not evidence the Principal's acceptance of anything done or not done by the Contractor.

### **11.7 RISE AND FALL**

The Contract rates and prices are not subject to adjustment for rise and fall in costs.

### **11.8 PRICES COVER EVERYTHING**

The rates and prices in the Contract (including any lump sum prices) include the cost of everything associated with or necessary for the proper performance of the Works and all other obligations of the Contractor under the Contract.

### **11.9 GOODS AND SERVICES TAX ADJUSTMENTS**

If any tax, duty, excise or statutory charge is abolished or reduced as part of the tax changes associated with the introduction of the Goods and Services Tax (GST) or if there is any change in the GST during the course of the Contract, the prices payable by the Principal for the

Contracted Work must be adjusted to take account of the abolition, reduction or change. This adjustment must be made without affecting the Contractor's Net Dollar Margin on any part of the Contracted Work to which the tax change relates.

The Contractor's Net Dollar Margin on any part of the Contracted Work is the price the Contractor charges to the Principal for that Work less the cost to the Contractor of undertaking the Work (including the cost of goods and services bought for the purposes of undertaking the Contracted Work and operating and selling costs).

The Contractor must ensure that all contracts the Contractor enters into with third parties in connection with the Contracted Work contain provisions equivalent to this clause.

## **12 WARRANTY ON COMPLETED SERVICES**

The Contractor warrants that the Works as Completed will be free from defects in workmanship and materials for the period set out in *item 6* of the Contract Schedule.

If the Contractor needs to fix something during the warranty period because it does not comply with the warranty, the warranty applies again from the time when the thing is fixed – but only with respect to the thing fixed.

## **13 DISPUTES AND TERMINATION**

### **13.1 DISAGREEMENT WITH DETERMINATIONS BY THE PRINCIPAL'S REPRESENTATIVE**

Any determination made by the Principal's Representative under the Contract may be challenged if the Contractor wishes to do so and the parties must attempt to resolve any dispute which results by following the process set out in clause 13.2.

### **13.2 RESOLVING DISPUTES**

The parties will attempt to resolve disputes speedily by negotiation in good faith.

If a dispute cannot be resolved by negotiation between the Contractor's Representative and the Principal's Representative within 60 Business Days of commencement of negotiations, the dispute must be referred for further discussion and negotiation to an appropriate senior executive nominated by each party.

If the senior executives are unable to resolve the dispute within 10 Business Days of commencement of discussion (or such longer time as is agreed between them), either party may refer the dispute to a Committee with equal representation from Local Government and the Principal, who will then attempt to resolve it.

The parties must continue to perform their obligations under the Contract in spite of a dispute.

### **13.3 DEFAULT BY THE CONTRACTOR**

If the Contractor breaches the Contract, the Principal may suspend payment to the Contractor until the breach is rectified to the Principal's satisfaction. This clause does not limit any other rights the Principal may have under the Contract or otherwise in connection with the Contractor's breach.

## **14 GENERAL**

### **14.1 NO ASSIGNMENT**

The Contractor may not assign or encumber a right or interest under the Contract without the prior written consent of the Principal.

### **14.2 DELEGATES OF THE PRINCIPAL'S REPRESENTATIVE**

The Principal's Representative may by notice in writing to the Contractor appoint one or more delegates ('Site Representatives') to exercise any of the functions, powers, duties or discretions of the Principal's Representative under the Contract. The Contractor must recognise the authority of any Site Representative so appointed to exercise the specific powers, functions, duties or discretions set out in the notice.

### **14.3 NO WAIVER**

If the Principal waives a breach of contract by the Contractor, the waiver only applies to the particular breach and the Principal can continue to insist on the Contractor performing the same obligation when it falls to be performed again.

### **14.4 GOVERNING LAW**

The Contract is governed by New South Wales law.

## CONTRACT SCHEDULE

Item	Description	Contract requirements
1	Contractor's Name and address	<i>[insert Contractor's name – including ACN if applicable - and address]</i>
2	Time for Completion ( <i>clauses 1.1, 2, 4.1, 4.2 and 4.3</i> )	<i>[.....]</i> weeks after the date of the Principal's letter of acceptance for the Works
3	Liquidated damages ( <i>clause 4.3</i> )	\$[                      ] per week
4	Amount of Contract Works Insurance ( <i>clause 10.4.1.2</i> )	\$
5	Other insurances required ( <i>clause 10.4.1.5</i> )	Type of insurance: <i>[include professional liability and indemnity insurance with a period of 6 years if design is significant]</i> Amount of cover:
6	Warranty Period ( <i>clause 12</i> )	

. . .