

## ABIC Contracts: What's new and amended in the 2018 contracts?

			<i>References</i>				
	<i>Subject</i>	<i>Summary</i>	<i>MW</i>	<i>SW</i>	<i>BW C</i>	<i>User Guide</i>	
<b>NEW</b>	A.	<p><b>Owner-specified materials:</b> allocation of risk for non-compliant materials</p> <p><b>New definition:</b> <i>*owner-specified materials</i></p>	<ul style="list-style-type: none"> <li>This subclause creates a new Owner warranty that materials supplied and requested by the Owner comply with the relevant building code.</li> <li>This new definition distinguishes those materials that are specified or instructed by the Architect <i>on behalf of the Owner</i>.</li> </ul>	A5.5 Sec. S	A5.5 Sec. S	A4.4 A4.5 Sec. S	Sched. 8
	B.	<b>Controlling access to *site:</b> WHS obligations	<ul style="list-style-type: none"> <li>A new right that allows the Contractor to exclude people from the site, if they have not complied / might not comply with the Contractor's WHS policies and procedures.</li> <li><b>Clause F2.1</b> keeps obligation to give access to the site (on reasonable notice).</li> </ul>	F2.2	F2.2	N/A	Sec. F
	C.	<b>Unfixed and undemolished materials:</b> who has ownership and when	<ul style="list-style-type: none"> <li>This clause clarifies the usual industry position that the Contractor owns all demolished materials and all unfixed materials (until paid by the Owner).</li> </ul>	G17	G9	N/A	Sec. G
	D.	<b>Surety Bond:</b> a new form of security to the Owner	<p>[MW commercial 'C' contract only]</p> <ul style="list-style-type: none"> <li><b>Schedule 5</b> contains a form of guarantee for the Owner: a surety bond.</li> </ul>	Sched. 5d	N/A	N/A	Sched. 5
	E.	<b>Deposit provisions:</b> when payable and when to certify	<p>[MW and SW domestic 'H' contracts only]</p> <ul style="list-style-type: none"> <li>New provision for payment of a deposit to the Contractor. A deposit is optional.</li> <li>A new item in <b>Schedule 1</b> for deposit payment details.</li> <li>A <i>*deposit</i> is defined as a part-payment towards the contract price. The Architect assesses and certifies the deposit amount after practical completion.</li> </ul> <p><b>New definition:</b> <i>*deposit</i></p>	Item 36 N17 N18	Item 30 N16 N17	N/A	Sched. 1 Sec. N
<b>AMENDED</b>	F.	<b>Rates for liquidated damages:</b> inclusion of <i>*GST</i>	<ul style="list-style-type: none"> <li>This item now includes GST in the rate for liquidated damages (LD).</li> <li>LDs are treated as financial settlements. Do not add GST to this amount at the time of certifying any liquidated damages.</li> </ul>	Item 30	Item 24	Item 9	Sched. 1
	G.	<b>Unconditional guarantees:</b> minor improvements	<ul style="list-style-type: none"> <li>Improvements reflect current bank practices when they issue bank guarantees. For example, <b>Schedule 5</b> now provides a date of expiry for the unconditional guarantee</li> </ul>	Sched. 5	Sched. 5	N/A	Sched. 5
	H.	<b>PL and contract works insurance:</b> reducing scope of risks and obligations that Owner indemnifies that Contractor for	<ul style="list-style-type: none"> <li>Modifications to reflect current insurance industry practice; typical contract works policies do not cover Contractor third party liability.</li> </ul>	A4.1e E1 E2	A4.1e E1 E2	N/A	Sec. A Sec. E

AMENDED

J.	<b>Owner’s capacity to pay:</b> When financial positions changes	<ul style="list-style-type: none"> <li>This provision requires the Owner to inform the Contractor immediately if its financial position changes.</li> <li>This provision was made as a running change between the 2008 and 2018 contracts.</li> </ul>	A4.2	A4.2	A4.2	Sec. A
K.	<b>Disputing architect’s failure to act:</b> time bar runs after becoming aware of failure	<ul style="list-style-type: none"> <li>Previously, <b>clause A8</b> (or equivalent) had the same time bar for when a party disputed an ‘act done’ or a ‘failure to act’.</li> <li>Now, <b>clause A9</b> creates a new time bar ‘for a failure to act’ that starts only after the disputing party becomes aware of a failure ‘event’.</li> </ul>	A9	A9	A7	Sec. A
L.	<b>Drawing on security:</b> procedure must be followed	<ul style="list-style-type: none"> <li>These were existing provisions but running changes were made with consolidation in the 2018 contract.</li> <li>A party must ensure the procedural steps for drawing on security are followed. If the procedure is not followed properly, then that party loses the right to draw on security. This serves as a procedural step to guard against the party from drawing on the security at its discretion.</li> <li>This is also a running change between the 2008 and 2018 contracts.</li> </ul>	C5, C6, C12, C13, C15 and C16	C4 C5	C2 C3	Sec. C
M.	<b>Cash retention:</b> ‘trust’ accounts not required	<ul style="list-style-type: none"> <li>The Owner is not required to hold cash retention in a ‘designated’ trust account. Banks are not offering these types of accounts anymore.</li> <li>Retentions kept in a regular account with a bank ‘on trust’ for the Contractor (legal or accounting practice trust accounts are not acceptable).</li> </ul>	C2	C2	C1.3	Sec. C
N.	<b>Drawing on security:</b> *PPSR registration  <b>New definition:</b> *PPSR	<ul style="list-style-type: none"> <li>This clause is amended to allow the Owner to draw on that security only if off-site plant and material is registered on the PPSR to secure payment (which means the Contractor can no longer transfer ownership to the Owner to complete the works).</li> <li>This new definition is relevant to the Owner’s right to draw on security for off-site plant or materials.</li> </ul>	C12 Sec. S	N/A	N/A	Sec. C
P.	<b>Access for defects liability period:</b> Owner must give access to the Contractor	<ul style="list-style-type: none"> <li>Owner now has a positive obligation to give the Contractor access to the site during the DLP. For MW: this includes giving access to a separable part of the works.</li> <li>Clarifies and avoids a potential source of dispute, so that the Owner doesn’t intentionally or accidentally, frustrate the rectification works by not giving access, or by interfering with access.</li> </ul>	M16.1	M13	N/A	Sec. M
Q.	<i>*dangerous or contaminated materials</i>	<ul style="list-style-type: none"> <li>This definition has been improved by removing repetitive wording; no substantive changes. This definition only applies only to MW.</li> </ul>	Sec. S	N/A	N/A	Sec. S